annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $146 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

IV. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov*.

1. Letter from Karin F. R. Moore, Vice President and General Counsel, Grocery Manufacturers Association, to Susan Mayne, Ph.D., Director, Center for Food Safety and Applied Nutrition, dated March 31, 2016.
2. Letter from Karin Moore, Senior Vice President and General Counsel, Grocery Manufacturers Association, to Susan Mayne, Ph.D., Director, Center for Food Safety and Applied Nutrition, dated June 26, 2016.
3. Economics Staff, Office of Planning, Office of Policy, Planning, Legislation, and Analysis, Office of the Commissioner, Food and Drug Administration, ''Food Labeling; Calorie Labeling of Articles of Food in Vending Machines; Extension of Compliance Date,'' dated July 2016.

Dated: July 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–18140 Filed 7–29–16; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1241

[Docket No. ONRR–2012–0005; DS63644000 DR2PS0000.CH7000 167D0102R2]

RIN 1012–AA05

Amendments to Civil Penalty Regulations

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

ACTION: Final rule.

SUMMARY: This rule amends the Office of Natural Resources Revenue (ONRR) civil penalty regulations by expanding the regulations to all Federal mineral leases onshore and on the Outer Continental Shelf (OCS), to all Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners' lands, and to all easements, rights of way, and other agreements on the OCS; incorporating the civil penalty inflation adjustments pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act); clarifying and simplifying existing regulations for issuing a Notice of Noncompliance (NONC), Failure to Correct Civil Penalty Notice (FCCP), and Immediate Liability Civil Penalty Notice (ILCP); and providing notice that ONRR will post matrices for civil penalty assessments on its Web site.

DATES: *Effective Date:* August 31, 2016.

FOR FURTHER INFORMATION CONTACT: For comments or questions on procedural issues, contact Armand Southall, Regulatory Specialist, by telephone at (303) 231–3221 or email to *armand.southall@onrr.gov.* For questions on technical issues, contact Geary Keeton, ONRR Chief of Enforcement, by telephone at (303) 231–3096 or email to *geary.keeton@onrr.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

ONRR is amending 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 Department (Secretary) reassigned MMS's responsibilities to three separate organizations. As part of this reorganization, the Secretary renamed MMS's MRM to ONRR and transferred it to the Assistant Secretary of Policy, Management and Budget. 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 rule include its predecessor MRM, and all references to 30 CFR part 1241 in this rule include former 30 CFR part 241.

II. Notice of and Comments on the Proposed Amendments

On May 20, 2014, ONRR published a Notice of Proposed Rulemaking (79 FR 28862) to amend ONRR's civil penalty regulations. In the preamble of the proposed rule, ONRR invited comments on all aspects of the proposed rule, including (1) the amount of the proposed processing fee for a hearing request, payment by Electronic Funds Transfer, and the form of identification to include with the fee; (2) the effect that the proposed processing fee could have on the filing of hearing requests; (3) the procedure to allow a motion for summary decision to be filed at any time after the case is referred to the Departmental Cases Hearings Division (DCHD), including before discovery commences; (4) whether industry should have the burden of showing by a preponderance of the evidence that it is not liable or that the penalty amount should be reduced; (5) whether the accrual of a penalty during the hearing process could be stayed; and (6) the definition of the term ''*knowingly or willfully.*''

The proposed rulemaking provided for a 60-day comment period, which ended on July 21, 2014. During the public comment period, ONRR received 19 written comments: 11 responses from members of industry, 7 responses from industry trade groups or associations, and 1 response from the Jicarilla Apache Nation.

ONRR has carefully considered all of the public comments that we received during the rulemaking process. We hereby adopt final regulations governing the application, assessment, and issuance of and request for hearing on a NONC, FCCP, and ILCP. These regulations will apply prospectively to a NONC, FCCP or ILCP issued on or after the effective date that we specify in the **DATES** section of this preamble.

