



## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

#### 30 CFR Part 550

[Docket No.: BOEM 2021-0028]

RIN 1010-AE08

### Maximum Daily Civil Penalty Amounts for Violations of the Federal Oil and Gas Royalty Management Act

**AGENCY:** Bureau of Ocean Energy Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Bureau of Ocean Energy Management (BOEM) regulations that set maximum daily civil penalty (MDCP) amounts for violations of the Federal Oil and Gas Royalty Management Act (FOGRMA). The amended BOEM regulations will cross-reference regulations of the Office of Natural Resources Revenue (ONRR) that also set MDCP amounts for FOGRMA violations. This cross-reference will ensure consistency between BOEM's FOGRMA MDCP amounts and ONRR's FOGRMA MDCP amounts. It will also ensure consistent compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) and related Office of Management and Budget (OMB) guidance, while reducing unnecessary duplication of effort and costs to BOEM.

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

**FOR FURTHER INFORMATION CONTACT:** Deanna Meyer-Pietruszka, Bureau of Ocean Energy Management, Chief, Office of Policy, Regulation and Analysis, at [deanna.meyer-pietruszka@boem.gov](mailto:deanna.meyer-pietruszka@boem.gov) or by mail to 1849 C Street NW, Mail Stop 5238, Washington D.C. 20240 or by calling (202) 208-6352.

**SUPPLEMENTARY INFORMATION:**

## **Background and Legal Authority:**

The Inflation Adjustment Act, Pub. L. 114-74, sec.701 (codified at 28 U.S.C. 2461 note), became law on November 2, 2015. It required Federal agencies to adjust the level of civil monetary penalties imposed under each agency’s regulations with an initial “catch-up” adjustment through rulemaking, if warranted, and then to make subsequent annual adjustments for inflation. Agencies were required to publish the initial annual inflation adjustments in the *Federal Register* no later than January 15, 2017, and are required to publish annual adjustments no later than January 15<sup>th</sup> of each subsequent year. The purpose of these inflation adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes that authorize the penalties.

BOEM has authority to impose civil penalties for violations of FOGRMA under 30 U.S.C. 1719 and delegations of authority by the Secretary of the Interior. BOEM’s regulations implementing its authority to impose penalties under FOGRMA are found at 30 CFR 550.1450-.1477. Specifically, BOEM may impose civil penalties under FOGRMA – after providing notice of noncompliance (NONC) and an opportunity to correct the violation – for noncompliance with any applicable statute, regulation, order, or lease term relating to any Federal oil or gas lease. *See* 30 CFR 550.1451. BOEM may also impose penalties under FOGRMA, without providing prior notice or an opportunity to correct the violation, for the knowing or willful preparation, maintenance, or submission of false, inaccurate, or misleading written information. *See id.* at 550.1460.

Sections 550.1453 and 550.1460 of BOEM’s existing regulations specify the MDCP amounts, as prescribed by section 109 of FOGRMA (30 U.S.C. 1719).<sup>1</sup> As required by the

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<sup>1</sup> Under existing §§ 550.1451 and .1453(a), BOEM may initially impose civil penalties of up to \$500 per day for each violation of a statute, regulation, order, or lease term for any Federal oil and gas lease that is not corrected within 20 days of receipt of a NONC identifying the violation. Under existing § 550.1453(b), BOEM may increase the MDCP amount up to \$5,000 per day for each violation not corrected within 40 days of the NONC. In addition, under existing § 550.1460(b), BOEM may impose civil penalties, without prior notice, of up to \$25,000 per day per violation for the knowing or willful preparation, maintenance, or submission of false, inaccurate, or misleading written information.

Inflation Adjustment Act, however, BOEM's FOGRMA civil penalty amounts must be adjusted annually for inflation.

Within the Department of the Interior (the Department), ONRR is the agency responsible for collecting revenue from energy leases and auditing royalty payments under FOGRMA. Like BOEM, ONRR has authority to impose civil penalties for certain violations of FOGRMA.

