

## § 1229.127

the lessor's position during the appeal process.

(b) An affected State, upon the request of the ONRR, shall provide expert witnesses from their audit staff for testimony as well as required documentation and analyses to support the Department's position during the litigation of court cases arising from denied appeals. The cost of providing expert witnesses including travel and per diem is reimbursable under the provisions of a delegation of authority, at the Federal Government's existing per diem rates.

### § 1229.127 Reports from States.

The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation. The report shall include:

(a) A statistical summary of the activities carried out, e.g., number of audits performed, accounts reconciled, and other actions taken;

(b) A summary of costs incurred during the previous quarter for which the State is seeking reimbursement; and

(c) A schedule of changes which the State proposes to make from its approved plan.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

## PART 1241—PENALTIES

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- 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.*

SOURCE: 81 FR 50316, Aug. 1, 2016, unless otherwise noted.

### Subpart A—General Provisions

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

This part explains:

- (a) When you may receive a NONC, FCCP, or ILCP.
- (b) How ONRR assesses a civil penalty.
- (c) How to appeal a 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 OCS.
- (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.
- (c) All easements, rights of way, and other agreements subject to 43 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 in 30 U.S.C. 1702.

(b) The following definitions apply to this part:

*Agent* means any individual or other person with the actual authority of, with the apparent authority of, or designated by a person subject to FOGRMA who acts or who, with apparent authority, appears to act on behalf of the person subject to FOGRMA.

*ALJ* means an Administrative Law Judge in the DCHD.

*Assessment* means a civil penalty set out in a FCCP or ILCP; it includes a dollar amount per violation for each day the violation continues. In this part “assessment” is used consistent with 30 U.S.C. 1719(k), but is distinguishable from “assessment” as defined in 30 U.S.C. 1702(19) and used in 30 U.S.C. 1702(25). Correspondence that we send to you to update you on the amount of penalties accrued or outstanding under a FCCP or ILCP we previously served on you is not an assessment.

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

*FCCP* means a Failure to Correct Civil Penalty Notice; it assesses a civil penalty if you fail to correct a violation identified in a NONC.

*FOGRMA* means the Federal Oil and Gas Royalty Management Act.

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

*ILCP* means an Immediate Liability Civil Penalty Notice; it identifies a violation and assesses a civil penalty for the violation even if you have not been provided prior notice and an opportunity to correct the violation.

*Information* means any data that you provide to an ONRR data system, or otherwise provide to us for our official records, including, but not limited to, any report, notice, affidavit, record, data, or document that you provide to us, any document that you provide to us in response to our request, and any other written information that you provide to us.

*Knowingly or willfully* includes an act or failure to act committed with:

- (i) Actual knowledge;
- (ii) Deliberate ignorance; or
- (iii) Reckless disregard of the facts surrounding the event or violation; it requires no proof of specific intent to defraud.

*Maintains false, inaccurate, or misleading information* includes providing information to an ONRR data system, or otherwise to us for our official records, and later learning that the information that you provided was false, inaccurate, or misleading, and you do not correct that information or other information that you provided to us that you know or should know contains the same false, inaccurate, or misleading information.

*NONC* means a Notice of Noncompliance; it identifies a violation, specifies the corrective action that must be taken, and establishes the deadline for such action to avoid a civil penalty.

*Notice* means a NONC, FCCP, or ILCP, as defined in this section.

*OCS* means the Outer Continental Shelf.

*ONRR* means the Office of Natural Resources Revenue (also referred to in the regulations as “we,” “our,” and “us,” as appropriate).

*RSFA* means the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

*Submits false, inaccurate, or misleading information* means that you provide false, inaccurate, or misleading information to an ONRR data system, or otherwise to us for our official records.

*Violation* means any action or failure to take action that is inconsistent with the provisions of FOGRMA, RSFA, a regulation promulgated under either of those Acts, or a Federal or Indian lease as defined by FOGRMA, as amended.

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

**§ 1241.4 How will ONRR serve a Notice?**

(a) We will serve a NONC, FCCP, or ILCP as set out in FOGRMA section 109(h) (30 U.S.C. 1719) by registered mail or personal service to the addressee of record or alternate, as identified in 30 CFR 1218.540.

## § 1241.5

(b) We will consider the Notice served on the date when it was delivered to the addressee of record or alternate, as identified in 30 CFR 1218.540.

