*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. (EST), on June 4, 2014. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

**V. Procedural Determinations**

*Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

**List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface Mining, Underground mining.

Dated: March 28, 2014.

**Thomas D. Shope,**

*Regional Director, Appalachian Region.*

[FR Doc. 2014–11678 Filed 5–19–14; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF THE INTERIOR

## Office of Natural Resources Revenue

## 30 CFR Part 1241

**[Docket No. ONRR–2012–0005; DS63610300 DR2PS0000.CH7000 134D0102R2]**

**RIN 1012–AA05**

## Amendments to Civil Penalty Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would amend the Office of Natural Resources Revenue civil penalty regulations to: apply the regulations to all mineral leases, including solid mineral and geothermal leases, and agreements for offshore energy development; adjust civil penalty amounts for inflation; clarify and simplify the existing regulations for issuing notices of noncompliance and civil penalties; and provide notice that we will post matrices for civil penalty assessments on our Web site.

**DATES:** You must submit comments on or before July 21, 2014.

**ADDRESSES:** You may submit comments to ONRR on this proposed rulemaking by any of the following methods. (Please reference the Regulation Identifier Number (RIN) 1012–AA05 in your comments.). See also Public Availability of Comments under Procedural Matters.

- Electronically go to *www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ''ONRR–2012–0005,'' and then click ''Search.'' Follow the instructions to submit public comments. ONRR will post all comments.
- Mail comments to Armand Southall, Regulatory Specialist, ONRR, P.O. Box 25165, MS 61030A, Denver, Colorado 80225.
- Hand-carry comments, or use an overnight courier service to the Office of Natural Resources Revenue, Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** For comments or questions on procedural issues, contact Armand Southall, Regulatory Specialist, email *armand.southall@onrr.gov.* For questions on technical issues, contact Geary Keeton, Office of Enforcement and Appeals, ONRR, telephone (303) 231–3096.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

ONRR is proposing to amend its civil penalty regulations. On May 13, 1999, the Department of the Interior (Department) published a final rule (64 FR 26240) in the **Federal Register** (FR) governing Minerals Management Service (MMS) Minerals Revenue Management (MRM) issuance of notices of noncompliance and civil penalties.

On May 19, 2010, the Secretary of the Interior (Secretary) reassigned MMS's responsibilities to three separate organizations. As part of this reorganization, the Secretary renamed MMS's MRM to ONRR and directed that it report to the Assistant Secretary of Policy, Management and Budget (PMB). This change required the reorganization of title 30 of the *Code of Federal Regulations* (30 CFR). In response, ONRR published a direct final rule on October 4, 2010 (75 FR 61051), to establish a new chapter XII in 30 CFR; to remove certain regulations from Chapter II; and to recodify these regulations in the new Chapter XII. Therefore, all references to ONRR in this proposed rule include its predecessor MRM, and all references to 30 CFR part 1241 in this proposed rule include former 30 CFR part 241.

**II. Explanation of Proposed Amendments**

ONRR proposes to amend 30 CFR part 1241, subpart B and add new subparts A and C relating to general provisions and penalties for Federal and Indian oil and gas leases. ONRR is amending its regulations to clarify ambiguities, simplify the processes for issuing notices of noncompliance and civil penalties and for contesting notices of noncompliance and civil penalties, and rewrite the regulations in Plain Language.

**III. Section-By-Section Analysis of 30 CFR Part 1241—Penalties**

*Subpart A—General Provisions*

Before reading the additional explanatory information below, please turn to the proposed rule language that immediately follows the List of Subjects in 30 CFR part 1241 and signature page in this proposed rule. DOI will codify

this language in the CFR, if we finalize the proposed rule as written.

After you have read this proposed rule, please return to the preamble discussion below. The preamble contains additional information about this proposed rule, such as why we defined a term in a certain manner and why we chose a certain interpretation.

Purpose (Section 1241.1)

We propose to add a new § 1241.1 explaining that this part applies to recipients of Notices of Noncompliance (NONC), Failure to Correct Civil Penalty notices (FCCP), and Immediate Liability Civil Penalties (ILCP). This section also would explain when you may receive an NONC, FCCP, or ILCP, when we will assess civil penalties, and how you can appeal an NONC, FCCP, or ILCP. See the discussion of NONC, FCCP, and ILCP in § 1241.3 below.

Scope (Section 1241.2)

We propose to add a new § 1241.2 to explain what leases are subject to this part. We currently undertake civil penalty enforcement activities under § 109 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1719, and its implementing regulations in 30 CFR part 1241. Because FOGRMA § 109 only applies to Federal and Indian oil and gas leases, the current ONRR regulations in part 1241 also only apply to Federal and Indian oil and gas leases.

However, in the 2009 Omnibus Appropriations Act, Public Law 111–88, sec. 114, 123 Stat. 2928 (2009) (codified at 30 U.S.C. 1720a), Congress authorized the Secretary of the Interior to apply FOGRMA § 109 to Federal and Indian solid mineral leases, geothermal leases, and agreements for outer continental shelf energy development under 30 U.S.C. 1337(p). Therefore, this proposed rule would implement that new authority by adding new § 1241.2 stating that this part will apply to all Federal and Indian mineral leases, geothermal leases, and agreements for outer continental shelf energy development under 30 U.S.C. 1337(p).

Definitions (Section 1241.3)

We propose to redesignate the definitions currently located at § 1241.50, rewrite them in Plain Language, and modify and clarify definitions as discussed below.

Unless specifically defined in this section, the terms in this part would have the same meaning as they do in 30 U.S.C. 1702. In order to clarify the current regulations in part 1241, this section would define certain terms used in part 1241 and in 30 U.S.C. 1719. See the proposed rule language for the list of terms and definitions not discussed in this preamble.

Under this proposed rule, we may issue either an NONC or an ILCP, depending upon the type of violation(s) we discover and whether it is knowing or willful. An NONC would mean a Notice of Noncompliance that states the violation(s) and how to correct the violations to avoid civil penalties. If you fail to correct the violations we identify in an NONC within the time period specified in the NONC, we may assess civil penalties by issuing an FCCP.

As we discuss further below, if a violation is knowing or willful, we will issue an ILCP to assess civil penalties without giving you a prior opportunity to correct the violation to avoid the penalty assessment.

We propose to add a definition for ''information.'' Under this proposed rule, information would mean any data you provided to ONRR, including but not limited to, any reports, notices, affidavits, records, data or documents you provide to ONRR, any documents you provide to ONRR in response to an ONRR information or data request, and any other written information you provide to ONRR. This definition is needed for the proposed definitions of ''maintenance'' and ''submission'' discussed below.

The proposed rule would define what ''knowing or willful'' means under 30 U.S.C. 1719(c) and (d) and part 1241. This statutory term is largely self-explanatory and readily implementable without regulation. However, ONRR believes that its enforcement efforts, adjudications of its enforcement efforts, and the regulated public would benefit from defining ''knowing or willful.'' We also believe there is a benefit to clarifying that corporations and other persons subject to FOGRMA are liable for the actions of their agents and employees regardless of the level of knowledge of managers, principals, or owners in the definition of ''knowing or willful.''

Our intent is to define ''knowing or willful'' as the lowest possible standard so that it encompasses all higher standards. Therefore, we are proposing that the definition of ''knowing or willful'' means gross negligence. ONRR believes that ''gross negligence'' requires only that it show a company or person has ''fail[ed] to exercise even that care which a careless person would use.'' *Black's Law Dictionary* 1057 (7th ed. 1999) (citations omitted). We believe penalizing prohibited acts committed with a mental state equivalent to gross negligence is appropriate given Congressional intent in FOGRMA to establish a robust enforcement system and to ensure the integrity of the royalty accounting system. 30 U.S.C. 1701 and 1711.

Because gross negligence is the lowest standard ONRR would have to prove to establish that a company acted ''knowingly or willfully,'' the proposed definition encompasses situations in which a corporation or individual in a corporation acts with actual knowledge, as well as situations in which the corporation acts with deliberate indifference or reckless disregard. It does not require specific intent. It is intended to penalize companies whose management remains deliberately ignorant of the actions of their employees and agents. It is also intended to penalize companies whose management is in reckless disregard as to whether their employees and agents are committing prohibited acts.

In addition, our intent is to hold persons who are subject to FOGRMA strictly and vicariously liable for the prohibited actions of their employees and agents. Although we believe this is already the case, the definition would specifically state that knowing or willful means the mental state of a person (which includes corporations), including the person's employees or agents. This means that the corporation/person has the same knowledge or willfulness as its employees and agents. The corporation/person is thus liable for the civil penalty even if the managers, principals, or owners may not have actual knowledge of specific prohibited acts their agents or employees commit.

In doing so, the proposed rule is guided by judicial precedent, primarily interpreting the False Claims Act, which imposes strict vicarious liability on corporations for the knowledge of their employees and agents. *American Society of Mechanical Engineers* v. *Hydrolevel Corp.,* 456 U.S. 556 (1982); *United States ex rel. Shackelford* v. *American Management Inc.,* 484 F. Supp. 2d 669 (E.D. Mich. 2007); *United States ex rel. Bryant* v. *Williams Building Corp.,* 158 F. Supp. 2d 1001 (S.D. 2001); *see also United States ex rel. Fago* v. *M&T Mortgage Corp.,* 518 F. Supp. 2d 108 (D.D.C. 2007) (noting different cases supporting strict vicarious liability).

ONRR believes that this strict vicarious liability approach implements Congressional intent underlying FOGRMA for four reasons. First, FOGRMA mandates full accounting and payment of all royalties and other payments. Second, Congress specifically called for enhanced enforcement to ensure this mandate. Third, strict vicarious liability will prevent

corporations from avoiding liability by claiming that management lacks knowledge or willfulness and that the prohibited acts were solely the acts of rogue employees and agents. Fourth, strict vicarious liability will incentivize corporations and other persons to take all necessary steps to ensure that their employees and agents are not engaging in prohibited acts.

