

DEPARTMENT OF THE INTERIOR**Minerals Management Service****30 CFR Part 250**

RIN 1010-AC11

Outer Continental Shelf Civil Penalties**AGENCY:** Minerals Management Service (MMS), Interior.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPR) would revise MMS regulations governing the Outer Continental Shelf (OCS) Civil Penalty Program. MMS is amending these regulations to clarify and simplify assessing and collecting OCS civil penalties. In addition, MMS is adjusting the maximum civil penalty per day per violation from \$20,000 to \$25,000 due to inflation.

DATES: MMS will consider all comments received by March 19, 1997. Any comments received after March 19, 1997 may not be fully considered.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 20170-4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Greg Gould, Program Coordinator, telephone (703) 787-1591 or fax (703) 787-1575.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA 90), (Pub.L. 101-380) expanded and strengthened MMS's authority to impose penalties for violating its regulations.

Section 8201 of OPA 90 authorizes the Secretary of the Interior (Secretary) to assess a civil penalty without providing notice and time for corrective action where a failure to comply with applicable regulations results in a threat of serious, irreparable, or immediate harm or damage to human life or the environment.

The goal of the MMS OCS Civil Penalty Program is to ensure safe and clean operations on the OCS. By pursuing, assessing, and collecting civil penalties, the program is designed to encourage compliance with OCS statutes and regulations.

Not all regulatory violations warrant a review to initiate civil penalty proceedings. However, violations that cause injury, death, or environmental damage, or pose a threat to human life or the environment, will trigger such review. Examples of such violations include:

- Unsafe and unworkmanlike operations involving injury to humans or pollution.

- Safety devices; e.g., surface and subsurface safety valves, emergency shut-down systems, etc. that are:

- (a) Bypassed or removed without (1) a valid reason, (2) prior approval, or (3) lockout-tagout, flagging or monitoring, or

- (b) Inoperable (i.e., failures) but are left in service without repair.

The provisions of OPA 90, amending the regulations at 30 CFR part 250, Subpart N, were published as a notice of final rulemaking the Federal Register on May 13, 1991. As of February 1996, MMS had

- Initiated 87 compliance reviews that resulted in 78 civil penalty cases,
- Assessed 41 civil penalties, and
- Collected over \$346,292 in fines.

Fourteen cases were dismissed, and 23 are still in review.

Over the past several years, MMS has had internal reviews of the OCS Civil Penalty Program. These reviews resulted in a rewrite of the regulations at 30 CFR part 250, Subpart N to simplify the language into "plain English." The new question-and-answer format should provide a better understanding of the OCS civil penalty process.

Besides simplifying the regulations, MMS is proposing to increase the maximum civil penalty to \$25,000 per day per violation. The provisions of OPA 90 require the Secretary to adjust at least every 3 years the maximum civil penalty to reflect any increases in the Consumer Price Index for all-urban consumers (CPI-U) as prepared by the Department of Labor.

In accord with Public Law 101-410, MMS divided the August 1995 CPI-U by the August 1990 CPI-U. The resulting value was multiplied by the current maximum civil penalty, rounding the new value to the nearest \$5,000 ($152.5/131.6=1.159$; $1.159 \times 20,000=23,180$) we rounded \$23,180 to \$25,000.

Author: Greg Gould, Inspection and Enforcement Branch, MMS, prepared this document.

Executive Order (E.O.) 12866

This rule is significant under E.O. 12866 and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Department of the Interior (DOI) determined that this NPR will not have a significant effect on a substantial number of small entities. In general, the entities that engage in offshore activities

are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities. The DOI also determined that the indirect effects of this NPR on small entities that provide support for offshore activities are small.

Paperwork Reduction Act

The NPR does not contain collections of information that require approval by OMB under 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment

The DOI determined that this NPR does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, DOI does not need to prepare a Takings Implication Assessment pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Unfunded Mandate Reform Act of 1995

This NPR does not contain any unfunded mandates to State, local, or tribal governments or the private sector.

E.O. 12988

The DOI has certified to OMB that the rule meets the applicable reform standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

National Environmental Policy Act

The DOI determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: October 2, 1996.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons in the preamble, Minerals Management Service (MMS) proposes to amend 30 CFR part 250 as follows:

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

1. Authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. Subpart N is revised to read as follows:

Subpart N—Outer Continental Shelf (OCS) Civil Penalties

Sec.