This final rule reflects revisions to the proposed rule. Also, consistent with the proposed rule, it amends the current

ONRR regulations to (1) apply the regulations to all Federal mineral leases onshore and on the OCS, to all Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners' lands, and to all easements, rights of way, and other agreements on the OCS; (2) incorporate the civil penalty inflation adjustments made pursuant to the 2015 Act; (3) clarify and simplify the existing regulations for issuing a NONC, FCCP, and ILCP; and (4) provide notice that ONRR will post matrices for civil penalty assessments on its Web site. The maximum civil penalty amounts for ONRR penalties under 30 U.S.C. 1719(a)–(d) were established in 1983 in the Federal Oil and Gas Management Act (FOGRMA). The civil penalties were not subsequently adjusted for inflation. The proposed rule, published on May 20, 2014 [79 FR 28862], adjusted the civil penalty amounts by 10 percent pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) (Inflation Adjustment Act). However, on November 2, 2015, the President of the United States signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the 2015 Act), which further amended the Inflation Adjustment Act. The 2015 Act required Federal agencies to adjust each civil penalty amount with an initial catch-up adjustment through an interim final rulemaking. The 2015 Act also requires Federal agencies to make annual inflation adjustments. In accordance with the 2015 Act, in a separate interim final rule, ONRR replaced the established 1983 maximum civil penalty amounts for each of the four established civil penalty tiers specified in 30 U.S.C. 1719(a)–(d). Therefore, the maximum civil penalty amounts in this final rule are greater than the amounts in the proposed rule because this final rule incorporates the adjustments made pursuant to the 2015 Act. Also, this final rule reflects other non-substantive technical changes and additions made to the proposed rule for the purpose of clarity. We discuss the revisions and amendments in more detail below.

A. General Comments

The majority of commenters expressed opposition to the proposed rule. The general comments fall into two categories: (1) The proposed rule is at odds with the FOGRMA civil penalty hierarchy, and (2) the proposed rule denies due process.

1. The Proposed Rule Is at Odds With the FOGRMA Civil Penalty Hierarchy

Public Comment: Industry contends that the proposed rule expands the definitions of statutory terms, establishes too lenient of standards for agency notification to industry members, and seeks to invent new knowing or willful violations. Industry further contends that Congress did not authorize ONRR to impose broad-ranging knowing or willful civil penalties entirely at ONRR's discretion. Rather, Congress established a purposeful hierarchy of civil penalties.

ONRR Response: We include language in the preamble of this final rule that clarifies ambiguities and simplifies the processes for issuing and contesting a NONC, FCCP, and ILCP. We may issue either a NONC or ILCP, depending upon the type of violation we discover and whether it is knowing or willful. We acknowledge that FOGRMA does not expressly define some statutory terms, such as ''*knowingly or willfully,*'' ''*submits,*'' or ''*maintains.*'' Therefore, we clarify these terms as they relate to royalty and production information, collection, and management. We do not believe that the definitions expand on or redefine these terms, but rather clarify the terms to minimize ambiguity. We do not understand what industry means by a broad-ranging knowing or willful civil penalty. Congress authorized the Secretary to impose civil penalties for the specific violations identified in 30 U.S.C. 1719. The burden of proof lies with us to prove, by a preponderance of the evidence, the fact of the violation and the basis of the amount of the civil penalty.

2. The Proposed Rule Denies Due Process

Public Comment: Industry asserts that the proposed rule would deprive a lessee of due process, including (1) precluding a lessee's statutory right to a full hearing on the record before an administrative law judge (ALJ), (2) preventing them from obtaining a stay of penalty accrual pending appeal of a FCCP or ILCP, and (3) unfairly shifting the adjudicatory role from an independent arbiter—an ALJ—to the agency that issued the contested civil penalty.

ONRR Response: We address industry concerns regarding due process under Specific Comments on 30 CFR part 1241—Penalties.

B. Specific Comments on 30 CFR Part 1241—Penalties

1. Definitions and Standards

a. The Proposed Definition of the Term ''*Maintains*'' Is Invalid

Public Comment: ONRR received 13 comments stating that the definition of ''*maintains*'' in proposed 30 CFR 1241.3 is invalid because it imposes liability under 30 U.S.C. 1719(d)(1) for failing to ensure the continued accuracy of information after it is provided to ONRR for a data system or other official record. Industry's position is that the proposed definition of ''*maintains*'' makes two changes, exposing a lessee to potentially limitless liability for a knowing or willful violation under 30 U.S.C. 1719(d)(1). First, the proscribed conduct of knowingly or willfully maintaining false, inaccurate, or misleading information is converted from an affirmative act to the passive act or non-action of failing to correct information. Second, the duty to maintain is made applicable to external information; in other words, information already provided to ONRR. Industry emphasizes that the term ''*maintains*'' applies only to a lessee's internal preservation of its own records for agency review or inspection. Industry notes that FOGRMA does not define ''*maintains*'' and that the proposed definition would elevate 30 U.S.C. 1719(a) and (b) violations to a 30 U.S.C. 1719(d)(1) violation, which is not FOGRMA's intent. Industry further contends that, under the proposed definition, a lessee who is given prior notice of an inadvertent error will be subject to a knowing or willful civil penalty, which is reserved for a violation without prior notice.