FOGRMA section 109(d)(1), 30 U.S.C. 1719(d)(1), states that ONRR may assess civil penalties if you knowingly or willfully prepare, submit, or maintain false, inaccurate, or misleading information. This proposed rule defines ''maintenance of false, inaccurate, or misleading information'' for purposes of 30 U.S.C. 1719(d)(1), as meaning that you (1) provided information to an ONRR data system, or otherwise to ONRR for our official records, (2) later learn the information you provided was false, inaccurate, or misleading, and (3) do not correct that information or other information you provided to ONRR that you know contains the same false, inaccurate, or misleading information. This interpretation of 30 U.S.C. 1719(d)(1) is consistent with current ONRR practice.

For example, assume that you unknowingly provide Reports of Sales and Royalty Remittance (Form ONRR–2014) to ONRR with an incorrect product code for the years 2008 through 2009 for gas produced from leases located in State X. Further, assume that ONRR informs you in January 2010 of the incorrect product code and you fail to correct the information on the Forms ONRR–2014 you provided to ONRR for the years 2008 through 2009 for gas produced from leases located in State X in a timely manner. In that case, we would consider you to have knowingly or willfully maintained false, inaccurate, or misleading information on the Forms ONRR–2014 you provided to ONRR for the years 2008 through 2009 for gas produced from leases located in State X. You would therefore be subject to an ILCP. In addition, if you had provided other Forms ONRR–2014 to ONRR for the years 2008 through 2009 for gas produced from leases located in State Y with the same inaccurate information, and failed to correct those Forms ONRR–2014, you have knowingly or willfully maintained false, inaccurate, or misleading information on the Forms ONRR–2014 for the years 2008 through 2009 for gas produced from leases located in State Y. Thus, you would be subject to an additional ILCP for those violations because your failure to maintain accurate information of the same type in different states is a problem with your system of which you were aware from the earlier notice.

Under this proposed rule, for purposes of section 109, 30 U.S.C. 1719(d)(1), ''submission of false, inaccurate, or misleading information'' means that (1) you provided information to an ONRR data system, or otherwise to ONRR for our official records, and (2) you knew, or should have known, the information you submitted was false, inaccurate, or misleading at the time you submitted the information.

For example, assume that, like the example above, you provide Forms ONRR–2014 to ONRR with an incorrect product code for the years 2008 through 2009. Further, assume that ONRR informs you of the incorrect product code in January 2010 and yet you continue to provide Forms ONRR–2014 to ONRR with an incorrect product code after January 2010. In that case, you have knowingly or willfully submitted false, inaccurate, or misleading information. You would be subject to an ILCP.

ONRR Service of NONCs, FCCPs, and ILCPs (Section 1241.4)

We propose to redesignate the regulations currently located at §§ 1241.51 and 1241.61 to this section rewritten in Plain Language, with changes and clarification discussed below.

Both current 30 CFR 1241.51(b) and 1241.61 state that we serve NONCs and civil penalty notices by registered mail or personal service using the recipient's address of record under 30 CFR part 1218, subpart H, as 30 U.S.C. 1719(h) requires. Paragraph (a) of this new § 1241.4 would consolidate the two current sections to decrease redundancy.

Paragraph (b) of this section would explain that we will consider an NONC, FCCP, or ILCP ''served'' on the date on which the delivery service delivers the documents to the address of record. Thus, we will consider a properly served document to be received by the addressee of record.

Request for a Hearing on the Record on an NONC, FCCP, or ILCP (Section 1241.5)

We propose to redesignate the regulations currently located at §§ 1241.54, 1241.56, 1241.62, and 1241.64 to this section, rewrite them in Plain Language, and make the changes and clarification discussed below.

Under the current regulations in 30 CFR part 1241, recipients of an NONC can request a hearing on either their liability for the NONC under § 1241.54 or just on the amount of the penalty under § 1241.56. Likewise, under the current regulations, recipients of an ILCP can either request a hearing on their liability for the ILCP under § 1241.62 or just on the amount of the penalty under § 1241.64. We believe that having four sections to request a hearing that result in the same process is confusing and redundant. Therefore, this new § 1241.5 would consolidate all four current sections to clarify the hearing process and decrease redundancy.

Paragraph (a) of this section would explain that you may still request a hearing on an NONC, FCCP, or ILCP before an Office of Hearings and Appeals (OHA) Hearings Division Administrative Law Judge (ALJ). You would have 30 days from receipt of an NONC, FCCP, or ILCP to file a hearing request. This provision is the same as the current regulations in 30 CFR 1241.54 (hearing request for an NONC) and 1241.62 (hearing request for liability for an ILCP). However, this provision would change current regulations at 30 CFR 1241.56(b) (hearing request for an FCCP) and 1241.64(b) (hearing request on the amount of civil penalties assessed in an ILCP). The current rules allow only 10 days for you to request a hearing on a civil penalty assessment. This rule would extend the period within which to request a hearing to 30 days.

For us to consider your hearing request to be timely filed, we would have to receive all of the following within 30 days of your receipt of an NONC, FCCP, or ILCP: (1) a nonrefundable processing fee of $300 under proposed subparagraph (a)(1); (2) a Request for Hearing under proposed subparagraph (a)(2); and (3) a bond or other surety instrument or demonstration of financial solvency under 30 CFR part 1243 under proposed subparagraph (a)(3). ONRR would consider your Request for Hearing filed when it receives all of the items required under this paragraph (a), not when you mail or fax the items to ONRR. Thus, there would be no 10-day grace period like the current 30 CFR 1290.105(c)(1) (2011) or 43 CFR 4.422(a) (2011).

Under § 1241.6 of this proposed rule, like the current rules for appeals of offshore decisions and orders in 30 CFR part 1290, you must pay a $300 nonrefundable processing fee electronically through the *Pay.gov* Web site at *https://www.pay.gov/paygov/.* The proposed rule also would explain that you could find information on how to pay using *Pay.gov* on the ONRR Web site at *www.onrr.gov/ReportPay/payments.htm.*

We determined that $300 is an appropriate nonrefundable processing fee as explained below. We request comments on the amount of the processing fee, payment by Electronic Funds Transfer, and what form of identification you should include with the fee.

The Department's authority to recover its costs for the processing of complaints involving violations and penalty assessments is in the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701 (IOAA). Office of Management and Budget (OMB) Circular No. A–25, 58 FR 38144 (adopted 1959; revised July 15, 1993), establishes Federal policy regarding user charges under the IOAA. Interior Solicitor Opinion M–36987 (December 5, 1996). Further, the Department of the Interior Accounting Handbook (DAH), paragraph 6.4.3, requires bureaus to follow OMB Circular A–25 regarding cost recovery of the bureau or office costs for services which provide special benefits or privileges to an identifiable non-Federal recipient even if the public incidentally benefits as well. Thus, as part of this proposed rulemaking, we analyzed previously proposed rules' processing fees (discussed immediately below) for reasonableness according to the factors in IOAA section 501(b), 31 U.S.C. 9701(b), and the guidance contained in the Department of the Interior Handbook and OMB's Circular No. A–25.

Concerns were raised regarding fees proposed in other rules by the former MMS. *Open and Nondiscriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act,* 72 FR 17047 (April 6, 2007) (OCS Rule). We are explaining how we determined the appropriate fee to proactively address any similar concerns with this proposed rule.

The United States Court of Appeals for the District of Columbia Circuit has upheld charging processing fees under the IOAA for administrative appeals. *Ayuda, Inc.* v. *Attorney General,* 848 F.2d 1297 (D.C. Cir. 1988)(''*Ayuda''*); *United Transportation Union-Illinois Legislative Board* v. *Surface Transportation Board,* No. 97–1038, 1997 U.S. App. LEXIS 37560, (D.C. Cir., Nov. 10, 1997). In *Ayuda,* the Court held that processing fees for administrative appeals ''are for a 'service or thing of value' [under the IOAA, 31 U.S.C. 9701(a)] which provides the recipients with a special benefit.'' 848 F.2d at 1301.

Like the appellant in *Ayuda,* the party seeking review of an NONC, FCCP, or ILCP under this rule is the regulated party. Thus, we have determined that under the IOAA we have authority to recover the costs to process these hearing requests because hearing requests provide ''a private benefit that incidentally includes some public benefit'' (DAH, paragraph 6.4.3).

A fee established under the IOAA must be: ''(1) fair; and (2) based on (A) the costs to the Government; (B) the value of the service or thing to the recipient; (C) public policy or interest served; and (D) other relevant facts'' 31 U.S.C. 9701(b). Factors 2A through 2D mirror four of the six factors under section 304(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734(b), for determining the reasonableness of costs for which the Secretary may seek reimbursement from those filing applications or other documents pertaining to onshore public lands. The ''reasonableness factors'' set out in FLPMA are: (a) ''Actual costs (exclusive of management overhead);'' (b) ''the monetary value of the rights or privileges sought by the applicant;'' (c) ''the efficiency to the government processing involved;'' (d) ''that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant;'' (e) ''the public service provided;'' and (f) ''other factors relevant to determining the reasonableness of the costs'' *Id.* Although the FLPMA factors apply only to onshore lands, the Department believes that using the FLPMA factors to determine fees is eminently ''fair'' under the IOAA because of the similarity between the factors used under both statutes and the open-ended ''other relevant facts'' element of the IOAA.

We propose to implement the IOAA by applying each of the FLPMA factors for hearing requests processed under this proposed rule. We first estimated the actual cost to ONRR and the Hearings Division for processing the hearing request. We then considered each of the other FLPMA factors to determine whether any factor might cause us to lower the fee to below actual cost. We then considered whether any of the remaining factors would militate against setting the fees at less than actual cost. We then decided the amount of the fee, which cannot be more than the actual processing cost. Accordingly, for hearing requests of NONCs, FCCPs, and ILCPs, we are proposing that requesters pay a fee set at $300.

