

**Federal Register** notice concerning environmental, civil rights, and other applicable Federal state, and local law;

(vi) Obtaining disbursement of loan funds according to this section and the annual **Federal Register** notice within 5 years. Any loan funds not disbursed within that time will be deobligated and become unavailable for disbursement.

(2) *Agency responsibilities.* (i) Based on the information presented by the Relender and any additional information that may be requested by the Agency, the Agency will determine the eligibility of the applicant and project under this subpart.

(ii) The Agency will notify the re-lender of its determination and any administrative review or appeal rights for Agency decisions made under this subpart. Programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). The applicant and re-lender may appeal any Agency decision that directly and adversely impacts them. For an adverse decision that impacts the applicant, the re-lender and applicant must jointly execute a written request for appeal for an alleged adverse decision made by the Agency. An adverse decision that only impacts the re-lender may be appealed by the re-lender only. A decision by a re-lender adverse to the interest of an applicant or borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be conducted by USDA NAD and will be handled in accordance with 7 CFR part 11.

(iii) For approved eligible borrowers and projects, the Agency will confirm that all environmental requirements as specified in this subpart and 7 CFR part 1970 have been met and that the Relender has provided adequate security for its loan, before the Agency will disburse funds to the Re-lender;

(iv) The Agency will service each re-lender's loan in accordance with 7 CFR part 1951, subpart E. The Agency may suspend further disbursements, and pursue any other available and appropriate remedies, if any of the re-lender loans become troubled, delinquent, or otherwise in default status, or if the re-lender is not meeting the terms of its Relender's Agreement.

Dated: June 29, 2016.

**Lisa Mensah,**

*Under Secretary, Rural Development.*

Dated: June 29, 2016.

**Alexis Taylor,**

*Deputy Under Secretary, Farm and Foreign Agricultural Services.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 250 and 385

[Docket No. RM16-16-000; Order No. 826]

#### Civil Monetary Penalty Inflation Adjustments

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Interim final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is issuing an interim final rule to amend its regulations governing the maximum civil monetary penalties assessable for violations of statutes, rules, and orders within the Commission's jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the Commission to issue this interim final rule.

**DATES:** *Effective Date:* This interim final rule is effective July 6, 2016.

**FOR FURTHER INFORMATION CONTACT:** Todd Hettenbach, Attorney, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8794, [Todd.Hettenbach@ferc.gov](mailto:Todd.Hettenbach@ferc.gov).

**SUPPLEMENTARY INFORMATION:**

#### Order No. 826

#### Interim Final Rule

1. In this interim final rule, the Federal Energy Regulatory Commission (Commission) is complying with its statutory obligation to amend the civil monetary penalties provided by law for matters within the agency's jurisdiction.

#### I. Background

2. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act),<sup>1</sup> which further amended the Federal Civil Penalties Inflation Adjustment Act

of 1990 (1990 Adjustment Act),<sup>2</sup> requires the head of each federal agency to issue an "interim final rule" by July 1, 2016 adjusting for inflation each "civil monetary penalty" provided by law within the agency's jurisdiction. The agency must then update each such civil monetary penalty on an annual basis every January 15 thereafter.<sup>3</sup>

#### II. Discussion

3. The 2015 Adjustment Act defines a civil monetary penalty as any penalty, fine, or other sanction that: (A)(i) Is for a specific monetary amount as provided by federal law or (ii) has a maximum amount provided for by federal law; (B) is assessed or enforced by an agency pursuant to federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the federal courts.<sup>4</sup> This definition applies to the maximum civil penalties that may be imposed under the Federal Power Act (FPA),<sup>5</sup> the Natural Gas Act (NGA),<sup>6</sup> the Natural Gas Policy Act of 1978 (NGPA),<sup>7</sup> and the Interstate Commerce Act (ICA).<sup>8</sup>

4. Under the 2015 Adjustment Act, for the initial adjustment, the first step for such adjustment of a civil monetary penalty for inflation requires determining the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (CPI-U) for October of the preceding year exceeds the CPI-U for October of the year in which the civil monetary penalty was last set or adjusted under a provision of law other than the 1990 and 2015 Adjustment Acts.<sup>9</sup> The Office of Management and Budget has instructed agencies to use the CPI-U for 1914 when calculating the inflation multiplier for penalties established or last adjusted prior to 1914.<sup>10</sup> Adjustments previously made for inflation pursuant to the 1990 Adjustment Act must be excluded.<sup>11</sup> The first adjustment, which is the subject of the present interim final rule, is limited to 150 percent of the civil monetary penalty that was in effect on November 2, 2015.<sup>12</sup>

<sup>2</sup> Public Law 101-410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note).

