



4310-MR-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 553

[Docket ID: BOEM–2017–0079; MMAA104000]

RIN 1010–AD99

Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Civil Penalties Inflation Adjustments

AGENCY: Bureau of Ocean Energy Management, Interior

ACTION: Final rule.

SUMMARY: This final rule implements the 2018 adjustment of the level of the maximum civil monetary penalties contained in the Bureau of Ocean Energy Management (BOEM) regulations pursuant to the Outer Continental Shelf Lands Act (OCSLA), the Oil Pollution Act of 1990 (OPA), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (FCPIA of 2015), and the Office of Management and Budget (OMB) guidance. The 2018 adjustment multiplier of 1.02041 accounts for one year of inflation spanning the period from October 2016 through October 2017.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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I. Background and Legal Authority

The Outer Continental Shelf Lands Act (OCSLA) directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index to account for inflation (43 U.S.C. § 1350(b)(1)). The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 104-410) (FCPIA of 1990) requires that all civil monetary penalties, including the OCSLA maximum civil penalty amount, be adjusted at least once every four years.

Similarly, the Oil Pollution Act of 1990 (OPA) authorizes the Secretary of the Interior to impose civil penalties for failure to comply with financial responsibility regulations that implement OPA. The FCPIA of 1990 requires that all civil monetary penalties, including the OPA maximum civil penalty amount, be adjusted for inflation at least once every four years.

The FCPIA of 2015 requires Federal agencies to promulgate annual inflation adjustments for civil monetary penalties. Specifically, agencies are required to adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rulemaking (IFR) in 2016, and must make subsequent annual adjustments for inflation, beginning in 2017. Agencies were required to publish the first annual inflation adjustments in the *Federal Register* by no later than January 15, 2017, and must publish recurring annual inflation adjustments by no later than January 15 each subsequent year. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

BOEM last adjusted the levels of civil monetary penalties in BOEM regulations through a final rule, RIN 1010-AD95 [82 FR 10709], which was published on February 15, 2017.

The OMB Memorandum M-18-03, issued December 15, 2017, (Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015; <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf>) explains agency statutory responsibilities for: identifying applicable penalties and performing the annual adjustment; publishing revisions to regulations to implement the adjustment in the *Federal Register*; applying adjusted penalty levels; and performing agency oversight of inflation adjustments.

BOEM is promulgating this 2018 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the FCPIA of 2015 and OMB guidance. A proposed rule is not

required because the FCPIA of 2015 states that agencies shall adjust civil monetary penalties “notwithstanding Section 553 of the Administrative Procedure Act.” (FCPIA of 2015 at sec. 4(b)(2)). Accordingly, Congress expressly exempted the annual inflation adjustments implemented pursuant to the FCPIA of 2015 from the pre-promulgation notice and comment requirements of the Administrative Procedure Act (APA), allowing them to be published as a final rule. This interpretation of the statute is confirmed by OMB Memorandum M-18-03. (OMB Memorandum M-18-03 at 4 (“This means that the public procedure the APA generally requires – notice, an opportunity for comment, and a delay in effective date – is not required for agencies to issue regulations implementing the annual adjustment.”)).

II. Calculation of 2018 Adjustments

Under the FCPIA of 2015 and the guidance provided in OMB Memorandum M-18-03, BOEM has identified applicable civil monetary penalties and calculated the necessary inflation adjustments. The previous civil penalty inflation adjustments accounted for inflation through October 2016. The required annual civil penalty inflation adjustment promulgated through this rule accounts for inflation through October 2017.

Annual inflation adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the October preceding the date of the adjustment, and the prior year’s October CPI-U. Consistent with the guidance in OMB Memorandum M-18-03, BOEM divided the October 2017 CPI-U by the October 2016 CPI-U to calculate the multiplying factor. In this case, October 2017 CPI-U (246.663) / October 2016 CPI-U (241.729) = 1.02041. OMB Memorandum M-18-03 confirms that this is the proper multiplier. (*See* OMB Memorandum M-18-03 at 1 and n.4).

For 2018, OCSLA and the FCPIA of 2015 require that BOEM adjust the OCSLA maximum civil penalty amount. To accomplish this, BOEM multiplied the existing OCSLA maximum civil penalty amount (\$42,704) by the multiplying factor ($\$42,704 \times 1.02041 = \$43,575.59$). The FCPIA of 2015 requires that the resulting amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the adjusted OCSLA maximum civil penalty is \$43,576.

For 2018, the FCPIA of 2015 requires that BOEM adjust the OPA maximum civil penalty amount. To accomplish this, BOEM multiplied the current OPA maximum civil penalty amount (\$45,268) by the multiplying factor ($45,268 \times 1.02041 = \$46,191.92$). The FCPIA of 2015 requires that the resulting amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the adjusted OPA maximum civil penalty is \$46,192.

The adjusted penalty levels will take effect immediately upon publication of this rule. Pursuant to the FCPIA of 2015, the increases in the OCSLA and OPA maximum civil penalty amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation(s) predates such increase. Consistent with the provisions of OCSLA, OPA, and the FCPIA of 2015, this rule adjusts the following maximum civil monetary penalties per day per violation:

CFR Citation	Description of the Penalty	Current Maximum Penalty	Multiplier	Adjusted Maximum Penalty
30 CFR 550.1403	Failure to comply per day per violation.	\$42,704	1.02041	\$43,576
30 CFR 553.51(a)	Failure to comply per day per violation.	\$45,268	1.02041	\$46,192

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866, 13563, and 13771)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the OMB will review all significant rules. OIRA has determined that this rule is not significant. (*See* OMB Memorandum M-18-03 at 3).

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to reduce uncertainty and to promote predictability and the use of the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. We have developed this rule in a manner consistent with these requirements, to the extent relevant and feasible given the limited discretion provided agencies in FCPIA.

E.O. 13771 of January 30, 2017 directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. OIRA has determined that agency regulations exclusively implementing the annual adjustment are not significant regulatory actions under E.O. 12866, provided they are consistent with OMB Memorandum M-18-03 (*See* OMB Memorandum M-18-03 at 3); thus, E.O. 13771 does not apply to this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant

economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. (*See* 5 U.S.C. sections 603(a) and 604(a)). The FCPIA of 2015 expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment. (*See* FCPIA of 2015 at section 4(b)(2); OMB Memorandum M-18-03 at 4). Thus, the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments, or the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department of the Interior's consultation policy, under Departmental Manual Part 512, Chapters 4 and 5, and under the criteria in E.O. 13175. We have determined that it has no substantial direct effects on Federally-recognized Indian tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department of the Interior's tribal and ANCSA consultation policies is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not

conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because, as a regulation of an administrative nature, this rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. Therefore, a detailed statement under NEPA is not required.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

30 CFR Part 553

Administrative practice and procedure, Continental shelf, Financial responsibility, Liability, Limit of liability, Oil and gas exploration, Oil pollution, Outer continental shelf,

Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Surety bonds, Treasury securities.

Dated: February 12, 2018.

Joseph R. Balash
Assistant Secretary - Land and Minerals Management

For the reasons stated in the preamble, the BOEM amends 30 CFR parts 550 and 553 as follows:

**PART 550—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER
CONTINENTAL SHELF**

1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

2. Revise § 550.1403 to read as follows:

§ 550.1403 What is the maximum civil penalty?

The maximum civil penalty is \$43,576 per day per violation.

**PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE
FACILITIES**

3. The authority citation for part 553 continues to read as follows:

Authority: 33 U.S.C. 2704, 2716; E.O. 12777, as amended.

4. In § 553.51, revise paragraph (a) to read as follows:

§ 553.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to \$46,192 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

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