- 250.200 Initiation of civil penalty process.
- 250.201 Index table.
- 250.202 Definitions.
- 250.203 What is the maximum civil penalty?
- 250.204 Which violations will MMS review for potential civil penalties?
- 250.205 When is a case file developed?
- 250.206 When will MMS notify me and provide penalty information?
- 250.207 How do I respond to the letter of notification?
- 250.208 When will I be notified of the Reviewing Officer's decision?
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Subpart N—Outer Continental Shelf (OCS) Civil Penalties

§ 250.200 Initiation of civil penalty process.

Whenever MMS determines, on the basis of available evidence, that a violation may have occurred, it will prepare a case file. MMS will appoint a Reviewing Officer.

§ 250.201 Index table.

The following table is an index of the sections in this subpart:

TABLE § 250.201

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§ 250.202 Definitions.

Terms used in this subpart have the following meaning:

Case file means an MMS document file containing information and the record of evidence related to the alleged violation.

Civil penalty is a fine. It is an MMS regulatory enforcement tool used in addition to Notices of Incidents of Noncompliance and directed

suspensions of production or other operations.

I, me in a question or *you* in a response means the person, or agent of a person engaged in oil, gas, sulphur, or other minerals operations in the Outer Continental Shelf (OCS).

Person means, in addition to a natural person, an association (including partnerships and joint ventures), a State, a political subdivision of a State, or a private, public, or municipal corporation.

Reviewing Officer means an MMS employee assigned to review case files and assess civil penalties.

Violation means failure to comply with the Outer Continental Shelf Lands Act (OCSLA) or any other applicable laws, with any regulations issued under the OCSLA, or with the terms or provisions of leases, licenses, permits, rights-of-way, or other approvals issued under the OCSLA.

Violator is a person who fails to comply with the OCSLA or any other applicable laws, with any regulations, or the terms or provisions of leases or rights-of-way, licenses, permits, or other approvals issued under the OCSLA.

§ 250.203 What is the maximum civil penalty?

The maximum civil penalty is \$25,000 per day per violation.

§ 250.204 Which violations will MMS review for potential civil penalties?

MMS will review each of the following violations for potential civil penalties:

- (a) Violations that you don't correct within the period MMS grants;
- (b) Violations that MMS determines may constitute a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment; or
- (c) Violations that cause serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

§ 250.205 When is a case file developed?

MMS will develop a case file during its investigation of the violation, and forward it to an MMS Reviewing Officer if any of the conditions in § 250.204 exist. The Reviewing Officer will review the case file and determine if a civil penalty is appropriate. The Reviewing Officer may administer oaths and issue subpoenas requiring witnesses to attend meetings, submit depositions, or produce evidence.

§ 250.206 When will MMS notify me and provide penalty information?

If the MMS Reviewing Officer determines that a civil penalty should be assessed, the Reviewing Officer will send the violator a letter of notification. The letter of notification will include:

- (a) The amount of the proposed civil penalty;
- (b) Information on the alleged violation(s); and
- (c) Instructions on how to obtain a copy of the case file.

§ 250.207 How do I respond to the letter of notification?

(a) You have 30 calendar days after you receive the Reviewing Officer's letter to either:

- (1) Request, in writing, a meeting the MMS Reviewing Officer;
- (2) Submit additional information; or
- (3) Pay the proposed civil penalty.

(b) The Reviewing Officer's letter will include instructions for scheduling a meeting, submitting information, or paying the penalty.

§ 250.208 When will I be notified of the Reviewing Officer's decision?

At the end of the 30-day response period, the MMS Reviewing Officer will review the case file, including all information you submitted, and send you a decision. The decision will include the amount of any final civil penalty and the basis for the civil penalty. Instructions for paying the civil penalty will be included in the decision.

§ 250.209 What are my appeal rights?

When you receive the Reviewing Officer's decision, you must either pay the penalty or file an appeal with MMS under part 290 of this chapter. If you do not either pay the penalty or file a timely appeal, MMS will take one or more the following actions:

(a) MMS will collect the amount you were assessed, plus interest, late payment charges, and other fees as provided by law, from the date of assessment until the date MMS receives payment.

(b) MMS may initiate additional enforcement proceedings including, if appropriate, cancellation of the lease, right-of-way, license, permit, or approval, or the forfeiture of a bond under this part.

(c) MMS may bar you from doing further business with the Federal Government.

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