



[4335-30]

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1241

[Docket No. ONRR–2016–0002; DS63644000 DR2PS0000.CH7000 178D0102R2]

RIN 1012-AA17

Civil Monetary Penalty Rates Inflation Adjustments for Calendar Year 2017 and Initial “Catch-Up” Adjustments

AGENCY: Office of the Secretary, Office of Natural Resources Revenue, Interior.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Act), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) and recent Office of Management and Budget (OMB) guidance, the Office of Natural Resources Revenue (ONRR) is publishing this final rule to adjust our maximum civil monetary penalty (CMP) rates for calendar year 2017. This final rule also adopts as final a 2016 interim final rule that adjusted the amount of our civil monetary penalties for inflation with initial “catch-up” adjustments under the 2015 Act.

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

FOR FURTHER INFORMATION CONTACT: For questions on procedural issues, contact Armand Southall, Regulatory Specialist, by telephone at (303) 231-3221 or email to Armand.Southall@onrr.gov. For questions on technical issues, contact Geary Keeton, Chief of

Enforcement, by telephone at (303) 231-3096 or email to *Geary.Keeton@onrr.gov*. You may obtain a paper copy of this rule by contacting Mr. Southall by phone or email.

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I. Background

The Act, as amended (set out in a note following 28 U.S.C. 2461), requires Federal agencies to adjust their civil monetary penalty (CMP) rates through an interim final rulemaking to take effect no later than August 1, 2016, and to make annual inflation adjustments not later than January 15 of every year thereafter with the guidance that OMB provides us by December 15 of each calendar year, as required by section 7 of the Act, to calculate the maximum CMP rates for the following calendar year.

On February 24, 2016, OMB issued guidance on calculating the initial catch-up and subsequent annual CMP inflation adjustments. *See* February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies from Shaun Donovan, Director, OMB, re:

Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of

2015 (OMB Memorandum M-16-06). That memorandum included a table (Table A) showing CMP inflation-adjustment multipliers by calendar year of CMP establishment from 1914 to 2015. On June 9, 2016, ONRR published its interim final rule required by the Act, as amended, adjusting for inflation from 1983 to 2016.

On December 16, 2016, OMB issued additional guidance on the annual adjustment of CMPs for 2017. *See* December 16, 2016, Memorandum for the Heads of Executive Departments and Agencies from OMB Director Shaun Donovan re: *Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum M-17-11). That memorandum informed agencies that the inflation-adjustment multiplier for 2017 is 1.01636.

II. Calculation of Adjustments

ONRR assesses CMPs under section 109 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), codified as amended at 30 U.S.C. 1719. In accordance with FOGRMA, we calculate and assess CMPs per violation, at the applicable rate, for each day such violation continues.

Since we had not adjusted the maximum CMP rates for inflation since their establishment in 1983, we calculated the new maximum CMP rates for 2016 using the inflation-adjustment multiplier for CMPs established in 1983, as set out in Table A in OMB Memorandum M-16-06. That multiplier was 2.35483. On June 9, 2016, we published an interim final rule in the **Federal Register** (81 FR 37153) establishing the maximum CMP rates with the initial catch-up adjustments. Those maximum CMP rates were effective on July 11, 2016. However, the interim final rule requested public comments until August 8, 2016. ONRR received no comments and, therefore, is finalizing that rule. OMB Memorandum M-17-11 authorizes agencies to finalize

their 2016 initial “catch-up” adjustment interim final rule in the same rulemaking that establishes their 2017 annual adjustments.

In accordance with sections 4 and 5 of the Act, as amended, the annual CMP Inflation Adjustment calculation for 2017 is based on the percent change in the Consumer Price Index for all Urban Consumers (CPI-U) between October 2015 and October 2016. To calculate the maximum CMP rates for 2017, we are using the inflation-adjustment multiplier that OMB provided in its Memorandum M-17-11. That multiplier is 1.01636. In accordance with section 5(a) of the Act, as amended, the new maximum CMP rates will be rounded to the nearest dollar. For example, the maximum CMP rate under 30 U.S.C. 1719(a) in 2016 is \$1,177 per violation for each day such violation continues; the 2017 CMP inflation-adjustment multiplier is 1.01636; $\$1,177 \times 1.01636 = \$1,196.2557$, which rounds down to \$1,196. Therefore, the new maximum CMP rate for this violation is \$1,196 for each day such violation continues. It is important to note that, by themselves, the increases in maximum CMP rates contained in this final rule do not determine the amount of the CMP that we will assess for a particular violation; as authorized by FOGRMA and the implementing regulations codified at 30 CFR part 1241, we calculate each CMP on a case-by-case basis.

In accordance with section 6 of the Act, as amended, the new maximum penalty rates will apply only to CMPs, including those which are associated with violations predating the increase, that are assessed after the date the increase takes effect.

III. Summary of Final Rule

This final rule adjusts the maximum CMP rates for each of the four categories of violations identified in 30 U.S.C. 1719(a)–(d). The following list identifies the existing ONRR regulations containing CMP rates and shows those rates before and after adjustment.