Factor (a)—Actual Costs

Actual costs would mean the financial measure of resources the Hearings Division and we expend or use to process a hearing request. This includes, but is not limited to, the costs to receive Requests for Hearings, prepare or respond to motions for summary decision, consider pleadings before the Hearings Division, issue decisions, prepare or respond to discovery requests, and take any other relevant action. Actual costs include both direct and indirect costs, exclusive of management overhead. Management overhead costs mean costs associated with the ONRR and OHA directorates. Section 304(b) of FLPMA requires that we exclude management overhead from chargeable costs. Because we are applying the FLPMA factors to implement the IOAA, we are excluding management overhead costs from this analysis.

Direct costs include an agency's expenditures for labor, material, and equipment usage connected with processing a hearing request. For our costs to process a hearing request, we calculated actual costs by estimating the average time it would take ONRR personnel to perform current similar processes for appeals of ONRR royalty orders under 30 CFR part 1290. The processes include accepting and date stamping the hearing request, deciding if the hearing request was timely and properly filed, and forwarding the request to the Hearings Division if it was timely filed. We estimate that this process would take four hours at a total cost of $201 based on an average of our personnel, material, and equipment usage expenses. We calculated the $201 by multiplying $33.46 ([2011 hourly rate for an employee at the grade of GS–11, Step 5] × 1.5 [benefits cost factor]) by the 4 hours, rounding to the nearest whole dollar ($200.76, rounded up). This method of calculating costs is a generally accepted practice in both the private and public sectors. Our indirect costs include items such as rent and overhead (excluding management overhead). Our average indirect cost for fiscal years 2011 and 2012 is 16.2 percent of total costs. ONRR assumes total costs are equal to the sum of direct and indirect costs. To account for our indirect costs, we divided our direct costs of $201 by 83.8 percent (1 − .162), which estimates our total cost to be $240 ($239.86 rounded up).

The costs of processing a hearing request to the Hearings Division under 43 CFR part 4 would cover the following steps:

(1) Considering all substantive pleadings, requests to supplement the record, and extension requests;

(2) Acting on any requests; and

(3) Researching, writing, and issuing a decision.

In addition to the $240 in costs ONRR will incur to accept and process Requests for Hearings, ONRR will incur additional costs to conduct discovery and a hearing, including preparing any exhibits for responses to motions for summary decision, making or responding to discovery requests, preparing exhibits for trial, etc. The average personnel costs of a case in FY2011, when we began tracking hours spent on the hearing phase, equaled $20,749 per case. This does not include costs associated with travel, Solicitor's Office representation, court reporters, and deposition or hearing transcripts. We calculated this cost by first multiplying the total hours each Office of Enforcement employee reported working on the hearing phase by the employee's hourly pay and adding all of the resulting figures to reach a pay total of $103,745. We then divided that number by the 5 cases we handled in FY 2011 to derive the average $20,749 per case. Those cases did not go to hearing but we conducted discovery. We then divided the $20,749 in direct costs by 83.8 percent, to account for indirect costs, for a total estimated cost for this part of the process of $24,760. Thus, the total estimated average cost to ONRR to process a hearing request is $25,000 ($240 plus $24,760).

For the Hearings Division's actual costs, we used a different approach, since 100 percent of the Division's costs relates to processing requests for hearings. We first calculated the Division's total direct and indirect costs for FY 2009—2011, including personnel salaries and benefits, rent and utilities, travel, court reporting, supplies, postage, books and publications, and equipment. Those costs averaged $1,933,800 per year. We then divided the total average costs by the average number of cases completed during the three years, 123 per year. Thus, we estimated that the Hearings Division's total average costs to conduct a hearing on an NONC, FCCP, or ILCP would be $15,722 ($1,933,800 divided by 123 equals $15,721.95, rounded up).

Based on these calculations, the total actual costs to the Department of processing a single hearing request would average more than $40,722 ($25,000 for ONRR plus $15,722 for the Hearings Division).

Factor (b)—Monetary Value of the Rights and Privileges Sought

''The monetary value of the rights and privileges sought'' means the objective worth of a hearing request, in financial terms, to the requester. The value to a requester is the opportunity to have an error corrected if there is an error in an NONC, FCCP, or ILCP (See *Ayuda,* 848 F.2d at 1301).

However, the monetary value of this opportunity will vary depending, in part, on the amount of the civil penalty under review. It also will vary depending on the extent to which the requester challenges not only the penalty amount, but also liability for the alleged violation(s). There would be additional value to the requester challenging liability because we will consider the requester's history of noncompliance in determining the penalty for any future violation(s) (see proposed § 1241.70(a)(2)). This ''liability value'' is difficult to quantify. Finally, the monetary value will vary depending on the likelihood of the requester's prevailing in the hearing. Given these variables, we rejected the idea of trying to calculate monetary value on a case-by-case basis as too speculative, time-consuming, wasteful of resources, and subject to dispute. However, based on our experience, the penalty, and hence the monetary value, will always be higher than the proposed fee of $300.

Consideration of this factor includes examining equitable considerations related to monetary value, rather than precise figures. However, given the nature of these hearings, we believe the monetary value to requesters of having an error corrected would be great.

However, a major equitable consideration is whether the level of cost reimbursement could burden the requester to such an extent that the hearing request would actually end up being of no monetary value to the requester whatsoever, since the requester will also have its own costs of participating in the hearing process. A hearing with a small potential value to the requester, but which triggers high processing costs, would be an instance where the fee might reasonably be set at a figure less than the actual cost of processing due to this factor. Thus, after considering this factor, we decided that it was reasonable to set a fee greatly below our actual costs so as not to frustrate Congress' intent under FOGRMA, 30 U.S.C. 1719(e), to give recipients of penalties an opportunity for a hearing on the record. This is because recipients of penalty notices might not request a hearing if the fee equaled our substantial actual costs.

Factor (c)—Efficiency to the Government Processing Involved

''The efficiency to the government processing involved'' means the ability of the agency to process a hearing request with a minimum of waste, expense, and effort. Implicit in this factor is the establishment of a cost recovery process that does not cost more to operate than is necessary and unduly increase costs recovered.

Given the variables noted above, we believe it would be inefficient to attempt, on a case-by-case basis, to set a processing fee that accounts for both our actual costs and the value of the hearing opportunity to the requester.

Moreover, we are basing the procedures that we would use to process NONCs, FCCPs, and ILCPs on standardized steps for similar ONRR and Hearings Division processes. This would eliminate duplicative and extraneous procedures, resulting in efficient government processing.

Factor (d)—Cost Incurred for the Benefit of the General Public Interest

''The cost incurred for the benefit of the general public interest'' (public benefit) means agency expenditures in connection with the processing of a hearing request for studies or data collection, if any, determined to have value or utility to the United States or the general public apart from document processing. It is important to note that this factor addresses funds expended in connection with a hearing request. There is another level of public benefit that includes studies that we are required, by statute or regulation, to perform regardless of whether we receive a hearing request. However, we have excluded the cost of such studies from our cost recovery calculations from the outset. Therefore, no reduction from costs recovered is necessary in relation to these studies.

We concluded that the processing of a hearing request would not produce studies or data collection that might benefit the public to any appreciable degree. Accordingly, we did not adjust the proposed fee based on this factor.

Factor (e)—Public Service Provided

''The public service provided,'' means direct benefits with significant public value that we expect as a result of a hearing request. This factor considers the benefit resulting from the ultimate decision in the hearing, while the previous factor related to the benefits of the document processing itself. It is important to note that a decision may benefit the public whether or not the decision is favorable to the requester.

Deciding a hearing request provides a public service because the primary function of the hearing process is to correct errors. This helps to ensure the ''fair and proper administration of [our] operations . . . .'' (*Ayuda,* 848 F.2d at 1301). Indeed, ''the public has a keen interest in the correctness of administrative decisions'' *Id.* The public

benefits even though the requester invokes the hearings procedures for their own benefit and therefore receives a ''service or a thing of value,'' see *id.* We therefore decided that it was reasonable to set a fee below actual costs based on this factor.

Factor (f)—Other Factors

The final reasonableness factor is ''other factors relevant to determining the reasonableness of the costs.'' Under this factor, we considered fees that other government entities charge for processing similar filings (see October 28, 1996 proposed rulemaking, 61 FR at 55609 and April 6, 2007 proposed rulemaking, 72 FR at 17054). We also examined what numerous State jurisdictions charge to file a complaint in a civil action. These fees ranged from $150 to $400 with an average of approximately $300.

After considering all of the reasonableness factors, we concluded that it is reasonable under the factor of public service (e) to set the fee for filing a hearing request at $300 instead of at the actual cost. None of the other factors militate against setting the fees below actual costs. Moreover, because the proposed $300 fee meets the reasonableness factors of FLPMA, it also would be fair under the IOAA. However, if we decide to promulgate an alternate process in the final rule after considering comments, the final fee could differ from that proposed in this rulemaking.

We invite comments concerning the proposed processing fee. Specifically, we request comments on the effect the proposed fee could have on the filing of hearing requests.

Subparagraph 1241.5(a)(2) would explain that you must file your Request for Hearing with the ONRR Enforcement Operations Officer at the address stated in the NONC, FCCP, or ILCP. Your hearing request would have to explain your reasons for challenging the NONC, FCCP, or ILCP and include the following attachments: (1) a copy of the NONC, FCCP, or ILCP that you are challenging; and (2) a copy of the *Pay.gov* receipt confirmation page demonstrating our receipt of your payment of the processing fee under § 1241.6.

