



ONRR's Proposed Revision to Civil Penalty Regulations Expanding Liability Exposure and Penalties for Oil and Gas Lessees

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The Office of Natural Resources Revenue ("ONRR") of the Department of the Interior published a proposed revision of the civil penalty regulations pertaining to federal onshore, offshore and tribal oil and gas leases on May 20, 2014 (the "Proposed Rule"). See 79 Fed. Reg. 28862. The Proposed Rule explicitly provides for expanded liability for lessees for the acts of employees and agents. It also increases reporting obligations and penalties.

In short, the Proposed Rule increases potential liability exposure and the burden on lessees to ensure all of their records are timely and accurate, while making it easier for ONRR to seek enforcement and impose larger penalties.

A brief summary of the key proposed provisions is provided below.

1. Definition of "Knowing and Willful."

ONRR has proposed defining the phrase "knowing and willful" as encompassing a gross negligence standard. ONRR's stated purpose in using this standard is to hold companies strictly and vicariously liable for the acts of their employees.

Under this standard, companies will be precluded from avoiding liability by claiming lack of knowledge or that the violation is result of a rogue employee.

2. Definition of "Maintenance of False, Inaccurate or Misleading Information."

The Proposed Rule includes a definition for "maintenance of false, inaccurate or misleading information." ONRR's proposed definition effectively requires that upon learning that the information submitted to ONRR is false or

inaccurate, the company must check any and all submissions to ONRR potentially affected, regardless of the state in which they are filed, or face immediate liability for civil penalties.

3. Proposed Revision to the Hearing and Appeals Process.

ONRR is seeking to revamp the hearing and appeals process. Under the Proposed Rule, companies will have 30 days to request a hearing to challenge its liability or the amount of penalties for all ONRR notices (Notices of Noncompliance (“NONCs”), Failure to Correct Civil Penalty (“FCCPs”) & Immediate Liability for Civil Penalties (“ILCPs”).

Importantly, under the Proposed Rule, the failure to request a hearing on any notice or order within the 30 day time frame will preclude all later administrative challenges to the propriety of that notice or order. Additionally, the party requesting a hearing will no longer be able to request a stay of penalty accruals. Rather, by posting the necessary bond, a company may only stay its obligation to pay those penalties.

4. Increased Penalties.

ONRR is proposing to increase all of its civil penalties in order to keep pace with inflation. The penalty for failing to correct a violation within 20 days of receiving NONC would be increased to \$550 per day and the failure to correct within 40 days would be increased to \$5,500 per day. Similarly, ONRR is proposing to increase the penalty to \$11,000 per day per violation for the knowing and willful failure to pay a royalty or permit an audit. The penalty for the knowing and willful submission or maintenance of false, inaccurate or misleading information will also be increased to \$27,500 per day per violation.

Comments on ONRR’s Proposed Rule are due by July 21, 2014.

Please do not hesitate to contact [Bret Sumner](#) or [Bill Sparks](#) if you have any questions or would like additional information. ONRR’s Proposed Rule can be found [here](#).