Additionally, industry comments that the proposed 30 CFR 1241.3 and the preamble contain undefined ''critical operative terms,'' resulting in no guidance for a lessee. For example, industry contends that the proposed rule expands the scope of ''*maintains*'' because ONRR may pursue a knowing or willful violation under 30 U.S.C. 1719(d)(1) if a lessee receives ''an email, preliminary determination letter, . . . or any other written communication'' identifying a violation and fails to correct the violation. Industry contends that this would violate a lessee's due process rights because a lessee cannot appeal any communication that is not an order.

ONRR Response: Under 30 CFR 1210.30 each reporter/payor must submit accurate, complete, and timely information to ONRR according to the requirements. If you discover an error in

a previous report, you must file an accurate and complete amended report within 30 days of your discovery. The burden falls on us to prove that the alleged violator knew that the incorrect information existed on our data system—and the incorrect information remained uncorrected on our data system—or that the violator acted with reckless disregard or deliberate ignorance to the same.

Industry asserts that FOGRMA uses the term ''*maintains''* to refer exclusively to industry's internal recordkeeping. We conclude that ''*maintains''* refers to both a party's internal records and to external information that the party submitted into our industry-fed recordkeeping system. FOGRMA recognizes the importance of accuracy in this system, as evidenced by 30 U.S.C 1711, which mandates an accurate royalty accounting system. The statutory obligation to ensure the full and proper collection of a royalty owed for the production and sale of a Federal royalty-bearing resource depends on the accuracy of the information that a party reports.

In *Statoil USA E&P, Inc.* v. *ONRR,* 185 IBLA 302 (Apr. 29, 2015) (on interlocutory review of summary judgment ruling), the Interior Board of Land Appeals (IBLA) affirmed ALJ Harvey C. Sweitzer's conclusion that found the term ''*maintains''* applies to information regarding royalty computation and payment within a party's internal recordkeeping system and to such information that a party has reported to us. *Id.* at 314. The IBLA concluded that, when a party has already submitted a report to us and later comes to know, whether through a party's own efforts or notice from us, that the report is inaccurate and then fails to correct the report on time, that party has knowingly or willfully maintained inaccurate information and ONRR may assess a civil penalty under 30 U.S.C. 1719(d)(1). *Id.* at 315. Moreover, a party's due process rights are not violated because they may challenge the ILCP through the hearing process.

b. The Proposed Definition of the Term ''*Submits''* Is Invalid

Public Comment: ONRR received 10 comments asserting that the definition of ''*submits''* in proposed 30 CFR 1241.3 is invalid. Industry asserts that ONRR's definition overreaches and directly ''contradicts the knowing or willful standard within 30 U.S.C. 1719(d) and is unlawful'' because it bypasses the lower hierarchy violations set out in 30 U.S.C. 1719(a) and (b). Additionally, industry contends that proposed 30 CFR 1241.60(b)(2) is unclear. It describes what information may be used as evidence of a knowing or willful violation, including lessee notification of a violation via a communication that is not an appealable order followed by correction of the violation and commission of ''substantially the same violation in the future.'' Industry contends that the quoted phrase is unclear because ONRR does not explicitly define what type of violation is ''substantially the same.'' Further, industry argues that ONRR should not be able to invoke the knowing or willful standard based on a communication that ''does not even rise to the level of an appealable order.''

ONRR Response: The term ''*knowingly or willfully''* is not defined in FOGRMA, which is why we are clarifying the term in the regulation. Reporting requirements are already defined in 30 CFR part 1210 and elsewhere; therefore, we can reasonably expect that information submitted to an ONRR system or representative will conform to those requirements. A party holding an interest in a Federal or Indian property must submit information that is correct, accurate, and not misleading. Furthermore, we are not required to prove ''specific intent'' to defraud, only that a party submitting false, inaccurate, or misleading information did so with actual knowledge, deliberate ignorance, or reckless disregard.