Under proposed § 1241.5(a)(3), the final item you would have to provide to file a hearing request would be a bond or other surety instrument or demonstration of financial solvency under 30 CFR part 1243. This would continue the requirement in the current regulations that a hearing requester post a bond or other surety instrument or demonstrate financial solvency for any unpaid penalties due under the FCCP or ILCP to stay the requirement to pay the penalties. The same standards and requirements prescribed in 30 CFR part 1243 would apply.

The bond amount would have to include (1) the principal amount of any unpaid penalties due under the FCCP or ILCP, (2) interest on the principal amount, and (3) any additional penalties that have accrued since we issued the FCCP or ILCP. For example, if we issue an ILCP to you on March 1, 2012, assessing penalties through January 30, 2012, and you request a hearing on March 31, 2012, the bond would include the original penalty assessed and any additional penalties that accrued between January 30, 2012, and March 31, 2012, plus interest. As discussed below, under proposed § 1241.12, your posting of a bond or other surety instrument, or demonstration of financial solvency, would not stay the accrual of penalties during the pendency of the hearing. However, it would stay your payment obligation.

Proposed § 1241.5(b) would explain that the 30-day period under paragraph § 1241.5(a) for us to receive your Request for Hearing, processing fee, and bond, other surety instrument, or demonstration of financial solvency cannot be extended for any reason. Subparagraph (b)(1) would explain that, if we do not receive all three items within 30 days after you are served the NONC, FCCP, or ILCP, we will not consider any Request for Hearing you submit to be filed and will return it to you. Subparagraph (b)(2) would explain that, if we return your unprocessed Request for Hearing for failure to timely file your Request for Hearing, remit the full amount of the processing fee, and post a bond or other surety instrument or demonstrate financial solvency, you may not appeal that decision.

Under proposed § 1241.5(c), if we receive your Request for Hearing, full amount of the processing fee, and bond or other surety instrument, or demonstration of financial solvency within 30 days after you are served the NONC, FCCP, or ILCP, we would forward your Request for Hearing to the Hearings Division.

Proposed paragraph (d) would provide that your hearing request on an ILCP must state whether you are contesting your liability for the ILCP, the penalties assessed, or both. If your hearing request did not state whether you are contesting your liability for the ILCP or the penalties assessed, or both, you would be deemed to have requested a hearing only on the amount of the penalty assessed. In other words, you would have waived your right to a hearing on your liability for the penalty assessed if you did not specifically contest your liability.

Proposed paragraph (e) would continue the current provision allowing you to request a hearing regardless of whether you correct the violations identified in the NONC, FCCP, or ILCP.

Processing Fee Payment (Section 1241.6)

Like the current offshore appeal regulations in 30 CFR part 590, § 1241.6 would provide that you must pay the fee using *Pay.gov* and include with your payment your taxpayer identification number, payor identification number, and the NONC, FCCP, or ILCP case number.

Enforcement Actions Not Subject to a Hearing (Section 1241.7)

In proposed § 1241.7, we would specify matters for which you may not request a hearing. Paragraph (a) would provide that you may not request a hearing on your liability for a violation in an FCCP if the violation for which we cited you is your failure to comply with an order you did not appeal under 30 CFR part 1290.

This provision would supersede the decision of the Interior Board of Land Appeals (IBLA) in *Merit Energy Co.* v. *Minerals Management Service,* 172 IBLA 137 (2007). In *Merit,* when Merit did not pay or appeal an ONRR order, we issued an NONC to enforce the order. Merit then not only requested a hearing on the NONC to the Hearings Division under the former 30 CFR part 241, but also requested a hearing on the merits of the order. The ALJ held that Merit could not challenge the merits of the order in part 241 hearing because it had failed to appeal the order under former 30 CFR part 290, subpart B. The ALJ then referred the matter to the IBLA. The IBLA disagreed with the ALJ and held that the hearing could address the merits of the order because Merit was entitled to challenge its ''underlying liability'' for penalties under former part 241 (172 IBLA at 149–51).

Because we believe that a hearing requester should not have two opportunities to seek review of an ONRR order, and thereby undermine the interest in timely due process and the finality of ONRR orders, this proposed rule would make clear that, if you receive an ONRR order and neither pay nor appeal that order under current 30 CFR part 1290, that order is the final decision of the Department. Thus, that order would not be reviewable in any

subsequent action to enforce that order under 30 CFR part 1241.

Paragraph (b) would provide that you also may not request a hearing on courtesy notices we issue to you under § 1241.12(a) of this part informing you of additional penalties that have accrued. If we issue you an FCCP or ILCP, and you do not request a hearing on those notices, you may not then request a hearing on any subsequent notices informing you of additional penalties that accrue after we issue the initial notice. The only way for you to administratively challenge penalties accruing after issuance of a FCCP or ILCP would be to file a request for hearing on the FCCP or ILCP in the first instance.

Procedures for Hearing Requests (Section 1241.8)

Under the current process in this part, hearings are generally conducted under OHA regulations in 43 CFR part 4 and include discovery (including requests for documents, interrogatories, and admissions), depositions, and a trial (with witnesses, exhibits, etc.). Under the current process, after recipients of NONCs, FCCPs, and ILCPs request a hearing, in most instances, discovery begins before any briefings that might dispose of legal issues and factual matters for which there is no genuine issue of material fact in dispute.

Proposed § 1241.8 would explicitly allow motions for summary decision to be filed at any time after the case is referred to the Hearings Division, including before discovery commences to narrow the disputed issues. We propose making this explicit because the current process of conducting discovery for all matters is costly and administratively burdensome for both the Department and the hearing requesters. We specifically request comments on this procedure.

Therefore, proposed paragraph (a) would provide that, after we forward your hearing request to the Hearings Division under § 1241.5(c), you or we could file a motion for summary decision. Under proposed paragraph (b), the opposing party could file a response to a motion for summary decision within 60 days after the opposing party is served with the motion. Paragraph (c) would provide that the moving party could file a reply to a response within 30 days after it was served with the response. Paragraph (d) would state that motions for summary decision, responses, and replies must meet the requirements of § 1241.9.

Under proposed paragraph (e), if, after briefing, the ALJ determines that there is no genuine issue of material fact and a party moving for summary decision is entitled to a decision as a matter of law, the ALJ may grant the motion in whole or part. Under proposed paragraph (f), if no party files a motion for summary decision or the ALJ denies the motion(s) for summary decision, the ALJ would, to the extent necessary, authorize discovery, conduct a hearing, and issue a decision.

We are also proposing a new paragraph (g) to clarify that by establishing our prima facie case in the NONC, FCCP, or ILCP we have met our initial burden. You would then have the burden of showing by a preponderance of the evidence that you are not liable or that the penalty amount should be reduced. We specifically request comments on this new paragraph (g).

We also propose to limit an ALJ's discretion to reduce the penalty assessed when the ALJ finds that the factual basis for imposing a civil penalty exists under new paragraph (h). Subparagraph (h)(1) would prohibit the ALJ from reducing the penalty below half of the amount assessed. Subparagraph (h)(2) would preclude the ALJ from reviewing the exercise of discretion by ONRR to impose a civil penalty. Finally, subparagraph (h)(3) would prohibit the ALJ from considering any factors in reviewing the amount of the penalty other than those specified in § 1241.70.

We are limiting ALJ review of the penalty assessed for several reasons. First, as stated below, we will be posting civil penalty matrices on our Web site in order to have greater transparency. We believe that such transparency warrants limiting review of penalty amounts because a lessee will have advance notice of its potential penalty liability for any violation of law. Second, this proposal is consistent with other Federal civil penalty regulations, for example 42 CFR 488.438(e), that limit ALJ review to determining whether the penalty was reasonable using the factors specified in the civil penalty regulation. See *Capitol Hill Community Rehabilitation and Specialty Care Center,* HHS Docket No. A–97–110, Departmental Appeals Board Decision No. 1629, 1997 HHSDAB LEXIS 576 at *8 (1997). We believe that limiting an ALJ review to the same factors ONRR is subject to when assessing penalties makes eminent sense given that the penalty amount assessed is within ONRR discretion in the first instance. Finally, the penalties we have assessed to date are already far below the maximum authorized by statute. Thus, we see no merit in further reductions during the hearings process unless the penalty amount is not reasonable in light of regulatory factors.

Lastly, proposed paragraph (i) would make clear that the provisions of 43 CFR 4.420–4.438 apply to requests for hearings under this part unless they are inconsistent with specific provisions in this part. For example, parties could request extensions of time to file motions and responses under 43 CFR 4.422(d) because that paragraph does not conflict with this subpart.

Requirements and Standards for Motions for Summary Decision and Responses (Section 1241.9)

This section would explain the requirements and standards you and we must follow when filing motions for summary decision, responses, and replies. It would explain typical requirements and standards for summary judgment motions and responses such as a verified statement of facts.

For example, proposed paragraph (c) would explain how to establish facts. For the purpose of summary decision, the ALJ would accept as true all material facts the moving party sets forth and properly supports unless the opposing party's response specifically controverts those facts. However, in the alternative, the parties could establish material facts for the purpose of summary decision by an agreement enumerating those facts.

Appeal of an ALJ's Decision (Section 1241.10)?

This section would remain the same, stating that you may appeal to the Interior Board of Land Appeals under 43 CFR part 4, subpart E, if you are adversely affected by the ALJ's decision.

Judicial Review of an IBLA Decision (Section 1241.11)

This section also would remain the same, stating that you may seek judicial review of the decision of the Interior Board of Land Appeals under 30 U.S.C. 1719(j). It also would continue to provide that a suit for judicial review in the District Court would be barred unless you file within 90 days after the final decision of the Interior Board of Land Appeals.

We note that a motion for reconsideration under 43 CFR 4.403 does not extend the 90-day period within which to seek judicial review unless the IBLA grants the motion and issues a new decision on reconsideration. In that case, the 90-day period would run from the date of the decision on reconsideration.