### § 1241.5 Which ONRR enforcement actions are subject to a hearing?

Except as provided by § 1241.6, you may request a hearing on:

- (a) A NONC to contest your liability.
- (b) A FCCP to contest only the civil penalty amount, unless a request for hearing was filed under paragraph (a) of this section; in which case, the requests for hearing filed under paragraph (a) and this paragraph (b) will be combined into a single proceeding.
- (c) An ILCP to contest your liability, civil penalty amount, or both. If your hearing request does not state whether you are contesting your liability for the ILCP or the penalty amount, or both, you will be deemed to have requested a hearing only on the penalty amount.
- (d) You may request a hearing even if you correct the violation identified in a Notice.

### § 1241.6 Which ONRR enforcement actions are not subject to a hearing?

You may not request a hearing on:

- (a) Your liability under an order identified in a NONC, FCCP, or ILCP if you did not appeal in a timely manner the order under 30 CFR part 1290 or you appealed in a timely manner the order under 30 CFR part 1290 but have exhausted your appeal rights.
- (b) Any correspondence that we send to you to update you on the amount of penalties accrued or outstanding under a FCCP or ILCP ONRR previously served on you.

### § 1241.7 How do I request a hearing on the record on a Notice?

You may request a hearing on the record before an ALJ on a Notice by filing a request within 30 days of the date of service of the Notice with the DCHD, at the address indicated in your Notice. The 30 day-period to request a hearing on the record will not be extended for any reason.

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### § 1241.8 How will DCHD conduct the hearing on the record?

If you request a hearing on the record under § 1241.7, an ALJ will conduct the hearing under the provisions of 43 CFR 4.420 through 4.438, except when the provisions are inconsistent with the provisions of this part. We have the burden of proving, by a preponderance of the evidence, the fact of the violation and the basis for the amount of the civil penalty. Upon completion of the hearing, the ALJ will issue a decision according to the evidence presented and the applicable law.

### § 1241.9 May I appeal the ALJ's decision?

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

### § 1241.10 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 Federal District Court within 90 days after the final IBLA decision.

### § 1241.11 Does my hearing request affect a penalty?

- (a) If you do not correct the violation identified in a Notice, any penalty will continue to accrue, even if you request a hearing, except as provided in paragraph (b) of this section.
  - (b) *Standards and procedures for obtaining a stay.* If you request in a timely manner a hearing on a Notice, you may petition the DCHD to stay the assessment or accrual of penalties pending the hearing on the record and a decision by the ALJ under § 1241.8.
    - (1) You must file your petition for stay within 45 calendar days after you receive a Notice.
    - (2) You must file your petition for stay under 43 CFR 4.21(b), in which event:
      - (i) We may file a response to your petition within 30 days after service.
      - (ii) The 45-day requirement set out in 43 CFR 4.21(b)(4) for the ALJ to grant or deny the petition does not apply.
      - (3) If the ALJ determines that a stay is warranted, the ALJ will issue an

order granting your petition, subject to your satisfaction of the following condition: within 10 days of your receipt of the order, you must post a bond or other surety instrument using the same standards and requirements as prescribed in 30 CFR part 1243, subpart B; or demonstrate financial solvency using the same standards and requirements as prescribed in 30 CFR part 1243, subpart C, for any specified, unpaid principal amount that is the subject of the Notice, any interest accrued on the principal, and the amount of any penalty set out in a Notice accrued up to the date of the ALJ order conditionally granting your petition.

(4)(i) If you satisfy the condition to post a bond or surety instrument or demonstrate financial solvency under paragraph (b)(3) of this section, the accrual of penalties will be stayed effective on the date of the ALJ's order conditionally granting your petition.

(ii) If you fail to satisfy the condition to post a bond or surety instrument or demonstrate financial solvency under paragraph (b)(3) of this section, penalties will continue to accrue.

(5) Notwithstanding paragraphs (b)(1), (2), (3), and (4) of this section, if the ALJ determines that your defense to a Notice is frivolous, and a civil penalty is owed, you will forfeit the benefit of the stay, and penalties will be calculated as if no stay had been granted.

**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 determine that you have not followed any requirement of a statute, regulation, order, or a term of a lease subject to this part, we may serve you with a NONC explaining:

- (a) What the violation is.
- (b) How to correct the violation to avoid a civil penalty.
- (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.

**§ 1241.51 What if I correct the violation identified in a NONC?**

If you correct all of the violations that we identified in the NONC within 20 days after the date on which you are served the NONC, or any longer period for correction that the NONC specifies, we will close the matter and will not assess a civil penalty. However, we will consider these 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 identified in a NONC?**

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

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

- (i) Begin to run on the day on which you were served with the NONC.
- (ii) Continue to accrue for each violation identified in the NONC until it is corrected.

