

Dated: January 13, 2017.

**Loretta E. Lynch,**  
Attorney General.

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## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

#### 30 CFR Part 250

[Docket ID: BSEE-2017-0001; 17XE1700DX EX1SF0000.DAQ000 EEEE50000]

RIN 1014-AA34

#### 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 civil monetary penalty contained in the Bureau of Safety and Environmental Enforcement (BSEE) regulations pursuant to the Outer Continental Shelf Lands Act (OCSLA), 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 1.01636 multiplier accounts for one year of inflation spanning from October 2015 to October 2016.

**DATES:** This rule is effective on February 3, 2017.

**FOR FURTHER INFORMATION CONTACT:** Robert Fisher, Acting Chief Safety and Enforcement Division, Bureau of Safety and Environmental Enforcement, (202) 208-3955 or by email: [regs@bsee.gov](mailto:regs@bsee.gov).

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#### I. Background and Legal Authority

The OCSLA, at 43 U.S.C. 1350(b)(1), 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. 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 requires Federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment through rulemaking, if warranted, and then to make subsequent annual adjustments for inflation. Agencies are required to publish the annual inflation adjustments in the **Federal Register** by no later than January 15, 2017, and 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.

BSEE last updated civil penalty amounts in BSEE regulations through RIN 1014-AA30 [81 FR 41801] effective July 28, 2016. Consistent with OMB guidance, BSEE’s interim final rule (IFR) implemented the catch-up adjustments required by the FCPIA of 2015, through October 2015. No public comments were received on the IFR, and BSEE published the final rule on November 17, 2016 [81 FR 80994].

The OMB Memorandum M-17-11 (Implementation of the 2017 annual adjustment pursuant to the FCPIA of 2015; [https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11\\_0.pdf](https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf)) explains agency responsibilities for: Identifying applicable penalties and performing the annual adjustment; publishing in the **Federal Register**; finalizing 2016 interim final rules; applying adjusted penalty levels; and performing agency oversight of inflation adjustments.

BSEE is promulgating this 2017 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 § 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-17-11. (OMB Memorandum M-17-11 at 3 (“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

Under the FCPIA of 2015 and the guidance provided in OMB Memorandum M-17-11, BSEE has identified the applicable civil monetary penalty and calculated the necessary inflation adjustment. The previous OCSLA civil penalty inflation adjustment accounted for inflation through October 2015. The required annual civil penalty inflation adjustment promulgated through this rule accounts for inflation through October 2016.

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-17-11, BSEE divided the October 2016 CPI-U by the October 2015 CPI-U to calculate the multiplying factor. In this case, October 2016 CPI-U (241.729)/October 2015 CPI-U (237.838) = 1.01636.

For 2017, OCSLA and the FCPIA of 2015 require that BSEE adjust the OCSLA maximum civil penalty amount. To accomplish this, BSEE multiplied the existing OCSLA maximum civil penalty amount (\$42,017) by the multiplying factor ( $\$42,017 \times 1.01636 = \$42,704.40$ ). The FCPIA of 2015 requires that the OCSLA maximum civil penalty amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the adjusted OCSLA maximum civil penalty is \$42,704.

Pursuant to the FCPIA of 2015, the increase in the OCSLA maximum 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:

CFR citation	Description of the penalty	Current maximum penalty	Multiplier	Adjusted maximum penalty
30 CFR 250.1403 .....	Failure to comply per-day, per-violation .....	\$42,017	1.01636	\$42,704

**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 will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant. (See OMB Memorandum M-17-11 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 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. 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-17-11 at 3). 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.

(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 affect 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:

(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. 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 the rule is covered by a categorical exclusion (see 43 CFR 46.210(i)). This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. 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.

*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, Incorporation by reference, Investigations, Oil and gas exploration, Penalties, Pipelines, Continental Shelf—mineral resources, Continental Shelf—

rights-of-way, Reporting and recordkeeping requirements, Sulfur.