<sup>3</sup> 28 U.S.C. 2461 note, at (4).

<sup>4</sup> *Id.* (3).

<sup>5</sup> 16 U.S.C. 791a *et seq.*

<sup>6</sup> 15 U.S.C. 717 *et seq.*

<sup>7</sup> 15 U.S.C. 3301 *et seq.*

<sup>8</sup> 49 App. U.S.C. 1 *et seq.* (1988).

<sup>9</sup> 28 U.S.C. 2461 note, at (5)(b).

<sup>10</sup> See Memorandum from Shaun Donovan, Office of Management and Budget, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 6 (Feb. 24, 2016).

<sup>11</sup> *Id.* (5)(b)(2)(A).

<sup>12</sup> *Id.* (5)(b)(2)(C).

<sup>1</sup> Sec. 701, Public Law 114-74, 129 Stat. 584, 599.

5. The second step requires multiplying the CPI-U percentage increase by the applicable November 2, 2015 civil monetary penalty.<sup>13</sup> This step results in a base penalty increase amount.

6. The third step requires rounding the base penalty increase amount to the nearest dollar.<sup>14</sup>

7. Under the 2015 Adjustment Act, an agency is directed to use the civil monetary penalty applicable at the time of assessment of a civil penalty, regardless of the date on which the violation occurred.<sup>15</sup>

8. The Commission currently has civil monetary penalty authority of up to \$1,000,000 per violation, per day under section 316A(b) of the FPA.<sup>16</sup> This civil monetary penalty applies to violations of provisions of Part II of the FPA and to violations of rules and orders promulgated pursuant to Part II of the FPA. Congress increased this Civil Monetary Penalty in 2005 from \$10,000 to \$1,000,000, and it expanded the scope of conduct to which the penalty applies. The Commission has not adjusted this civil monetary penalty for inflation. Inflation during the relevant period was 19.397 percent<sup>17</sup>—the percentage by which the CPI-U for October of the prior year (October 2015, for which the CPI-U=237.838) exceeds the CPI-U for October of the year in which the Civil Monetary Penalty was last set or adjusted (October 2005, for which the CPI-U=199.2). The resulting civil monetary penalty is \$1,193,970.<sup>18</sup>

9. The Commission currently has civil monetary penalty authority of \$11,000 per violation, per day under section 31(c) of the FPA.<sup>19</sup> This civil monetary penalty applies to licensees, permittees, and exemptees who: (a) Violate or fail or refuse to comply with any rule or regulation issued under Part I of the FPA; (b) violate or fail or refuse to comply with any term or condition of a

license, permit, or exemption under Part I of the FPA; or (c) violate or fail or refuse to comply with any order issued pursuant to the Commission's authority to monitor and investigate licenses and permits issued under Part I of the FPA. Congress established this civil monetary penalty at \$10,000 in 1986.<sup>20</sup> The only time that the Commission adjusted this civil monetary penalty was in 2002, when it increased the civil monetary penalty from \$10,000 to \$11,000 to account for inflation pursuant to the 1990 Adjustment Act.<sup>21</sup> According to the 2015 Adjustment Act, however, the Commission must disregard such increases made pursuant to the 1990 Adjustment Act. Inflation between October 1986 and October 2015 was 115.628 percent—the percentage by which the CPI-U for October of the prior year (October 2015, for which the CPI-U=237.838) exceeds the CPI-U for October of the year in which the civil monetary penalty was last set or adjusted for purposes of the 2015 Adjustment Act (October 1986, for which the CPI-U=110.3).<sup>22</sup> The resulting increase rounded to the nearest dollar is \$11,563, and the resulting civil monetary penalty is \$21,563.