(2) The penalty may be up to \$1,273 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 period longer than 20 days that the NONC specifies for correction, then we may increase the penalty to a maximum of \$12,740 per day for each violation identified in the NONC that you have not corrected. The increased penalty will:

- (1) Begin to run on the 40th day after the date on which you were served the NONC, or on the 20th day after the expiration of any period longer than 20 days that the NONC specifies for correction.
- (2) Continue to accrue for each violation identified in the NONC until it is corrected.

[81 FR 50316, Aug. 1, 2016, as amended at 82 FR 18860, Apr. 24, 2017; 83 FR 2909, Jan. 22, 2018; 84 FR 8418, Mar. 8, 2019; 85 FR 7223, Feb. 7, 2020]

## § 1241.60

### PENALTIES WITHOUT A PERIOD TO CORRECT

#### **§ 1241.60 Am I subject to a penalty without prior notice and an opportunity to correct?**

(a) We may assess a penalty for a violation identified in paragraph (b) of this section without prior notice or first giving you an opportunity to correct the violation. We will inform you of a violation without a period to correct by issuing an ILCP explaining:

(1) What the violation is.

(2) The amount of the civil penalty. The civil penalty for such a violation begins running on the day it was committed.

(b) ONRR may assess a civil penalty of up to:

(1) \$25,479 per day, per violation for each day that the violation continues if you:

(i) Knowingly or willfully fail to make any royalty payment by the date specified by statute, regulation, order, or a term of the lease.

(ii) Fail or refuse to permit lawful entry, inspection, or audit, including refusal to keep, maintain, or produce documents.

(2) \$63,699 per day, per violation for each day that the violation continues if you knowingly or willfully prepare, maintain, or submit a false, inaccurate, or misleading report, notice, affidavit, record, data, or any other written information.

(c) We may use any information as evidence that you knowingly or willfully committed a violation, including:

(1) The act and failure to act of your employee or agent.

(2) An email indicating your concurrence with an issue.

(3) An order that you did not appeal or an order, NONC, or ILCP for which no further appeal is available.

(4) Any written or oral communication, identifying a violation which:

(i) You acknowledge as true and fail to correct.

(ii) You fail to or cannot further appeal and fail to correct.

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(iii) You correct, but you subsequently commit the same violation.

[81 FR 50316, Aug. 1, 2016, as amended at 82 FR 18860, Apr. 24, 2017; 83 FR 2909, Jan. 22, 2018; 84 FR 8418, Mar. 8, 2019; 85 FR 7223, Feb. 7, 2020]

### **Subpart C—Penalty Amount, Interest, and Collections**

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

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

(1) The severity of the violation.

(2) Your history of noncompliance.

(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 consequence of the underlying violation when determining the amount of the civil penalty for a violation under § 1241.50 or § 1241.60(b)(1)(ii) or (b)(2).

(c) We will post the FCCP and ILCP assessment matrices and any adjustments to the matrices on our Web site.

#### **§ 1241.71 Do I owe interest on both the penalty amount and any underlying underpayment or unpaid debt?**

(a) A penalty under this part is in addition to interest that you may owe on any underlying underpayment or unpaid debt.

(b) If you do not pay the penalty amount 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 when the civil penalty payment became due under § 1241.72 until the date when you pay the civil penalty amount.

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

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

(b) If you request a hearing on a 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 § 1241.9, 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 §1241.9, and 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 that IBLA determines 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?**

ONRR's Director or his or her delegate may compromise or reduce a civil penalty assessed under this part.

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

(a) If you do not pay a civil penalty amount by the date when 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 an amount owed by a lessee, to pay the penalty.

(2) Deducting the amount of the penalty from any sum that the United States owes you.

(3) Referring the debt to the Department of the Treasury for collection under 30 CFR part 1218, subpart J.

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

(b) If ONRR uses 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 penalty amount assessed plus interest from the date of the expiration of the 90-day period referred to in 30 U.S.C. 1719(j).

**PART 1243—SUSPENSIONS PENDING APPEAL AND BONDING—OFFICE OF NATURAL RESOURCES REVENUE**

**Subpart A—General Provisions**

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AUTHORITY: 5 U.S.C. 301 *et seq.*; 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.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

SOURCE: 64 FR 26254, May 13, 1999, unless otherwise noted. Redesignated at 75 FR 61087, Oct. 4, 2010.