Penalty Accrual When You Request a Hearing (Section 1241.12)

Paragraph (a) of this section would provide that penalties would continue to accrue if you do not correct the violations identified in the FCCP or ILCP even if you request a hearing. Paragraph (b) would eliminate the provisions in the current regulations at 30 CFR 1241.55(b) and 30 CFR 1241.63(b) allowing a hearing requester to petition for a stay of the accrual of civil penalties during the pendency of the proceeding.

We are proposing to eliminate these provisions for several reasons. First, § 109 of FOGRMA explicitly states that penalties shall continue to accrue ''for each day such violation continues'' (30 U.S.C. 1719(a), (b), (c), and (d)). There is no provision in FOGRMA for a stay of such daily accrual due to a hearing. Second, although hearing requesters routinely petition for a stay, consistent with the statutory provision that penalties continue to accrue daily, we routinely oppose those petitions, and the ALJs routinely deny them.

Third, under 43 CFR 4.21(a), ''when the public interest requires,'' the Director of the Office of Hearings and Appeals or an Appeals Board may override an initial automatic stay and ''provide that a decision . . . shall be in full force and effect immediately.'' In the case of civil penalties ONRR issues under this part, we believe that the accrual of civil penalties for uncorrected violations is always in the public interest, since every violation will affect either production accountability or royalty income. Therefore, rather than continue the practice of allowing lessees to request a stay, and our opposing those stays, this rulemaking would provide that penalties will continue to accrue during the pendency of the proceeding.

Finally, this position is consistent with other penalty regulations. For example, Department of Health and Human Services civil penalty regulations state that, if a penalty assessment is upheld after a hearing, the penalties are calculated for ''the number of days of noncompliance until the date the facility achieves substantial compliance, or, if applicable, the date of termination when . . . the . . . decision of noncompliance is upheld after a final administrative decision . . . .'' 42 CFR 488.440(b)(1). In other words, the penalty continues to accrue throughout the hearing process.

We welcome comments on our proposal not to stay the accrual of penalties during the hearing process. Please include legal citations and references with your comments.

*Subpart B—Notices of Noncompliance and Civil Penalties*

Violation of a Statute, Regulation, Order, or Lease Term (Section 1241.50)

Effect of Correcting NONC Violation(s) (Section 1241.51)

The two sections above would be the same as current 30 CFR 1241.51 and 1241.52, respectively. However, we propose to rewrite the sections in Plain Language.

Effect of Not Correcting NONC Violation(s)(Section 1241.52)

We propose to redesignate the regulation currently located at § 1241.53 to this section rewritten in Plain Language, with one change and some clarification discussed below. The penalty would no longer run from the date of the NONC. Rather, under proposed subparagraph (a)(1)(i), if you do not correct the violations listed in the NONC, the penalty would begin to run on the day you were served with the NONC. We do not believe it is fair for penalties to begin to run prior to a recipient's receipt of the NONC.

Proposed paragraph (b) would clarify when penalties escalate if you do not correct all of the violations identified in the NONC within 40 days after you are served the NONC or within 20 days following the expiration of any longer time the NONC specifies. In such instances, we could increase the penalty to a maximum of $5,500 per day for each violation the NONC identified that you did not correct, and it would increase on the 41st day after you are served with the NONC or on the 21st day after the expiration of any longer time the NONC specifies.

Penalties Without Prior Notice and Opportunity To Correct (Section 1241.60)

This proposed section is the same as existing § 1241.60 rewritten in Plain Language, with changes discussed below and some clarification.

Proposed subparagraph (b)(1)(ii) would explain that we could consider your failure to keep, maintain, or produce documents to be a knowing or willful failure or refusal to permit an audit. In such instances, we would assess penalties of up to $11,000 per day per violation, for each day you failed to keep, maintain, or produce documents, without first giving you an opportunity to correct the violation. On March 10, 2011, we sent a Dear Reporter Letter to all reporters explaining recordkeeping requirements and the consequences of failure to produce documents upon request. We sent the Dear Reporter Letter certified mail to document which companies we have warned of the penalty consequences for the failure to keep, maintain, or timely provide documents. This preamble also puts you on notice of your recordkeeping requirements and what we may do if you fail to comply with those requirements.

Thus, we are proposing this provision to codify existing practice and to make clear to lessees that there are serious consequences if they fail to timely comply with ONRR or agent (State or Tribal) requests for documentation or data for audit, compliance reviews, and investigations.

It is important to note that selling leases does not exempt the seller or purchaser from records maintenance requirements. In addition, merged companies carry records maintenance requirements into the purchasing or surviving companies.

Delays in providing documents may result in curable NONCs under proposed § 1241.50. However, we will likely treat delays in providing documents and outright refusal to provide documents as a knowing or willful failure to permit an audit under this paragraph, resulting in an ILCP instead of an NONC. Consistent with current policy, we will consider each audit step that ONRR cannot perform for lack of requested documents as a violation.

Although we are specifically proposing that failure to permit an audit would be considered ''knowing or willful'' consistent with the existing rule and current practice, the language of FOGRMA suggest that failure to permit an audit may not require us to show it was knowing or willful. FOGRMA, 30 U.S.C. 1719(c) states that any person who—

''(1) *knowingly or willfully* fails to make any royalty payment by the date as specified by statute, regulation, order or terms of the lease;

(2) *fails or refuses to permit lawful entry, inspection, or audit;*

or

(3) *knowingly or willfully* fails or refuses to comply with subsection 102(b)(3), shall be liable for a penalty of up to $10,000 per violation for each day such violation continues.'' (Emphasis added)

Based on the Plain Language of section 1719(c)(2), it appears that ONRR may penalize failure to permit an audit without proving it was committed ''knowingly or willfully.'' We specifically request comments on whether we should eliminate the

requirement that failure to permit an audit be committed ''knowingly or willfully'' in the final rule. Please include legal citations to support your comments.

Proposed subparagraph (b)(2) would explain that ONRR may assess penalties of up to $27,500 per day per violation for each day the violation continues if you knowingly or willfully prepare, maintain, or submit false, inaccurate, or misleading reports, notices, affidavits, records, data, or any other written information.

We are also codifying our practice of penalizing repeat violations under this paragraph. Specifically, the proposed rule would state that, if you have received an email, preliminary determination letter, order, NONC, ILCP, or any other written communication identifying a violation, and you fail to make the correction or correct that violation, and commit substantially the same violation in the future, then, in some instances, we may consider the uncorrected or repeat violation to be knowing or willful preparation, maintenance, or submission of false, inaccurate, or misleading reports, notices, affidavits, records, data, or any other written information under this paragraph. For example, if you receive such a communication and do not correct the errors, we may consider that to be knowing or willful maintenance of false, inaccurate, or misleading reports or data in our system.

The proposed rule also would amend current 30 CFR 1241.53(a), 1241.53(b), 1241.60(a), and 1241.60(b) by adjusting the $500, $5,000, $10,000, and $25,000 FOGRMA civil penalty amounts for inflation consistent with the Federal Civil Penalty Inflation Adjustment Act of 1990 (Inflation Adjustment Act), Pub. L. 101–410, 104 Stat. 890–892 (uncodified, but found in a note to 28 U.S.C. 2461). The Inflation Adjustment Act requires agencies to increase civil penalties every 4 years based on specific inflation factors. We have not previously adjusted FOGRMA civil penalties for inflation but propose to do so in this rulemaking.

Consistent with the Inflation Adjustment Act, we identified the percentage of the Consumer Price Indices for all Urban Consumers (CPI–U) for June of the preceding year (2011) and June of the year the civil monetary penalties were set by law (FOGRMA 1982) and computed the potential adjustment as 136.6 percent. However, the maximum penalty increase that may be applied under a 1996 amendment to the Inflation Adjustment Act, Public Law 104–134, 110 Stat. 1321–373, is only ten percent. Therefore, in this proposed rule, we would adjust the FOGRMA maximum penalties of $500, $5,000, $10,000, and $25,000 to $550, $5,500, $11,000, and $27,500 respectively, in the new 30 CFR 1241.53(a)(2), 1241.53(b), 1241.60(b)(1), and 1241.60(b)(2).

*Subpart C—Penalty Amount, Interest, Collections, and Criminal Penalties*

Penalty Assessment (Section 1241.70)

Paragraph (a) would retain the existing regulatory criteria used to determine the amount of the penalty to assess: (1) the severity of the violations; (2) your history of noncompliance; and (3) the size of your business. To determine the size of your business, we may consider the number of employees in your company, parent company or companies, and any subsidiaries and contractors. For example, if your company has 10 employees, but employs 400 contractors as agents to do its business, we would consider the size of your company to be 410 employees. This would not include all employees of the contractor, just those who actually conduct business on your behalf.

Proposed paragraph (b) would explain that we would not consider the royalty consequences of the underlying violation when determining the amount of the civil penalty for violations under §§ 1241.50, 1241.60(b)(1)(ii), and 1241.60(b)(2). For example, assume that we issued a penalty to a lessee for the knowing or willful submission of false or inaccurate reports under § 1241.60(b)(2). Assume further that after the lessee corrected its reporting to comply with the penalty notice, there was no royalty consequence—what industry refers to as ''net zero'' errors. In that case, we would not issue a reduced penalty merely because there was no royalty consequence. This is consistent with our existing practice and FOGRMA legislative history.

Research on Congressional intent reveals several facts leading to the conclusion that the royalty consequences of a violation are not relevant in determining the severity of the penalty for violations subject to NONCs, reporting errors, and failures to permit audit, and that Congress already considered the royalty consequence when it established different penalties for different violations. First, Congress enacted the FOGRMA civil penalty provisions in response to the Linowes Commission Report. The report concluded, ''the industry is essentially on an honor system.'' The Commission found that:

> The [ONRR accounting] system does not provide for the verification of data reported by oil and gas lessees, and lease account records are so unreliable that federal royalty managers often do not know which lessees have paid royalties and which lessees have not. Penalties for late payment or underpayment are rarely imposed.