10. Under section 315(a) of the FPA, public utilities or licensees are currently subject to civil forfeiture for any willful failure to: Comply with any order of the Commission; file any report required under the FPA or any rule or regulation promulgated pursuant to the FPA; submit any information or document required by the Commission in the course of an investigation conducted under the FPA; or to appear at any hearing or investigation in response to a subpoena issued under the FPA.<sup>23</sup> Congress established this civil monetary penalty at \$1,000 in 1935.<sup>24</sup> The only time that the Commission adjusted it was in 2002, when the Commission increased the civil monetary penalty from \$1,000 to \$1,100 to account for inflation pursuant to the 1990 Adjustment Act.<sup>25</sup> The Commission must disregard such increases made pursuant to the 1990 Adjustment Act.

Inflation during the relevant period was 1,636.044 percent—the percentage by which the CPI-U for October of the prior year (October 2015, for which the CPI-U=237.838) exceeds the CPI-U for October of the year in which the Civil Monetary Penalty was last set or adjusted (October 1935, for which the CPI-U=13.7).<sup>26</sup> However, the 2015 Adjustment Act caps civil monetary penalty increases at 150 percent, so the resulting increase is \$1,750 and the resulting civil monetary penalty is \$2,750.

11. The Commission currently has civil monetary penalty authority of \$1,000,000 per violation, per day under section 22 of the NGA.<sup>27</sup> This civil monetary penalty applies to violations of the NGA, and to violations of rules, regulations, restrictions, conditions, and orders promulgated pursuant to the NGA. Congress established this civil monetary penalty in 2005, and neither the Commission nor Congress has adjusted it for inflation. Inflation during the relevant period was 19.397 percent—the percentage by which the CPI-U for October of the prior year (October 2015, for which the CPI-U=237.838) exceeds the CPI-U for October of the year in which the civil monetary penalty was last set or adjusted (October 2005, for which the CPI-U=199.2).<sup>28</sup> The resulting civil monetary penalty is \$1,193,970.

12. The Commission currently has civil monetary penalty authority of \$1,000,000 per violation, per day, under section 504(b)(6)(A)(i) of the NGPA.<sup>29</sup> This civil monetary penalty applies to violations of any provision of the NGPA and to violations of any rule or order issued under the NGPA, including 18 CFR 358.4, 358.5, 250.16, and 284.13. Congress increased this Civil Monetary Penalty in 2005 from \$5,000 to \$1,000,000, and the Commission has not adjusted it since. Nor has it made conforming changes to one of its regulations, 18 CFR 250.16(e), to reflect the statutory increase of this civil monetary penalty. Inflation during the relevant period was 19.397 percent—the percentage by which the CPI-U for October of the prior year

<sup>13</sup> *Id.* (5)(a).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (6).

<sup>16</sup> 16 U.S.C. 825o-1(b).

<sup>17</sup> See Bureau of Labor Statistics, Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items—Continued, <http://www.bls.gov/cpi/cpid1602.pdf> (last visited March 22, 2016); see also Memorandum from Shaun Donovan, at 6.

<sup>18</sup> The Commission may impose a penalty against a user, owner, or operator of the bulk-power system for a violation of a reliability standard pursuant to FPA section 215(c)(3), 16 U.S.C. 824o(c)(3). The Commission concluded in 2006 that FPA section 316A establishes the limit on such monetary penalties. See *Rule Concerning Certification of the Electric Reliability Organization, and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 71 FR 8662, 8711 (Feb. 17, 2006).

<sup>19</sup> 16 U.S.C. 823b(c); 18 CFR 385.1602(b).

<sup>20</sup> Electric Consumers Protection Act of 1986, Section 12(c), Pub. L. 99-495, 100 Stat 1243.

<sup>21</sup> *Civil Monetary Penalty Inflation Adjustment Rule*, Order No. 692, 67 FR 52410, 52412 (Aug. 12, 2002) (renumbered from Order No. 890).

<sup>22</sup> See Bureau of Labor Statistics, Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items—Continued, <http://www.bls.gov/cpi/cpid1602.pdf> (last visited March 22, 2016); see also Memorandum from Shaun Donovan, at 6.

<sup>23</sup> 16 U.S.C. 825n(a); 18 CFR 385.1602(c).