ONRR's civil penalty regulations are found in 30 CFR part 1241. As required by the Inflation Adjustment Act, ONRR also must annually adjust its regulatory MDCP amounts for inflation.

ONRR published such a final rule for calendar year 2017 on April 24, 2017. *See* 82 FR 18858. Each year since, ONRR has calculated and adjusted the MDCP amounts in 30 CFR part 1241 in accordance with the Inflation Adjustment Act. On February 2, 2021, ONRR published the final rule adjusting the MDCP amounts in 30 CFR part 1241 for calendar year 2021. *See* 86 FR 7808.<sup>2</sup>

Because FOGRMA sets the MDCP amounts for penalties assessed by BOEM and ONRR for violations of FOGRMA and because the Inflation Adjustment Act uniformly applies to require adjustments to the civil penalties that may be assessed by both agencies as calculated from the same base year, BOEM's FOGRMA MDCP amounts must be the same as ONRR's FOGRMA MDCP amounts.

#### **Changes Made to Existing BOEM Regulations:**

Through this rule, BOEM amends §§ 550.1453 and 550.1460 of its FOGRMA civil penalty regulations in order to cross-reference to ONRR's civil penalty regulations in 30 CFR part 1241. By cross-referencing to ONRR's regulations, BOEM's MDCP amounts for FOGRMA violations will be the same as ONRR's MDCP amounts, ensuring ongoing consistency within the Department as ONRR adjusts the FOGRMA MDCP amounts annually for inflation. In addition, this rule will

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<sup>2</sup> Specifically, in relevant part, ONRR amended 30 CFR 1241.52(a)(2) to authorize civil penalties of up to \$1,288 per day for each violation of a statute, regulation, order, or lease term that is not corrected within 20 days of receipt of a NONC identifying the violation. *See* 86 FR 7808, 7810. Under the amended 30 CFR 1241.52(b), ONRR may impose civil penalties of up to \$12,891 per day for each violation that is not corrected within 40 days of receipt of the NONC. Finally, ONRR amended 30 CFR 1241.60(b)(2) to authorize imposition of penalties, without prior notice, of up to \$64,452 per day per violation for knowing or willful preparation, maintenance, or submission of false, inaccurate, or misleading written information. *Id.*

avoid the duplication of effort and unnecessary expenditures within the Department that would occur if both BOEM and ONRR were to develop and publish separate final rules every year adjusting their corresponding FOGRMA MDCP amounts.

**Administrative Procedure Act Requirements:**

Section 701(b)(1)(D) of the Inflation Adjustment Act states that agencies must adjust civil monetary penalties “notwithstanding section 553 of title 5, United States Code [the Administrative Procedure Act (APA)].” OMB interprets that provision to mean the APA’s public procedures of notice and comment rulemaking are not required to implement annual civil monetary penalty inflation adjustments. OMB Memorandum M-21-10, December 23, 2020 (M-21-10), p. 3. In this manner, Congress exempted the annual inflation adjustments under the Inflation Adjustment Act from the APA notice and comment requirements (5 U.S.C. 553(b)), allowing agencies to publish annual inflation adjustments as final rules without prior proposed rules.

In addition, the APA provides a good cause exemption from notice and comment rulemaking when an agency finds that prior notice and public procedure are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C 553(b)(B). BOEM finds that it is unnecessary to issue a proposed rule prior to this final rule because the Inflation Adjustment Act does not provide discretion to BOEM—the act specifies the adjustments to be made, the methodology to be employed, and the index for inflation to be utilized. BOEM cannot choose to take a different course in response to public comments.

