

taxable year ending December 31, 2023.”

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DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE-2022-0002; 223E1700D2
 EEEE500000 ET1SF0000.EAQ000]

RIN 1014-AA55

Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Civil Penalty Inflation Adjustment

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This final rule adjusts the level of the maximum daily civil monetary penalty contained in the Bureau of Safety and Environmental Enforcement (BSEE) regulations for violations of the Outer Continental Shelf Lands Act (OCSLA), in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget (OMB) guidance. The civil penalty inflation adjustment, using a 1.06222 multiplier, accounts for one year of inflation based on the Consumer Price Index (CPI) spanning from October 2020 to October 2021.

DATES: This rule is effective on February 24, 2022.

FOR FURTHER INFORMATION CONTACT:

Janine Marie Tobias, Safety and Enforcement Division, Bureau of Safety and Environmental Enforcement, (202) 208-4657 or by email: regs@bsee.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Legal Authority

The OCSLA, at 43 U.S.C. 1350(b)(1), directs the Secretary of the Interior (Secretary) to adjust the OCSLA maximum daily civil penalty amount at least once every three years to reflect any increase in the CPI to account for inflation. 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) (FCPIA of 2015). The

FCPIA of 2015 required Federal agencies to adjust the level of civil monetary penalties found in their regulations with an initial “catch-up” adjustment through rulemaking, if warranted, and then to make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. 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 of each subsequent year.

BSEE last updated the maximum daily civil penalty amounts in BSEE’s regulations for OCSLA violations by a final rule published and effective on May 4, 2021. (See 86 FR 23606). Consistent with OMB guidance, the 2021 final rule implemented the inflation adjustments required by the FCPIA of 2015 through October 2020.

The OMB Memorandum M-22-07 (*Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*; available at <https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-07.pdf>) explains agency 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.

BSEE is promulgating this 2022 inflation adjustment for the OCSLA maximum daily civil penalties as a final rule pursuant to the provisions of the FCPIA of 2015 and OMB’s guidance. A proposed rule is not required because the FCPIA of 2015 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, 5 U.S.C. 553 *et seq.* (the APA), allowing those adjustments to be published directly as final rules. Specifically, the FCPIA of 2015 states that agencies shall adjust civil monetary penalties “notwithstanding Section 553 of the Administrative Procedure Act.” (FCPIA of 2015 at § 4(b)(2)). This interpretation of the FCPIA of 2015 is confirmed by OMB Memorandum M-22-07 at 3-4 (“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 Adjustments

In accordance with the FCPIA of 2015 and the guidance provided in OMB Memorandum M-22-07, BSEE has calculated the necessary inflation adjustment for the maximum daily civil monetary penalty amount in 30 CFR 250.1403 for violations of OCSLA. The previous OCSLA civil penalty inflation adjustment accounted for inflation through October 2020. The required annual civil penalty inflation adjustment promulgated through this rule accounts for inflation through October 2021.

Annual inflation adjustments are based on the percent change between the CPI 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-22-07, BSEE divided the October 2021 CPI-U by the October 2020 CPI-U to calculate the multiplying factor. In this case, the October 2021 CPI-U (276.589) divided by the October 2020 CPI-U (260.388) is 1.06222. OMB Memorandum M-22-07 confirms that this is the proper multiplier. (OMB Memorandum M-22-07 at 1 & n.4).

The FCPIA of 2015 requires that BSEE adjust the OCSLA maximum daily civil penalty amount for inflation using the applicable 2022 multiplier (1.06222). Accordingly, BSEE multiplied the existing OCSLA maximum daily civil penalty amount (\$46,000) by 1.06222 to arrive at the new maximum daily civil penalty amount (\$48,862.12). 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 daily civil penalty for 2022 is \$48,862.

The adjusted penalty levels take effect immediately upon publication of this rule. Pursuant to the FCPIA of 2015, the increase in the OCSLA maximum daily civil penalty amount applies to civil penalties assessed after the date the increase takes effect, even when the associated violation(s) predates such increase. Consistent with the provisions of OCSLA and the FCPIA of 2015, this rule adjusts the following maximum civil monetary penalty per day per violation as follows:

CFR citation	Description of the penalty	Current maximum penalty	Multiplier	Adjusted maximum penalty
30 CFR 250.1403	Failure to comply per-day, per-violation	\$46,000	1.06222	\$48,862

III. Procedural Requirements

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

Executive Order (E.O.) 12866 provides that the OMB Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant. (See OMB Memorandum M-22-07 at 3).

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use 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. E.O. 13563 further emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for 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. 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 § 4(b)(2); OMB Memorandum M-22-07 at 3-4). 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:

(1) Does not have an annual effect on the economy of \$100 million or more;

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) Does 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. To the extent that State and local governments have a role in Outer Continental Shelf activities, this rule will not affect that role. 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:

(1) 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

(2) 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.