<sup>24</sup> 49 Stat. 803, 861 (codified at 16 U.S.C. 825n(a)).

<sup>25</sup> *Civil Monetary Penalty Inflation Adjustment Rule*, 67 FR at 52412.

<sup>26</sup> See Bureau of Labor Statistics, Table 24.

Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items—Continued, <http://www.bls.gov/cpi/cpid1602.pdf> (last visited March 22, 2016); see also Memorandum from Shaun Donovan, at 6.

<sup>27</sup> 15 U.S.C. 717t-1.

<sup>28</sup> See Bureau of Labor Statistics, Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items—Continued, <http://www.bls.gov/cpi/cpid1602.pdf> (last visited March 22, 2016); see also Memorandum from Shaun Donovan, at 6.

<sup>29</sup> 15 U.S.C. 3414(b)(6)(A)(i).

(October 2015, for which the CPI-U=237.838) exceeds the CPI-U for October of the year in which the civil monetary penalty was last set or adjusted (October 2005, for which the CPI-U=199.2).<sup>30</sup> The resulting civil monetary penalty is \$1,193,970.

13. Under section 6(10) of the ICA, pipeline carriers, receivers, and trustees are currently subject to a civil penalty for failure or refusal to comply with regulations or orders concerning posting and filing rate schedules issued by the Commission under section 6 of the ICA.<sup>31</sup> Congress established this civil monetary penalty in 1910 at \$500 per offense and \$25 per day after the first day,<sup>32</sup> and that penalty has not been adjusted since. Inflation during the relevant period was 2,254.832 percent—the percentage by which the CPI-U for October of the prior year (October 2015, for which the CPI-U=237.838) exceeds the CPI-U for October 1914 (for which the CPI-U=10.1).<sup>33</sup> However, the 2015 Adjustment Act caps civil monetary penalty increases at 150 percent, so the base penalty increase is \$750, and the per day increase is \$37.50. The resulting civil monetary penalty is \$1250 per offense and \$62.50 per day after the first day.

14. Under section 16(8) of the ICA, pipeline carriers, representatives or agents of carriers, receivers, trustees, or agents of the above are currently subject to a civil penalty for knowing or neglectful failure to comply with orders issued by the Commission under sections 3 (prohibiting undue or unreasonable preferences, advantages,

discrimination, or disadvantages), 13 (concerning Commission investigations and power to set aside, after full hearing, any “rate, fare, charge, classification, regulation, or practice caus[ing] any undue or reasonable advantage, preference, or prejudice . . . .”), or 15 (empowering the Commission, after full hearing, to set aside any rate, fare, or charge that “is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any provisions of [the ICA]”).<sup>34</sup> Congress initially established this civil monetary penalty in 1910 at \$5,000 per offense, per day,<sup>35</sup> and it has not been adjusted since. Inflation during the relevant period was 2,254.832 percent—percentage by which the CPI-U for October of the prior year (October 2015, for which the CPI-U=237.838) exceeds the CPI-U for October 1914 (for which the CPI-U=10.1).<sup>36</sup> However, the 2015 Adjustment Act caps civil monetary penalty increases at 150 percent, so the resulting increase is \$7,500 and the resulting civil monetary penalty is \$12,500 per day.

15. Under section 19a(k) of the ICA, pipeline carriers, receivers of pipeline carriers, and operating trustees are currently subject to a civil penalty for their failure to comply with Commission’s requirements to provide information, or to provide access, in connection with the Commission’s valuation of a pipeline carrier’s property under section 19(a) of the ICA.<sup>37</sup> Congress established this civil monetary penalty in 1913 at \$500 per offense, per

day,<sup>38</sup> and it has not been adjusted since. Inflation during the relevant period was 2,254.832 percent—percentage by which the CPI-U for October of the prior year (October 2015, for which the CPI-U=237.838) exceeds the CPI-U for October 1914 (for which the CPI-U=10.1).<sup>39</sup> However, the 2015 Adjustment Act caps civil monetary penalty increases at 150 percent, so the resulting increase is \$750 and the resulting civil monetary penalty is \$1,250 per offense, per day.