The APA also exempts “rules of agency, organization, procedure, or practice” from notice and comment rulemaking. 5 U.S.C. 553(b)(A). BOEM’s decision to address the civil penalty inflation adjustment required under the Inflation Adjustment Act by cross-referencing to ONRR’s regulations, which are subject to the same inflation adjustment standards under the Inflation Adjustment Act, rather than annually amending the FOGRMA penalties in each affected BOEM regulation, is an exercise of procedural rulemaking, which primarily concerns BOEM’s internal operations. Here, BOEM is organizing its internal procedures to meet

its own legal duties. Moreover, while prior notice and comment is required for rules that affect rights or duties of the public, BOEM's reliance on cross-referencing does not affect the rights of any regulated parties because the civil penalty amounts will be the same regardless of whether those amounts are cross-referenced to ONRR's regulations or calculated and published separately by BOEM. ONRR must calculate and adjust the MDCP amounts in 30 CFR part 1241 annually in accordance with the Inflation Adjustment Act and related OMB guidance, just as BOEM must do.

### **Procedural Requirements:**

#### **Regulatory Planning and Review (Executive Orders 12866 and 13563)**

Executive Order (E.O.) 12866 provides that the OMB Office of Information and Regulatory Affairs (OIRA) will review all significant rules. Consistent with OIRA criteria, this rule is not significant. OMB M-21-10 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. BOEM has developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

#### **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)). For the

reasons discussed in part III of this rule, BOEM is not required to publish a proposed rule prior to this final rule. Thus, the RFA does not apply to this rulemaking.

### **Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (as codified at 5 U.S.C. 804(2)) because this rule will not:

- (1) Have an annual effect on the economy of \$100 million or more;
- (2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

### **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.

### **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.

### **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. This rule will not substantially and directly affect the relationship between the Federal and State governments. 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.

### **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.

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

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

### **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.

### **National Environmental Policy Act**

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed analysis under the National Environmental Policy Act of 1969 (NEPA) is not required if the rule is covered by a categorical exclusion (*see* 43 CFR 46.205). This rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this rule is "of an administrative, financial, legal, technical, or procedural nature . . ." BOEM 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.

## **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 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, Rights-of-way, Reporting and recordkeeping requirements, Sulfur.

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Laura Daniel-Davis  
Principal Deputy Assistant Secretary  
Land and Minerals Management



For the reasons given in the preamble, the Bureau of Ocean Energy Management hereby amends 30 CFR part 550 as follows:

**PART 550--OIL AND GAS AND SULPHUR 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.

**Subpart N – Outer Continental Shelf Civil Penalties**

2. Revise § 550.1453 to read as follows:

**§ 550.1453 What if I do not correct the violation?**

(a) We may send you a Notice of Civil Penalty if you do not correct all of the violations identified in the Notice of Noncompliance within 20 days after you receive the Notice of Noncompliance (or within a longer time period specified in that Notice). The Notice of Civil Penalty will tell you how much penalty you must pay for each day, beginning with the date of the Notice of Noncompliance, for each violation identified in the Notice of Noncompliance for as long as you do not correct the violation. The maximum civil penalty amount for each day for each uncorrected violation is as specified in 30 CFR 1241.52(a)(2).

(b) If you do not correct all of the violations identified in the Notice of Noncompliance within 40 days after you receive the Notice of Noncompliance (or 20 days following the expiration of a longer time period specified in that Notice), we may increase the penalty for each day, beginning with the date of the Notice of Noncompliance, for each violation for as long as you do not correct the violation. The maximum civil penalty amount for each day for each uncorrected violation is as specified in 30 CFR 1241.52(b).

3. Amend § 550.1460 by revising paragraph (b) to read as follows:

**§ 550.1460 May I be subject to penalties without prior notice and an opportunity to correct?**

\* \* \* \* \*

(b) Under 30 U.S.C. 1719(d), you may be subject to civil penalties up to the maximum amount specified in 30 CFR 1241.60(b)(2) for each violation for each day that it continues if you:

(1) Knowingly or willfully prepare, maintain, or submit false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information.

(2) [Reserved]

[FR Doc. 2021-15388 Filed: 7/21/2021 8:45 am; Publication Date: 7/22/2021]