

166 FERC ¶ 61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 250 and 385

[Docket No. RM19-9-000; Order No. 853]

Civil Monetary Penalty Inflation Adjustments

(Issued January 8, 2019)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a 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 final rule.

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

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Civil Monetary Penalty
Inflation Adjustments

Docket No. RM19-9-000

ORDER NO. 853

FINAL RULE

(Issued January 8, 2019)

1. In this 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),¹ which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act),² required the head of each federal agency to issue a rule by July 2016 adjusting for inflation each "civil monetary penalty"

¹ Sec. 701, Pub. L. 114-74, 129 Stat. 584, 599.

² Pub. L. 101-410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note).

provided by law within the agency's jurisdiction and to make further inflation adjustments on an annual basis every January 15 thereafter.³

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.⁴ This definition applies to the maximum civil penalties that may be imposed under the Federal Power Act (FPA),⁵ the Natural Gas Act (NGA),⁶ the Natural Gas Policy Act of 1978 (NGPA),⁷ and the Interstate Commerce Act (ICA).⁸

4. Under the 2015 Adjustment Act, the first step for such adjustment of a civil monetary penalty for inflation requires determining the percentage by which the

³ 28 U.S.C. 2461 note, at (4). The Commission made its January 2018 adjustment on January 8, 2018, in Docket No. RM18-4-000. *See Civil Monetary Penalty Inflation Adjustments*, Order No. 839, 83 FR 1550 (Jan. 12, 2018), FERC Stats. & Regs. ¶ 31,397 (2018).

⁴ *Id.* (3).

⁵ 16 U.S.C. 791a *et seq.*

⁶ 15 U.S.C. 717 *et seq.*

⁷ 15 U.S.C. 3301 *et seq.*

⁸ 49 App. U.S.C. 1 *et seq.* (1988).

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 before that.⁹

The CPI-U for October 2018 exceeded the CPI-U for October 2017 by 2.522 percent.¹⁰

5. The second step requires multiplying the CPI-U percentage increase by the applicable existing maximum civil monetary penalty.¹¹ This step results in a base penalty increase amount.

6. The third step requires rounding the base penalty increase amount to the nearest dollar and adding that amount to the base penalty to calculate the new adjusted maximum civil monetary penalty.¹²

7. Under the 2015 Adjustment Act, an agency is directed to use the maximum civil monetary penalty applicable at the time of assessment of a civil penalty, regardless of the date on which the violation occurred.¹³

8. The adjustments that the Commission is required to make pursuant to the 2015 Adjustment Act are reflected in the following table:

⁹ 28 U.S.C. 2461 note, at (5)(b)(1).

¹⁰ See, e.g., Memorandum from Mick Mulvaney, Office of Management and Budget, Implementation of the Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 1 (Dec. 14, 2018).

¹¹ *Id.* (5)(a).

¹² *Id.*

¹³ *Id.* (6).

Source	Existing Maximum Civil Monetary Penalty	New Adjusted Maximum Civil Monetary Penalty
16 U.S.C. 825o-1(b), Sec. 316A of the Federal Power Act	\$1,238,271 per violation, per day	\$1,269,500 per violation, per day
16 U.S.C. 823b(c), Sec. 31(c) of the Federal Power Act	\$22,363 per violation, per day	\$22,927 per violation, per day
16 U.S.C. 825n(a), Sec. 315(a) of the Federal Power Act	\$2,852 per violation	\$2,994 per violation
15 U.S.C. 717t-1, Sec. 22 of the Natural Gas Act	\$1,238,271 per violation, per day	\$1,269,500 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	\$1,238,271 per violation, per day	\$1,269,500 per violation, per day
49 App. U.S.C. 6(10) (1988), Sec. 6(10) of the Interstate Commerce Act	\$1,296 per offense and \$65 per day after the first day	\$1,329 per offense and \$67 per day after the first day
49 App. U.S.C. 16(8) (1988), Sec. 16(8) of the Interstate Commerce Act	\$12,964 per violation, per day	\$13,291 per violation, per day
49 App. U.S.C. 19a(k) (1988), Sec. 19a(k) of the Interstate Commerce Act	\$1,296 per offense, per day	\$1,329 per offense, per day
49 App. U.S.C. 20(7)(a) (1988), Sec. 20(7)(a) of the Interstate Commerce Act	\$1,296 per offense, per day	\$1,329 per offense, per day

III. Administrative Findings

9. Congress directed that agencies issue final rules to adjust their maximum civil monetary penalties notwithstanding the requirements of the Administrative Procedure Act (APA).¹⁴ Because the Commission is required by law to undertake these inflation adjustments notwithstanding the notice and comment requirements that otherwise would apply pursuant to the APA, 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

10. 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.¹⁵ The requirements of the Regulatory Flexibility Act apply only to rules promulgated following notice and comment.¹⁶ The requirements of the Regulatory Flexibility Act do not apply to this rulemaking because the Commission is issuing this final rule without notice and comment.

¹⁴ *Id.* (3)(b)(2).

¹⁵ 5 U.S.C. 601 *et seq.*

¹⁶ 5 U.S.C. 603, 604.

V. Paperwork Reduction Act

11. 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 1995.¹⁷

VI. Document Availability

12. 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.

13. 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.

14. User assistance is available for eLibrary and the Commission's website 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, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659, public.referenceroom@ferc.gov.

¹⁷ 44 U.S.C. 3507(d).

VII. Effective Date and Congressional Notification

15. 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,¹⁸ and therefore, the regulation is effective upon publication in the *Federal Register*.

16. 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 and Reporting and recordkeeping requirements.

¹⁸ 5 U.S.C. 553(d)(3).

18 CFR Part 385

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

By the Commission.

(S E A L)

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 continues 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 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 \$1,269,500 for any one violation.

* * * * *

PART 385 – RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 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 \$22,927 for each day that the violation continues.

* * * * *

5. 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: \$1,269,500.

(b) 16 U.S.C. 823b(c), Federal Power Act: \$22,927 per day.

(c) 16 U.S.C. 825n(a), Federal Power Act: \$2,994.

(d) 16 U.S.C. 825o-1(b), Federal Power Act: \$1,269,500 per day.

(e) 15 U.S.C. 717t-1, Natural Gas Act: \$1,269,500 per day.

(f) 49 App. U.S.C. 6(10) (1988), Interstate Commerce Act: \$1,329 per offense and \$67 per day after the first day.

(g) 49 App. U.S.C. 16(8) (1988), Interstate Commerce Act: \$13,291 per day.

(h) 49 App. U.S.C. 19a(k) (1988), Interstate Commerce Act: \$1,329 per day.

(i) 49 App. U.S.C. 20(7)(a) (1988), Interstate Commerce Act: \$1,329 per day.