16. Under section 20(7)(a) of the ICA, pipeline carriers and their lessors are currently subject to a civil penalty for their failure to keep or submit certain accounts, records, or memoranda required by the Commission under authority granted in section 20 of the ICA.<sup>40</sup> Congress last adjusted this civil monetary penalty in 1940 at \$500 per offense, per day,<sup>41</sup> and it has not been adjusted since. Inflation during the relevant period was 1,598.843 percent—percentage by which the CPI-U for October of the prior year (October 2015, for which the CPI-U=237.838) exceeds the CPI-U for October of the year in which the civil monetary penalty was last set or adjusted (October 1940, for which the CPI-U=14).<sup>42</sup> However, the 2015 Adjustment Act caps civil monetary penalty increases at 150 percent, so the resulting increase is \$750 and the resulting civil monetary penalty is \$1,250 per offense, per day.

17. The preceding adjustments are reflected in the following table:

Source	Existing maximum civil monetary penalty	New adjusted civil monetary penalty
16 U.S.C. 825o-1(b), Sec. 316A of the Federal Power Act.	\$1,000,000 per violation, per day .....	\$1,193,970 per violation, per day.
16 U.S.C. 823b(c), Sec. 31(c) of the Federal Power Act.	\$11,000 per violation, per day .....	\$21,563 per violation, per day.

<sup>30</sup> See Bureau of Labor Statistics, Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items—Continued, at <http://www.bls.gov/cpi/cpid1602.pdf> (last visited March 22, 2016); see also Memorandum from Shaun Donovan, at 6. The Office of Management and Budget has instructed agencies to use the CPI-U for 1914 when calculating the inflation multiplier for penalties established or last adjusted prior to 1914. See Memorandum from Shaun Donovan, at 6.

<sup>31</sup> 49 App. U.S.C. 6(10) (1988).

<sup>32</sup> 36 Stat. 539, 548 (codified at 49 App. U.S.C. 6(10) (1988)).

<sup>33</sup> See Bureau of Labor Statistics, Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items—Continued, at <http://www.bls.gov/cpi/cpid1602.pdf> (last visited March 22, 2016); see also Memorandum from Shaun Donovan, Office of Management and Budget, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements

Act of 2015, 6 (Feb. 24, 2016). The Office of Management and Budget has instructed agencies to use the CPI-U for 1914 when calculating the inflation multiplier for penalties established or last adjusted prior to 1914. See Memorandum from Shaun Donovan, at 6.

<sup>34</sup> 49 App. U.S.C. 16(8) (1988).

<sup>35</sup> 36 Stat. 539, 554 (codified at 49 App. U.S.C. 16(8) (1988)).

<sup>36</sup> See Bureau of Labor Statistics, Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items—Continued, at <http://www.bls.gov/cpi/cpid1602.pdf> (last visited March 22, 2016); see also Memorandum from Shaun Donovan, at 6. The Office of Management and Budget has instructed agencies to use the CPI-U for 1914 when calculating the inflation multiplier for penalties established or last adjusted prior to 1914. See Memorandum from Shaun Donovan, at 6.

<sup>37</sup> 49 App. U.S.C. 19a(k) (1988).

<sup>38</sup> 37 Stat. 701, 703 (codified at 49 App. U.S.C. 19a(k) (1988)).

<sup>39</sup> See Bureau of Labor Statistics, Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items—Continued, at <http://www.bls.gov/cpi/cpid1602.pdf> (last visited March 22, 2016); see also Memorandum from Shaun Donovan, at 6. The Office of Management and Budget has instructed agencies to use the CPI-U for 1914 when calculating the inflation multiplier for penalties established or last adjusted prior to 1914. See Memorandum from Shaun Donovan, at 6.

<sup>40</sup> 49 App. U.S.C. 20(7)(a) (1988).

<sup>41</sup> 54 Stat. 916, 918 (codified at 49 App. U.S.C. 20(7)(a) (1988)).

<sup>42</sup> See Bureau of Labor Statistics, Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items—Continued, at <http://www.bls.gov/cpi/cpid1602.pdf> (last visited March 22, 2016); see also Memorandum from Shaun Donovan, at 6.