For the reasons given in the preamble, the Bureau of Safety and Environmental Enforcement amends Title 30, Chapter II, Subchapter B, Part 250 Code of Federal Regulations as follows.

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

■ 1. The authority citation for 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 \$42,704 per day per violation.

**Richard T. Cardinale,**

*Acting Assistant Secretary for Land and Minerals Management.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2016-0620; FRL-9958-28-Region 8]

### Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to Nonattainment Permitting Regulations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action to conditionally approve all but one of the State Implementation Plan (SIP) revisions submitted by the State of Utah on August 20, 2013, with supporting administrative documentation submitted on September 12, 2013. These submittals revise the Utah Administrative Code (UAC) that pertain to the issuance of Utah air quality permits for major sources in nonattainment areas. The EPA is not taking final action on the portion of the August 20, 2013 submittal that revised rule R307-420 at this time. The EPA is taking final action to conditionally approve the other revisions because, while the submitted revisions to Utah's nonattainment permitting rules do not fully address the deficiencies in the state's program, Utah has committed to address additional remaining

deficiencies in the state's nonattainment permitting program no later than a year from the EPA finalizing this conditional approval. Upon the EPA finding of a timely meeting of this commitment in full, the final conditional approval of the SIP revisions would convert to a final approval of Utah's plan. This action is being taken under section 110 of the Clean Air Act (CAA) (Act).

**DATES:** This final rule is effective March 6, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2016-0620. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays. **FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, or [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).

### I. Background

On August 20, 2013, with supporting administrative documentation submitted on September 12, 2013, Utah sent the EPA revisions to their nonattainment permitting regulations, specifically to address deficiencies the EPA identified in their nonattainment permitting regulations that affected the EPA's ability to approve Utah's PM<sub>10</sub> maintenance plan and that may affect the EPA's ability to approve Utah's PM<sub>2.5</sub> SIP. These revisions addressed R307-403-1 (Purpose and Definitions), R307-403-2 (Applicability), R307-403-11 (Actual Plant-wide Applicability Limits (PALs)), and R307-420 (Ozone Offset Requirements in Davis and Salt Lake Counties). In addition, Utah moved R307-401-19 (Analysis of Alternatives) to R307-403-10 and moved R307-401-20 (Relaxation of Limits) to R307-403-2. On June 2, 2016, the EPA entered into a consent decree with the Center for

Biological Diversity, Center for Environmental Health, and Neighbors for Clean Air regarding a failure to act, pursuant to CAA sections 110(k)(2)-(4), on certain complete SIP submissions from states intended to address specific requirements related to the 2006 PM<sub>2.5</sub> national ambient air quality standard (NAAQS) for certain nonattainment areas, including the submittal from the Governor of Utah dated August 20, 2013.

The SIP revisions submitted by the Utah Department of Air Quality (UDAQ) on August 20, 2013, establish specific nonattainment new source review (NNSR) permitting requirements. In this revision, the UDAQ has incorporated federal regulatory language—establishing permitting requirements for new and modified major stationary sources in a nonattainment area—from portions of 40 CFR 51.165 and reformatted it into state-specific requirements for sources in Utah under R307-403-1 (Purpose and Definitions) and R307-403-2 (Applicability), including provisions relevant to NNSR programs for PM<sub>2.5</sub> nonattainment areas. Additionally, UDAQ incorporated by reference the provisions of 40 CFR 51.165(f)(1)—(f)(14) into 307-403-11 (Actual PALs), and revised R307-420 to state that the definitions and applicability provisions in R307-403-1 apply to this section.

CAA section 110(a)(2)(C) requires each state plan to include “a program to provide for . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter,” and CAA section 172(c)(5) provides that the plan “shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section [173].” CAA section 173 lays out the requirements for obtaining a permit that must be included in a state's SIP-approved permit program. CAA section 110(a)(2)(A) requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. CAA section 110(i) (with certain limited exceptions) prohibits states from modifying SIP requirements for stationary sources except through the SIP revision process. CAA section 172(c)(7) requires that nonattainment plans, including NNSR programs required by section 172(c)(5),