J. National Environmental Policy Act

This rule does not constitute a major Federal action because of the non-discretionary nature of the civil penalty adjustment as required by law (40 CFR 1508.1(q)(1(ii))). The Department of Labor's CPI sets the annual civil penalty adjustment as required by the FCPIA of 2015. BSEE has no discretion in the execution of the civil penalty adjustments. Because this rule is not a Major Federal Action, it is therefore not subject to the requirements of the National Environmental Policy Act of 1969 (NEPA).

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 in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Penalties, Pipelines, Continental shelf—mineral resources, Continental Shelf—

rights-of-way, Reporting and recordkeeping requirements, and Sulfur. **Laura Daniel-Davis,** *Principal Deputy Assistant Secretary, Land and Minerals Management.*

For the reasons given in the preamble, the BSEE amends Title 30, Chapter II, Subchapter B, part 250 of the Code of Federal Regulations as follows.

PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

- 1. The authority citation for 30 CFR part 250 continues to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

- 2. Revise § 250.1403 to read as follows:

§ 250.1403 What is the maximum civil penalty?

The maximum civil penalty is \$48,862 per day per violation.

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DEPARTMENT OF THE TREASURY

31 CFR Part 16

Program Fraud Civil Remedies

AGENCY: Departmental Offices, Treasury. **ACTION:** Final rule.

SUMMARY: This final rule updates the definition of “investigating official” in the Department’s Program Fraud regulations. The definition is revised to include inspectors general that have been established since the Program Fraud regulations were implemented. This final rule adopts a November 23, 2021 proposed rule without change.

DATES: Effective March 28, 2022.

FOR FURTHER INFORMATION CONTACT: Brian Sonfield, Assistant General Counsel for General Law, Ethics & Regulation at (202) 622-9804.

SUPPLEMENTARY INFORMATION:

Background and Proposed Rule

The Department promulgated implementing regulations for the Program Fraud Civil Remedies Act of 1986 (Act) (31 U.S.C. 3801 through 3812) on September 17, 1987 (52 FR 35071). The Act generally provides that any person who knowingly submits a false claim or statement to the Federal Government may be liable for an administrative civil penalty for each false claim or statement, and, in certain cases, to an assessment equal to double the amount falsely claimed.

The Act vests authority to investigate allegations of liability under its provisions in an agency’s investigating official. Based upon the results of an investigation, the agency reviewing official determines, with the concurrence of the Attorney General, whether to refer the matter to a presiding officer for an administrative hearing. Any penalty or assessment imposed under the Act may be collected by the Attorney General, through the filing of a civil action, or by offsetting amounts other than tax refunds, owed the particular party by the federal government.

The Act grants agency investigating officials authority to require by subpoena the production of documentary evidence which is “not otherwise reasonably available.” If the case proceeds to hearing, the presiding officer may require the attendance and testimony of witnesses as well as the production of documentary evidence.

The Department of the Treasury adopted implementing regulations at 31 CFR part 16, which designated the Department’s Assistant Secretary for Management as the authority head, designated the Department’s Inspector General as the investigating official, and assigned the role of reviewing official to the General Counsel or designee.

On November 23, 2021 (86 FR 66497), the Department issued a proposed rule that would revise the definition of investigating official in § 16.2. Since the regulations were promulgated in 1987, three inspectors general have been established including the Treasury Inspector General for Tax Administration (See Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685), the Special Inspector General for the Troubled Asset Relief Program (See Emergency Economic Stabilization Act of 2008, Pub. L. 110-343, 122 Stat. 3765), and the Special Inspector General for Pandemic Recovery (See Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281). The proposed revision would define investigating official as any Inspector General, including any Special Inspector General, with investigatory authority over programs of the Department of the Treasury.

This Final Rule

The public comment period on the proposed rule closed on January 6, 2022. One comment was received that supported the proposal. The Department appreciates the commenter’s input.

For the reasons discussed in the proposed rule and this preamble, the

Department adopts the proposed rule without change.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the rule on small entities. A small entity is defined as either a small business, a small organization, or a small governmental jurisdiction; an individual is not a small entity. Section 605(b) of the RFA allows an agency to prepare a certification in lieu of an IRFA if the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The rule is limited to updating the definition of investigating official for program fraud investigations in order to reflect current law. Accordingly, this rule will have no direct impacts on small entities.

Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action” under Executive Order 12866.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a rule that includes any federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This regulation does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

Federalism

Executive Order 13132 (titled Federalism) prohibits an agency from publishing any rule that has federalism