

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Background**

The Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380) expanded and strengthened MMS's authority to impose penalties for violating regulations promulgated under the Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.* 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.

In accordance with OPA 90, every 3 years MMS must analyze the civil penalty maximum amount in conjunction with the CPI prepared by the U.S. Department of Labor. If an adjustment is necessary, MMS informs the public through the **Federal Register** of the new maximum amount. MMS must comply with OPA 90 which specifies the CPI as the index and the MMS action is not discretionary. Therefore, public comments are unnecessary and in accordance with 5 U.S.C. 553(b)(3)(B), MMS is publishing an immediately final rule instead of a proposed rule.

MMS uses Office of Management and Budget (OMB) guidelines for determining how penalty amounts should be rounded. In computing this new civil penalty maximum amount, MMS divided the August 2002 CPI of 180.7 by the previously used August 1995 CPI of 152.9. This resulted in a multiplying factor of 1.18. The previous maximum amount of \$25,000 per violation per day was multiplied by the 1.18 factor and resulted in a new maximum penalty amount of \$29,500. This amount was rounded to \$30,000 as per OMB guidelines. The new civil penalty maximum amount is now

\$30,000 per violation per day. It must be remembered that this is a maximum amount and is only used when a non-compliance issue warrants it.

Regulatory Planning and Review (Executive Order 12866)

This final rule is not significant under E.O. 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility (RF) Act

The Department of the Interior (DOI) certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). This rule applies to all lessees that operate on the OCS. Generally, lessees that operate under this rule would fall under the Small Business Administration's (SBA) North American Industry Classification System Codes 211111, Crude Petroleum and Natural Gas Extraction and 213111, Drilling Oil and Gas Wells. Under these codes, SBA considers all companies with fewer than 500 employees to be a small business. We estimate that of the 130 lessees that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent). The primary effect of the rule is the increase in civil penalties assessed only for those operators that do not comply with Federal OCS regulations.

This rule will have no impact on the oil and gas industry operators that comply with Federal OCS regulations. For those operators whose non-compliance results in a civil penalty, the increase resulting from the inflation factor of 1.18 amounts to an increase of less than \$200,000 spread over an average of 37 cases per year or slightly over \$5,000 additional per case. This is using data over the past 9 years and averaging civil penalties paid and number of cases paid per year. This dollar amount is very minor considering the considerable sums of money operators must have to operate on the OCS. This is true for even the smallest of OCS operators.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1-888-REG-FAIR (1-888-734-3247). You may comment to the Small Business Administration without

fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

1. Does not have an annual effect on the economy of \$100 million or more. As described above, we estimate an annual increase of \$5,000 per civil penalty case.
2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The minor increase in cost will not change the way the oil and gas industry conducts business, nor will it affect regional oil and gas prices; therefore, it will not cause major cost increases for consumers, the oil and gas industry, or any government agencies.
3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises. All lessees and drilling contractors, regardless of nationality, will have to comply with the requirements of this rule. Therefore, the rule will not affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act (PRA) of 1995

This regulation does not contain any information collection requirements subject to the PRA. We will not submit Form 83-I to OMB for review and approval under Section 3507(d) of the PRA.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between Federal and State governments. This final rule only increases the maximum civil penalty amount per day allowed. This is outside State jurisdiction. States have no role in this activity. The rule does not impose costs on States or localities.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with E.O. 13175, this rule does not have tribal implications that impose substantial direct