S. Rep. No. 97–512, at 9 (1982). Based on its findings, the Commission made 60 recommendations including that the Department seek legislation authorizing DOI to ''assess civil penalties for site security violations, nonpayments, late payments, underpayments, error-ridden reports, and failure to submit or update the required payor plan'' *Id.* Secretary Watt agreed with all the recommendations, *id.* at 10, and Congress ultimately enacted FOGRMA. What is clear from this history is that Congress was not solely concerned with ''payment'' errors but also with failure to submit data and reporting errors—regardless of the royalty consequences. Indeed, many reporting errors and failures to submit data result in delay of audits or an inability to audit in the first instance, which was a concern of Congress's in enacting FOGRMA.

Moreover, regardless of whether a lessee owes additional royalties, there are consequences to failures to follow ONRR regulations, misreporting, and failures to permit audit because a lessee does not timely provide documents ONRR requests. For example, many companies' reporting is so erroneous that we cannot even audit to determine if there are royalty consequences. As stated above, this was a concern the Linowes Commission raised and that Congress addressed in FOGRMA. Specifically, the Linowes Commission recommended ''[t]hat the Department systematically cross-check production and sales records to determine if the correct amount of royalties are being paid'' (S. Rep. No. 97–512, at 10 (1982)). This is because the Commission found that ''lease account records are so unreliable that federal royalty managers often do not know which lessees have paid royalties and which lessees have not'' *id.* at 9. Thus, it would contradict Congressional intent for ONRR to assess a lower penalty for failures to follow ONRR regulations, misreporting so egregious that we cannot audit, and failures to provide documents that prevent us from completing an audit simply because there is no royalty underpayment.

As discussed below, when we propose the rule, we will be posting our penalty matrices. Those matrices show the penalty type and range of assessments for very small, small, and large companies. In addition, as those

matrices will demonstrate, in order to not issue penalties so high that a company cannot possibly pay, our assessments are already far below the maximum allowable under the law. For example, although FOGRMA authorizes penalties up to $10,000 per day per violation for knowing or willful failure to pay royalties, for a very small company (less than 25 employees), our standard assessment is $100 per day per violation. However, mitigating factors may result in a lower assessment per day per violation and aggravating factors may result in a higher assessment per day per violation.

Proposed paragraph (c) would state that we will post our penalty assessment matrices for FCCPs and ILCPs, and any adjustments to that matrix, on the ONRR Web site at *www.onrr.gov/CivilPenalties/default.htm*. In 1999, we published the civil penalty matrix, as it existed at that time, in response to a comment requesting that we provide more specific regulatory criteria for calculating civil penalties (64 FR 26240, 26242 (1999)). The commenters believed that the purpose of FOGRMA civil penalties is to encourage voluntary compliance. The commenters also believed there was a lack of transparency in calculation of the civil penalties.

We agree that our civil penalty process could be more transparent. We also agree that knowing the potential monetary consequence of noncompliance would encourage voluntary compliance and deter violations. Currently, BSEE publishes its civil penalty matrix in a Notice to Lessees, which is available at the BSEE Web site, *www.bsee.gov/Inspection-and-Enforcement/Civil-Penalties-and-Appeals/Civil-Penalties-and-Appeals.aspx*. Additionally, every 3 years, BSEE publishes in the **Federal Register** any adjustments to the maximum civil penalty amount to reflect any increase in the Consumer Price Index. Like BSEE, we propose to publish the civil penalty matrices we use on the ONRR Web site at *www.onrr.gov*. However, unlike BSEE, we will post any adjustments to the matrices for inflation, or any other reason, on our Web site rather than through notices in the **Federal Register**.

Late Payment Interest on Penalty Assessments, Underpayments, and Unpaid Debts (Section 1241.71)

This section would retain the provision of existing § 1241.71(a) that the penalties under this part are in addition to interest you may owe on any underlying underpayments or unpaid debt.

ONRR proposes to modify existing § 1241.71(b), which currently provides that interest will run from the date required under existing § 1241.75(d). Existing § 1241.75(d) requires you to pay penalties 40 days after you receive the penalty if you do not request a hearing and 40 days after decisions in various stages of the hearing and appeal process, if you do not or cannot appeal those decisions. However, this proposed rule would state that interest would run from the due date in the invoice accompanying the penalty notice until the date you pay the civil penalty assessed. This change is consistent with 30 CFR 1218.50(b), which states ''[p]ayments made on an invoice are due as specified by the invoice.''

Penalty Payment (Section 1241.72)

Penalty Reduction (Section 1241.73)

Penalty Collection (Section 1241.74)

We propose to redesignate the regulations currently located at 30 CFR 1241.75, 1241.76, and 1241.77 to these sections, respectively, rewritten in Plain Language.

Criminal Violation(s) (Section 1241.75)

We propose to redesignate the regulation currently located at 30 CFR 1241.80 to this section rewritten in Plain Language.

**Procedural Matters**

*1. Summary Cost and Royalty Impact Data*

This is a technical rule that would (1) apply our civil penalty regulations to solid mineral and geothermal leases consistent with Federal law, (2) adjust civil penalty amounts for inflation as required by Federal law, and (3) announce our practice of publishing our civil penalty assessment matrices on the ONRR Web site. These proposed changes would have no royalty impacts on industry, State and local governments, Indian Tribes, individual Indian mineral owners, and the Federal Government. As explained below, industry would not incur significant additional administrative costs under this proposed rulemaking. However, industry could realize some increased penalties under this proposed rulemaking. The Federal Government, and any States and Tribes that are eligible to share civil penalties under 30 U.S.C. 1736, would benefit from these increased penalties.

*A. Industry*

*(1) Royalty Impacts.* None.

*(2) Administrative Costs—Processing Fee.* This rulemaking would result in an increase in administrative costs to industry due to our proposal to recover a portion of the Department's costs to process a hearing request by requiring requesters to pay a $300 processing fee. We received 15 hearing requests in the last three fiscal years, for an average of five per year. We therefore estimate that the processing fee would cost industry $1,500 ($300 × 5 hearing requests) in the first year and the same each year thereafter.

*(3) Penalties.* This rulemaking may result in some increase in civil penalties that lessees must pay. First, consistent with the inflation adjustment in this proposed rule, we could increase civil penalty collections by ten percent. We collected an average of $1,022,462 in civil penalties annually for fiscal years 2007 through 2011. Thus, for the potential increases in civil penalties that we could collect due to the inflation adjustment, we based our calculations on ten percent of the annual average amount of civil penalties we currently collect under 30 CFR part 1241. We calculated a possible increase in civil penalties we would collect from industry of $102,246 per year (10% × $1,022,462 average total annual civil penalty collections).

Second, we estimated the potential increase in civil penalties due to application of part 1241 to solid mineral and geothermal leases by estimating how many lessees, operators, and royalty payors of solid mineral and geothermal leases there are in relation to all mineral leases that reported production and royalties as of June 2012. That estimate came to 6 percent of our current mineral reporter universe (120 solids and geothermal payors and reporters divided by 1,970 total payors and reporters (oil and gas, solids, and geothermal)). Therefore, we multiplied the $1,022,462 in average annual civil penalties by 6 percent (solid mineral and geothermal payors and reporters) to estimate an increase in civil penalties we collect of $61,348.

Thus, we estimate the total impact to industry of implementing this proposed rule would be $163,594 annually ($102,246 for the inflation adjustment + $61,348 for application of part 1241 to solid mineral and geothermal leases). Accordingly, the impact to industry of implementing the new provisions of law would be minimal.

*B. State and Local Governments*

*(1) Royalty Impacts.* None.

*(2) Administrative Costs.* None.

*(3) Penalties.* State governments having delegated audit authority under 30 U.S.C. 1735 would receive a 50 percent share of civil penalties collected as a result of their activities under

ONRR delegations of authority (30 U.S.C. 1736). However, how much a State government could receive due to the estimated increase discussed above would be purely speculative.

*C. Indian Tribes and Individual Indian Minerals Owners*

*(1) Royalty Impacts.* None.

*(2) Administrative Costs.* None.

*(3) Penalties.* Indian tribal governments having cooperative agreements with ONRR under 30 U.S.C. 1732 would receive a 50 percent share of civil penalties collected as a result of their activities under ONRR delegations of authority (30 U.S.C. 1736). However, how much a tribal government could receive due to the estimated increase discussed above would be purely speculative.

*D. Federal Government*

*(1) Royalty Impacts.* None.

*(2) Administrative Costs.* The application of FOGRMA penalties to solid minerals and geothermal leases would produce a slight increase in the enforcement workload, which ONRR likely would absorb using current staff.

*(3) Penalties.* As discussed above, we estimate that the Federal Government could receive $163,594 in increased civil penalties as a result of this rule if no State or Tribe shared in those civil penalties.

*2. Regulatory Planning and Review (Executive Orders 12866 and 13563)*

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

Executive Order 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. The executive order 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 have developed this rule in a manner consistent with these requirements.

*3. Regulatory Flexibility Act*

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule would affect large and small entities but would not have a significant economic effect on either.

*4. Small Business Regulatory Enforcement Fairness Act (SBREFA)*

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

a. Would not have an annual effect on the economy of $100 million or more. See Item 1 above.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*5. Unfunded Mandates Reform Act*

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. This proposed rule would not have a significant or unique effect on State, local, or tribal governments, or the private sector. Therefore, we are not providing a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) requires. See Item 1 above.

*6. Takings (Executive Order 12630)*

Under the criteria in section 2 of E.O. 12630, this proposed rule would not have any significant takings implications. This proposed rule would not be a governmental action capable of interference with constitutionally protected property rights. This proposed rule does not require a Takings Implication Assessment.

*7. Federalism (E.O. 13132)*

Under the criteria in section 1 of E.O. 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would not substantially and directly affect the relationship between Federal and State governments. A Federalism Assessment is not required.