Source	Existing maximum civil monetary penalty	New adjusted civil monetary penalty
16 U.S.C. 825n(a), Sec. 315(a) of the Federal Power Act.	\$ 1,100 per violation .....	\$2,750 per violation.
15 U.S.C. 717t-1, Sec. 22 of the Natural Gas Act.	\$1,000,000 per violation, per day .....	\$1,193,970 per violation, per day.
15 U.S.C. 3414(b)(6)(A)(i), Sec. 504(b)(6)(A)(i) of the Natural Gas Policy Act of 1978.	\$1,000,000 per violation, per day .....	\$1,193,970 per violation, per day.
49 App. U.S.C. 6(10) (1988), Sec. 6(10) of the Interstate Commerce Act.	\$500 per offense and \$25 per day after the first day.	\$1,250 per offense and \$62.50 per day after the first day.
49 App. U.S.C. 16(8) (1988), Sec. 16(8) of the Interstate Commerce Act.	\$5,000 per violation, per day .....	\$12,500 per violation, per day.
49 App. U.S.C. 19a(k) (1988), Sec. 19a(k) of the Interstate Commerce Act.	\$500 per offense, per day .....	\$1,250 per offense, per day.
49 App. U.S.C. 20(7)(a) (1988), Sec. 20(7)(a) of the Interstate Commerce Act.	\$500 per offense, per day .....	\$1,250 per offense, per day.

**III. Administrative Findings**

18. Under the Administrative Procedure Act, a final rule may be issued without prior public notice and comment if the agency finds that notice and comment are impractical, unnecessary, or contrary to the public interest.<sup>43</sup> The Commission finds that prior notice and comment for this rulemaking would be impractical, unnecessary, and contrary to the public interest. The Commission is required by law to adopt an interim final rule adjusting its civil monetary penalties for inflation. Moreover, the formula for the civil monetary penalty adjustment is prescribed by Congress and is not subject to the Commission's discretion. Because the Commission is required by law to undertake these inflation adjustments, and because the Commission lacks discretion with respect to the method and amount of the adjustments, prior notice and comment would be impractical, unnecessary, and contrary to the public interest.

**IV. Regulatory Flexibility Statement**

19. The Regulatory Flexibility Act, as amended, requires agencies to certify that rules promulgated under their authority will not have a significant economic impact on a substantial number of small businesses.<sup>44</sup> The requirements of the Regulatory Flexibility Act apply only to rules promulgated following notice and comment.<sup>45</sup> The requirements of the Regulatory Flexibility Act do not apply to this rulemaking because the Commission is issuing this interim final rule without notice and comment.

**V. Paperwork Reduction Act**

20. This rule does not require the collection of information. The Commission is therefore not required to

submit this rule for review to the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995.<sup>46</sup>

**VI. Document Availability**

21. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

22. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

23. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659, [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

**VII. Effective Date and Congressional Notification**

24. For the same reasons the Commission has determined that public notice and comment are unnecessary, impractical, and contrary to the public interest, the Commission finds good cause to adopt an effective date that is less than 30 days after the date of publication in the **Federal Register** pursuant to the Administrative Procedure Act,<sup>47</sup> and therefore, the

regulation is effective upon publication in the **Federal Register**.

25. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, and Government Accountability Office.

**List of Subjects**

*18 CFR Part 250*

Natural gas, Reporting and recordkeeping requirements.

*18 CFR Part 385*

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Issued: June 29, 2016.

**Kimberly D. Bose**,  
*Secretary.*

In consideration of the foregoing, the Commission amends parts 250 and 385, Chapter I, Title 18, *Code of Federal Regulations* as follows:

**PART 250—FORMS**

■ 1. The authority citation for part 250 is revised to read as follows:

**Authority:** 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352; 28 U.S.C. 2461 note.

■ 2. Amend § 250.16 by revising paragraph (e)(1) to read as follows:

**§ 250.16 Format of compliance plan transportation services and affiliate transactions.**

\* \* \* \* \*

(e) *Penalty for failure to comply.* (1) Any person who transports gas for others pursuant to Subparts B or G of

<sup>43</sup> 5 U.S.C. 553(b)(3)(B).

<sup>44</sup> 5 U.S.C. 601 *et seq.*

<sup>45</sup> 5 U.S.C. 603, 604.

<sup>46</sup> 44 U.S.C. 3507(d).