30 CFR citation	Current penalty rate	2017 inflation adjustment multiplier	2017 Adjusted penalty rate
1241.52(a)(2).....	1,177	1.01636	1,196
1241.52(b).....	11,774	1.01636	11,967
1241.60(b)(1).....	23,548	1.01636	23,933
1241.60(b)(2).....	58,871	1.01636	59,834

Note: The CMP rates under 30 CFR part 1241 are authorized by 30 U.S.C. 1719(a)–(d).

IV. Procedural Requirements

A. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in OMB will review all significant rules. OIRA has determined that this rule is not significant.

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 emphasizes further 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 developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) because the rule only makes adjustments for inflation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties with a subsequent annual inflation adjustment through a final rule. Therefore, 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:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, local government agencies; or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States–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. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, we are not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) requires because this rule is not an unfunded mandate.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. Therefore, this rule does not require a takings implication assessment.

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, this rule does not require a Federalism summary impact statement.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

a. Meets the criteria of section 3(a), which requires that we review all regulations to eliminate errors and ambiguity and to write them to minimize litigation.

b. Meets the criteria of section 3(b)(2), which requires that we write all regulations in clear language using clear legal standards.

H. Consultation with Indian Tribal Governments (E.O. 13175)

The Department strives to strengthen its government-to-government relationship with the Indian Tribes through a commitment to consultation with the Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this rule and determined that it will have no substantial direct effects on Federally-recognized Indian Tribes and does not require consultation.

I. Paperwork Reduction Act

This rule:

(a) Does not contain any new information collection requirements.

(b) Does not require a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). See 5 CFR 1320.4(a)(2).

J. National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major Federal action, significantly affecting the quality of the human environment. We are not required to provide a detailed statement under NEPA because this rule qualifies for categorical exclusion under 43 CFR 46.210(i) in that this rule is “. . . of an administrative, financial, legal, technical, or procedural nature. . . .” We also have determined

that this rule is not involved in 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 and, therefore, does not require a Statement of Energy Effects.

L. Clarity of this Regulation

We are required by E.O. 12866 (section 1(b)(12)), E.O. 12988 (section 3(b)(1)(B)), and E.O. 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized.
- (b) Use the active voice to address readers directly.
- (c) Use common, everyday words and clear language rather than jargon.
- (d) Be divided into short sections and sentences.
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send your comments to Armand.Southall@onrr.gov. Your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Administrative Procedure Act (APA)

The Act requires agencies to publish annual inflation adjustments by no later than January 15, 2017, and by no later than January 15 each subsequent year, notwithstanding section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). OMB has interpreted this direction to mean that the usual APA public procedure for rulemaking—which includes public notice of a

proposed rule, an opportunity for public comment, and a delay in the effective date of a final rule—is not required when agencies issue regulations to implement the annual adjustments to civil penalties that the Act requires. Accordingly, we are issuing the 2017 annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the **Federal Register**.

Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that “notice and public procedure...are impracticable, unnecessary, or contrary to the public interest,” the agency may issue a rule without providing notice and an opportunity for prior public comment. Under section 553(b), ONRR finds that there is good cause to promulgate this rule without first providing for public comment. It would not be possible to meet the deadlines imposed by the Act if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Also, ONRR is promulgating this final rule to implement the statutory directive in the Act, which requires agencies to publish a final rule and to update the civil penalty amounts by applying a specified formula. We have no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment on this rule prior to promulgation. Thus, providing for notice and public comment is impracticable and unnecessary.

Furthermore, ONRR finds under section 553(d)(3) of the APA that good cause exists to make this final rule effective immediately upon publication in the **Federal Register**. In the Act, Congress expressly required Federal agencies to publish annual inflation adjustments to civil penalties in the **Federal Register** by January 15, 2017, and not later than January 15 of every subsequent year, notwithstanding section 553 of the APA. Under the statutory framework and

OMB guidance, the new penalty levels take effect immediately upon the effective date of the adjustment. The statutory deadline does not allow time to delay this rule’s effective date beyond publication. Moreover, an effective date after January 15 would delay application of the new penalty levels, contrary to Congress’s intent.

List of Subjects in 30 CFR Part 1241

Administrative practice and procedure, Civil penalties, Coal, Geothermal, Inflation, Mineral resources, Natural gas, Notices of non-compliance, Oil.

*Amy Holley, Acting Assistant Secretary
for Policy, Management and Budget.*

Authority and Issuance

For the reasons discussed in the preamble, ONRR amends 30 CFR Part 1241 as set forth below:

PART 1241—PENALTIES

1. The authority citation for part 1241 continues to read as follows:

AUTHORITY: 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

§ 1241.52 [Amended]

2. Amend § 1241.52 by:

- a. In paragraph (a)(2), removing “\$1,177” and adding in its place “\$1,196.”

- b. In paragraph (b) introductory text, removing “\$11,774” and adding in its place “\$11,967.”

§ 1241.60 [Amended]

3. Amend § 1241.60 by:

- a. In paragraph (b)(1), removing “\$23,548” and adding in its place “\$23,933.”

b. In paragraph (b)(2), removing “\$58,871” and adding in its place “\$59,834.”

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