*8. Civil Justice Reform (E.O. 12988)*

This proposed rule would comply with the requirements of E.O. 12988. Specifically, this rule:

a. Would meet the criteria of § 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Would meet the criteria of § 3(b)(2) requiring that we write all regulations in clear language and contain clear legal standards.

*9. Consultation With Indian Tribes (E.O. 13175)*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with 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 proposed rule and determined that it would have no substantial direct effects on federally recognized Indian Tribes. Likewise, these proposed amendments to 30 CFR part 1241, subpart B, would not affect Indian Tribes because the changes are only technical in nature.

*10. Paperwork Reduction Act*

This proposed rule does not contain information collection requirements and a submission to OMB would not be required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). See 5 CFR 1320.4(a)(2).

*11. National Environmental Policy Act*

This proposed rule would not constitute a major Federal action, and it would not significantly affect the quality of the human environment. The procedural changes resulting from these amendments have no consequences with respect to the physical environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for categorical exclusion under 43 CFR 46.210(c) and (i) and the DOI Departmental Manual, part 516, section 15.4.D: ''(c) Routine financial transactions including such things as . . . audits, fees, bonds, and royalties . . . (i) Policies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature.'' We have also determined that this proposed rule does not involve in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*12. Effects on the Energy Supply (E.O. 13211)*

This proposed rule would not be a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

*13. Clarity of This Regulation*

Executive Orders 12866 (section 1(b)(2)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and the Presidential Memorandum of June 1, 1998, require us 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; and (e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To help revise the rule, 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, and the sections where you feel lists or tables would be useful, etc.

*14. Public Availability of Comments*

We will post all comments, including names and addresses of respondents, at *www.regulations.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that we may make your entire comment—including your personal identifying information—publically available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

**List of Subjects in 30 CFR part 1241**

Notices of noncompliance, Civil penalties.

Dated: April 18, 2014.

**Rhea Suh,**

*Assistant Secretary for Policy, Management and Budget.*

For the reasons stated in the preamble, the Office of Natural Resources Revenue proposes to revise 30 CFR part 1241 to read as follows:

## PART 1241—PENALTIES

### Subpart A—General Provisions

Sec.



### Subpart B—Notices of Noncompliance and Civil Penalties

**Penalties With a Period To Correct**



**Penalties Without a Period To Correct**



### Subpart C—Penalty Amount, Interest, Collections, and Criminal Penalties



**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.

## Subpart A—General Provisions

### § 1241.1 What is the purpose of this part?

This part applies to you if you are the recipient of a Notice of Noncompliance (NONC), Failure to Correct Civil Penalty Notice (FCCP), or Immediate Liability Civil Penalty Notice (ILCP). This part explains:

(a) When you may receive an NONC, FCCP, or ILCP;

(b) How we assess civil penalties; and

(c) How to appeal an NONC, FCCP, or ILCP.

### § 1241.2 What leases are subject to this part?

This part applies to:

(a) All Federal mineral leases onshore and on the Outer Continental Shelf; and

(b) All federally administered mineral leases on Indian tribal and individual Indian mineral owners' lands, regardless of the statutory authority under which the lease was issued or maintained; and

(c) All leases, easements, rights of way, and other agreements subject to 30 U.S.C. 1337(p).

### § 1241.3 What definitions apply to this part?

(a) Unless specifically defined in paragraph (b) of this section, the terms in this part have the same meaning as 30 U.S.C. 1702.

(b) The following definitions apply to this part:

*Agent* means any individual or other person—

(i) With the actual authority of;

(ii) With the apparent authority of; or

(iii) Designated by a person subject to FOGRMA who acts or purports to act on behalf of the person subject to FOGRMA.

*ALJ* means an administrative law judge in the Hearings Division.

*FCCP* means a Failure to Correct Civil Penalty notice, which assesses civil penalties if you fail to correct the violations in a NONC.

*Hearings Division* means the Departmental Cases Hearings Division, Office of Hearings and Appeals.

*IBLA* means the Interior Board of Land Appeals, Office of Hearings and Appeals.

*ILCP* means an Immediate Liability Civil Penalty notice, which assesses civil penalties for specified violation(s) without providing a prior opportunity to correct the violation(s).

*Information* means any data you provide to an ONRR data system, or otherwise provide to ONRR for our official records, including but not limited to, any reports, notices, affidavits, records, data or documents you provide to us, any documents you provide to us in response to our request, and any other written information you provide to us.

*Knowing or willful* means that a person, including its employee or agent, with respect to the prohibited act, acts with gross negligence.

*Maintenance of false, inaccurate, or misleading information* means you provided information to an ONRR data system, or otherwise to us for our official records, and you later learn the information you provided was false, inaccurate, or misleading, and you do not correct that information or other information you provided to us that you know contains the same false, inaccurate, or misleading information.

*NONC* means a Notice of Noncompliance, which states the

violation(s) and how to correct the violations to avoid civil penalties.

*Notices* means NONCs, FCCPs, and ILCPs as defined in this section.

*ONRR (we, our)* means the Office of Natural Resources Revenue.

*Prohibited act* means any act or failure to act subject to civil penalties under 30 U.S.C. 1719(c) or (d).

*Submission of false, inaccurate, or misleading information* means you provide information to an ONRR data system, or otherwise to us for our official records, and you knew, or should have known, the information that you provided was false, inaccurate, or misleading at the time you provided the information.

*You* (*I*) means the recipient of an NONC, FCCP, or ILCP.

**§ 1241.4 How will ONRR serve notices?**

(a) We will serve NONCs, FCCPs, and ILCPs by registered mail or personal service to the addressee of record under 30 CFR 1218.520 consistent with 30 CFR 1218.540(b).

(b) We will consider the notice served on the date it was delivered to the addressee of record.

**§ 1241.5 How do I request a hearing on the record on a notice?**

(a) You may request a hearing on the record before an ALJ on an NONC, FCCP, or ILCP by filing a request with ONRR. We will consider your Request for Hearing filed when we receive all of the items required under this paragraph, not when you mail or fax the items to us. For your Request for Hearing to be filed, we must receive all of the following from you within 30 days after you are served the notice:

(1) A nonrefundable processing fee of $300 under § 1241.6.

(2) A Request for Hearing that:

(i) You file with the ONRR Enforcement Operations Officer at the address stated in the NONC, FCCP, or ILCP;

(ii) Explains your reasons for challenging the notice; and

(iii) Includes the following attachments:

(A) A copy of the notice, that you are challenging; and

(B) A copy of the Pay.gov receipt confirmation page demonstrating our receipt of your payment of the processing fee under § 1241.6.

(3) A bond or other surety instrument or demonstration of financial solvency under 30 CFR part 1243 for:

(i) The principal amount of any unpaid penalties due under the FCCP or ILCP;

(ii) Interest on the principal amount; and

(iii) Any additional penalties that have accrued since ONRR issued the FCCP or ILCP.

(b) The 30-day period for you to meet all of the requirements of paragraph (a) of this section cannot be extended for any reason.

(1) If we do not receive all of the items you are required to submit under paragraph (a) of this section, then we cannot consider your Request for Hearing to be filed and will return it to you.

(2) If we return your unprocessed Request for Hearing under paragraph (b)(1) of this section, then you may not appeal that decision.

(c) If ONRR receives all of the items you are required to submit under paragraph (a) of this section, 30 days after you are served the notice, then we will forward your Request for Hearing to the Hearings Division.

(d) If you request a hearing on an ILCP, your hearing request must state whether you are contesting your liability for the ILCP or the penalties assessed, or both. If your hearing request does not state whether you are contesting your liability for the ILCP or the penalties assessed, or both, you will be deemed to have requested a hearing only on the amount of the penalty assessed.

(e) You may request a hearing even if you correct the violations identified in the NONC or ILCP.

**§ 1241.6 How do I pay the processing fee?**

(a) You must pay the $300 fee electronically through the Pay.gov Web site at *https://www.pay.gov/paygov.* You must provide the following information with the payment:

(1) Your taxpayer identification number;

(2) Your payor identification number, if applicable; and

(3) The NONC, FCCP, or ILCP case number.

(b) Information on how to pay using the Pay.gov Web site is available on the ONRR Web site at *www.onrr.gov/ReportPay/payments.htm.*

**§ 1241.7 Which ONRR enforcement actions are not subject to a hearing?**

You may not request a hearing on:

(a) Your liability for a violation in an FCCP if the violation is your failure to comply with an order you did not timely appeal under 30 CFR part 1290; and

(b) A courtesy notice we send to you under § 1241.12(a) informing you that additional penalties have accrued.

**§ 1241.8 What procedures apply to my hearing request?**

(a) After we forward your Request for Hearing to the Hearings Division under § 1241.5(c), then either party may submit a motion for summary decision.

(b) The opposing party may file a response to a motion for summary decision within 60 days after service of the motion.

(c) The moving party may file a reply to a response to a motion for summary decision within 30 days after service of the response.

(d) Motions for summary decision and responses must meet the requirements of § 1241.9.

(e) The ALJ will grant a party's motion for summary decision, in whole or in part, if there is no genuine issue of material fact and the party is entitled to a decision as a matter of law.

(f) If neither party files a motion for summary decision or the ALJ denies the motion for summary decision, then the ALJ will, to the extent necessary, authorize discovery, conduct a hearing, and issue a decision.

(g) You have the burden of showing that you are not liable or that the penalty amount should be reduced by a preponderance of the evidence.

(h) In issuing any decision on a hearing request, if the ALJ finds that the factual basis for imposing a civil penalty exists, the ALJ may not:

(1) Reduce a penalty below half of the amount assessed;

(2) Review the exercise of discretion by ONRR to impose a civil penalty; or

(3) Consider any factors in reviewing the amount of the penalty other than those specified in § 1241.70.