<sup>47</sup> 5 U.S.C. 553(d)(3).

Part 284 of this chapter and who knowingly violates the requirements of §§ 358.4 and 358.5, § 250.16, or § 284.13 of this chapter will be subject, pursuant to sections 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than \$1,193,970 for any one violation.

\* \* \* \* \*

## PART 385—RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 385 is revised to read as follows:

**Authority:** 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988); 28 U.S.C. 2461 note (1990); 28 U.S.C. 2461 note (2015).

■ 4. Revise § 385.1504(a) to read as follows:

### § 385.1504 Maximum civil penalty (Rule 1504).

(a) Except as provided in paragraph (b) of this section, the Commission may assess a civil penalty of up to \$21,563 for each day that the violation continues.

\* \* \* \* \*

■ 5. Revise § 385.1601 to read as follows:

### § 385.1601 Scope and purpose (Rule 1601).

The purpose of this subpart is to make inflation adjustments to the civil monetary penalties provided by law within the jurisdiction of the Commission. These penalties shall be subject to review and adjustment as necessary at least every year in accordance with the Federal Civil Penalties Inflation Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

■ 6. Revise § 385.1602 to read as follows:

### § 385.1602 Civil penalties, as adjusted (Rule 1602).

The current inflation-adjusted civil monetary penalties provided by law within the jurisdiction of the Commission are:

(a) 15 U.S.C. 3414(b)(6)(A)(i), Natural Gas Policy Act of 1978: \$1,193,970 per day.

(b) 16 U.S.C. 823b(c), Federal Power Act: \$21,563 per day.

(c) 16 U.S.C. 825n(a), Federal Power Act: \$2,750.

(d) 16 U.S.C. 825o–1(b), Federal Power Act: \$1,193,970 per day.

(e) 15 U.S.C. 717t–1, Natural Gas Act: \$1,193,970 per day.

(f) 49 App. U.S.C. 6(10) (1988), Interstate Commerce Act: \$1,250 per offense and \$62.50 per day after the first day.

(g) 49 App. U.S.C. 16(8) (1988), Interstate Commerce Act: \$12,500 per day.

(h) 49 App. U.S.C. 19a(k) (1988), Interstate Commerce Act: \$1,250 per day.

(i) 49 App. U.S.C. 20(7)(a) (1988), Interstate Commerce Act: \$1,250 per day.

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## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

#### 25 CFR Part 575

#### Civil Penalty Inflation Adjustment

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Interim final rule.

**SUMMARY:** In compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget (OMB) guidance, this rule adjusts the level of the civil monetary penalty, contained in the National Indian Gaming Commission's (NIGC or Commission) regulation, with an initial “catch-up” adjustment.

**DATES:** This interim final rule will have an effective date of August 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Contact Armando J. Acosta, Senior Attorney, Office of General Counsel, National Indian Gaming Commission, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the Act). The Act requires federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rulemaking and then make subsequent annual adjustments for inflation. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a federal civil statute or regulation, and is assessed or enforceable through a civil action in federal court or an administrative proceeding.

## II. Calculation of Adjustment

The OMB issued guidance on calculating the catch-up adjustment. See February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, Subject: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*. Under this guidance, the Commission has identified one applicable civil monetary penalty and calculated the catch-up adjustment. This rule adjusts the level of the civil monetary penalty contained in 25 CFR 575.4 (“The Chairman may assess a civil fine, not to exceed \$25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation . . .”). The OMB provided to agencies a table of multipliers to adjust the penalty level based on the year that the penalty was established or last adjusted by statute or regulation. The multiplier for 1988 (when the Indian Gaming Regulatory Act was enacted) is 1.97869 ( $\$25,000 \times 1.97869 = \$49,467$ ).

## III. Regulatory Matters

### Regulatory Planning and Review

This interim final rule is not a significant rule and OMB has reviewed this rule under Executive Order 12866. This rule provides an initial catch-up adjustment of penalties to account for inflation.

(1) This rule will not have an effect of \$100 million or more on the economy or will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of recipients.

(4) This regulatory change does not raise novel legal or policy issues.

### Regulatory Flexibility Act

The Commission certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule makes adjustments for inflation.