(i) The provisions of 43 CFR 4.420–4.438 apply to hearings under this part except when they are inconsistent with the provisions of this part.

**§ 1241.9 What are the requirements and standards for a motion for summary decision and response?**

(a) *Motion requirements.* For a motion for summary decision to be properly made and supported, the party filing a motion for summary decision must:

(1) Rely on more than mere allegations in its own pleadings;

(2) Concisely state the material facts which the party contends are undisputed;

(3) Verify those facts with supporting affidavits, declarations, or other evidentiary materials;

(4) Include references to the specific portions of the record which verify those facts; and

(5) State why the party is entitled to summary decision as a matter of law.

(b) *Response requirements.* When a motion for summary decision is

properly made and supported, an opposing party's response must:

(1) Not rely merely on allegations or denials in its own pleadings, but must:

(i) Concisely state the material facts that the opposing party contends are disputed;

(ii) Verify that those facts are disputed with supporting affidavits, declarations, or other evidentiary materials; and

(iii) Include references to the specific portions of the record that verify that those facts are disputed: and/or

(2) State why the moving party is not entitled to summary decision as a matter of law.

(c) *Establishing facts.* (1) All material facts set forth by the moving party and properly supported by the record will be taken as true and considered undisputed for the purpose of a summary decision unless specifically controverted by the opposing party's response.

(2) The parties may stipulate to by an agreement of the parties enumerating those facts.

#### § 1241.10 May I appeal the ALJ's decision?

If you are adversely affected by the ALJ's decision, you may appeal that decision to IBLA under 43 CFR part 4, subpart E.

#### § 1241.11 May I seek judicial review of the IBLA decision?

You may seek judicial review of the IBLA decision under 30 U.S.C. 1719(j) in Federal District Court. You must file a suit for judicial review in district court within 90 days after the final IBLA decision.

#### § 1241.12 Does my hearing request affect the penalties?

(a) If you do not correct the violations identified in the FCCP or ILCP, the penalties will continue to accrue, even if you request a hearing. We may issue courtesy notices to you informing you of any additional penalties that have accrued after we issue an FCCP or ILCP.

(b) Neither the ALJ nor the IBLA may stay the accrual of penalties pending a decision on your hearing request.

## Subpart B—Notices of Noncompliance and Civil Penalties

### Penalties With a Period To Correct

#### § 1241.50 What may ONRR do if I violate a statute, regulation, order, or lease term relating to a lease subject to this part?

If we believe that you have not followed any requirement of a statute, regulation, or order, or the terms of a lease subject to this part, we may serve you with an NONC explaining:

(a) What the violation is;

(b) How to correct the violation to avoid civil penalties; and

(c) That you have 20 days after the date on which you are served the NONC to correct the violation, unless the NONC specifies a longer period. The period for you to correct the violations specified in the NONC cannot be extended for any reason.

#### § 1241.51 What if I correct the violation(s) identified in an NONC?

If you correct all of the violations we identified in the NONC within 20 days after the date on which you are served the NONC, or any longer period the NONC specifies, then we will close the matter and will not assess a civil penalty. However, we will consider the violations as part of your history of noncompliance for future penalty assessments under § 1241.70(a)(2).

#### § 1241.52 What if I do not correct the violation(s) identified in an NONC?

(a) If you do not correct all of the violations we identified in the NONC within 20 days after the date on which you are served the NONC, or any longer period the NONC specifies, then we may send you an FCCP.

(1) The FCCP will state the amount of the penalty you must pay. The penalty will:

(i) Begin to run on the day on which you were served with the NONC; and

(ii) Continue to accrue for each violation identified in the NONC until it is corrected.

(2) The penalty may be up to $550 per day for each violation identified in the NONC that you have not corrected.

(b) If you do not correct all of the violations identified in the NONC within 40 days after you are served the NONC, or within 20 days following the expiration of any longer time the NONC specifies, then we may increase the penalty to a maximum of $5,500 per day for each violation identified in the NONC that you have not corrected. The increased penalty will:

(1) Begin to run on the 41st day after the date on which you were served the NONC, or on the 21st day after the expiration of any longer time the NONC specifies; and

(2) Continue to accrue for each violation identified in the NONC until it is corrected.

### Penalties Without a Period To Correct

#### § 1241.60 Am I subject to penalties without prior notice and an opportunity to correct?

(a) We may assess penalties without first giving you an opportunity to correct the violation. We will inform you of violations without a period to correct by issuing an ILCP explaining:

(1) What the violation is;

(2) How to correct the violation; and

(3) The amount of the civil penalty assessed.

(b) We may assess civil penalties of up to;

(1) $11,000 per day per violation for each day the violation continues if you knowingly or willfully:

(i) Fail to make any royalty payment by the date specified by statute, regulation, order or terms of the lease; or

(ii) Fail or refuse to permit lawful entry, inspection, or audit. We may consider your failure to keep, maintain, or produce documents to be a knowing or willful failure or refusal to permit an audit; and

(2) $27,500 per day per violation for each day the violation continues for knowing or willful preparation, maintenance, or submission of false, inaccurate, or misleading reports, notices, affidavits, records, data, or any other written information. You also may be deemed to have knowingly or willfully prepared, maintained, or submitted false, inaccurate, or misleading information if you have received an email, preliminary determination letter, order, NONC, ILCP, or any other written communication identifying a violation, and you:

(i) Fail to correct that violation; or

(ii) Correct that violation but commit substantially the same violation in the future.

## Subpart C—Penalty Amount, Interest, Collections, and Criminal Penalties

#### § 1241.70 How does ONRR decide the amount of the penalty to assess?

(a) We will determine the amount of the penalty to assess by considering:

(1) The severity of the violations;

(2) Your history of noncompliance; and

(3) The size of your business. To determine the size of your business, we may consider the number of employees in your company, parent company or companies, and any subsidiaries and contractors.

(b) We will not consider the royalty consequences of the underlying violation when determining the amount of the civil penalty for violations under §§ 1241.50, 1241.60(b)(1)(ii), and 1241.60(b)(2).

(c) We will post the FCCP and ILCP assessment matrix and any adjustments to that matrix, on the ONRR Web site at *www.onrr.gov/CivilPenalties/default.htm.*

**§ 1241.71 Do I owe interest on both the penalty assessed and any underlying underpayment(s) or unpaid debt(s)?**

(a) The penalties under this part are in addition to interest you may owe on any underlying underpayment(s) or unpaid debt(s).

(b) If you do not pay the penalty assessed by the due date in the bill accompanying the FCCP or ILCP, you will owe late payment interest on the penalty amount under 30 CFR 1218.54 from the date the civil penalty payment was due until the date you pay the civil penalty assessed.

**§ 1241.72 When must I pay the penalty?**

(a) If you do not request a hearing on an FCCP or ILCP under this part, you must pay the penalties assessed by the due date specified in the bill accompanying the FCCP or ILCP.

(b) If you request a hearing on an FCCP or ILCP under this part, the ALJ affirms the civil penalty, and:

(1) You do not appeal the ALJ's decision to the IBLA under § 1241.10, you must pay the civil penalty amount determined by the ALJ within 30 days of the ALJ's decision; or

(2) You appeal the ALJ's decision to the IBLA under § 1241.10, the IBLA affirms a civil penalty, and:

(i) You do not seek judicial review of the IBLA's decision under 30 U.S.C. 1719(j), you must pay the civil penalty amount determined by the IBLA within 120 days of the IBLA decision; or

(ii) You seek judicial review of the IBLA decision, and a court of competent jurisdiction affirms the penalty, you must pay the penalty assessed within 30 days after the court enters a final non-appealable judgment.

**§ 1241.73 May ONRR reduce my penalty once it is assessed?**

The ONRR Director or his or her delegate may compromise or reduce civil penalties assessed under this part.

**§ 1241.74 How may ONRR collect my penalty?**

(a) If you do not pay a civil penalty we assess by the date payment is due under § 1241.72, we may use all available means to collect the penalty including, but not limited to:

(1) Requiring the lease surety, for amounts owed by lessees, to pay the penalty;

(2) Deducting the amount of the penalty from any sums the United States owes to you;

(3) Referring the debt to the Department of the Treasury for collection under 30 CFR part 218, subpart J; and

(4) Using the judicial process to compel your payment under 30 U.S.C. 1719(k).

(b) If we use the judicial process to compel your payment, or if you seek judicial review under 30 U.S.C. 1719(j), and the court upholds the assessment of a penalty, the court will have jurisdiction to award the amount assessed plus interest assessed from the date of the expiration of the 90-day period referred to in 30 U.S.C. 1719(j). The amount of any penalty, as finally determined, may be deducted from any sum owing to you by the United States.

**§ 1241.75 May the United States criminally prosecute me for violations??**

If you commit an act for which a civil penalty is provided in 30 U.S.C. 1719(d) and 30 CFR 1241.60(b)(2), the United States may pursue criminal penalties as provided in 30 U.S.C. 1720 in addition to any authority for prosecution under other statutes.

[FR Doc. 2014–11552 Filed 5–19–14; 8:45 am]

**BILLING CODE 4310–T2–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2014–0253]**

**RIN 1625–AA00**

## Safety Zone; Bullhead City River Regatta; Bullhead City, AZ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on the navigable waters of the Colorado River in Bullhead City, Arizona. The safety zone is necessary to provide for the safety of the Bullhead City River Regatta marine event participants. The safety zone will temporarily restrict vessel movement and public waterway use within the designated area. During the annual one-day event, held on August 9, 2014, non-authorized event persons and vessels would be prohibited from entering into, transiting through or anchoring within the enforced period of the safety zone unless authorized by the Captain of the Port or his designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 19, 2014.

Requests for public meetings must be received by the Coast Guard on or before June 4, 2014.

**ADDRESSES:** You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander John Bannon, Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278–7656, email *John.E.Bannon@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as