The proposed regulation did not explicitly define what constitutes ''substantially the same'' violation. For clarity the term ''*substantially''* was removed from the final rule. ONRR will consider, on a case-by-case basis, a party's history of noncompliance for the purpose of determining the appropriate amount of the civil penalty. Although 30 U.S.C. 1719(d)(1), as amended by the 2015 Act, allows for a penalty assessment ''of up to $58,871 per violation for each day such violation continues,'' we rarely exercise our right to issue a penalty of this magnitude. FOGRMA provides that submission violations require no prior opportunity to correct before a civil penalty is issued. Therefore, industry's argument that we should issue an appealable order before issuing the civil penalty is inconsistent with FOGRMA's clear language.

c. The Proposed Definition of the Term ''Knowingly or Willfully'' is Invalid

Public Comment: ONRR received six comments from industry stating that the definition of the term ''*knowingly or willfully''* in proposed 30 CFR 1241.3 is invalid because ONRR is defining ''*knowingly or willfully''* to mean gross negligence, which is too low of a standard. Industry states that gross negligence requires ONRR to ''show that a person has 'failed to exercise even that care which a careless person would use.''' Industry argues that ''ONRR cites no legal authority for equating 'knowing or willful' under FOGRMA with 'gross negligence.'''

ONRR Response: In 30 CFR 1241.3 of the final rule, the definition of the term ''*knowingly or willfully''* includes acting—or failing to act, as applicable—in reckless disregard of the facts surrounding the event or violation. Industry equates reckless disregard with gross negligence. Regardless of whether the terms are equivalent, the application of the reckless disregard standard is consistent with a recent ruling issued by ALJ Sweitzer in *Cabot Oil & Gas Corporation,* Case No. CP11–016 (DCHD June 5, 2015). ALJ Sweitzer held that the term ''*willfully''* in 30 U.S.C. 1719 includes acts undertaken with reckless disregard. Further, ALJ Sweitzer suggested that gross negligence may support a finding that the conduct is ''*willful.''* Consequently, the reckless disregard standard is an appropriate standard to measure a knowing or willful violation.

d. The Proposed ''Mens Rea'' Standard Is Insufficient

Public Comment: ONRR received 12 comments from industry stating that the ''mens rea'' standard of gross negligence in the definition of the term ''*knowingly or willfully''* in proposed 30 CFR 1241.3 is too low of a standard for a 30 U.S.C. 1719(d) violation. Conduct that violates 30 U.S.C. 1719(d) is also criminally punishable under 30 U.S.C. 1720. Industry mentions that ''*willfully''* can signify two different ''mens rea'' depending on whether it is being used in civil or criminal law. Industry argues that ONRR is improperly patterning the ''mens rea'' requirements for 30 U.S.C. 1719(d) on the lower civil ''mens rea'' requirements of the False Claims Act, despite the fact that a 30 U.S.C. 1719(d) violation is also punishable criminally.

The False Claims Act defines ''*knowing''* to include reckless disregard. Because FOGRMA makes no mention of reckless disregard, industry contends that FOGRMA requires the government to prove criminal ''mens rea'' to establish liability. ''ONRR's Proposed Rule also fails to acknowledge that the ''knowing or willful'' standard in § 1719(d) is unique and must also warrant criminal liability under § 1720,'' which would undercut Congress' hierarchy penalty system already

established in FOGRMA and conflict with established principles of law.

ONRR Response: The proposed definition of the term ''*knowingly or willfully''* is consistent with the history and purpose of FOGRMA. Congress was concerned by reports from the U.S. General Accounting Office (GAO, now the U.S. Government Accountability Office) discussing the government's failure to collect royalties for oil and gas leases on Federal and Indian lands and the theft of oil and gas from those leases. The Secretary appointed the Linowes Commission (Commission) to address GAO's claims. The Commission found numerous deficiencies, concluding that ''the industry is essentially on an honor system.'' In response, Congress passed FOGRMA and empowered the Secretary with the authority to impose a civil penalty to guard against a FOGRMA violation. When Congress established the tiered system of penalties, Congress stated that ''a balance must be struck between the need to deter violations of the Act and the need to avoid a situation in which exposure to very severe penalty liability for relatively minor or inadvertent violations of necessarily complex regulations becomes a major disincentive to produce oil or gas from lease sites on Federal or Indian lands.''

Though FOGRMA does not define the term ''*knowingly or willfully,''* courts generally do not dispute the meaning of the term ''*knowingly,''* which denotes actual knowledge or intentional blindness. However, the term ''*willfully''* may signify two different standards depending on whether it is being used in criminal or civil law. The IBLA considered the meaning of the term ''*willful''* in *Meridian Oil, Inc.,* 147 IBLA 211 (1999), in the context of a civil penalty proceeding. The IBLA concluded that the term ''*willfulness''* can be demonstrated through reckless disregard as to whether a violation is occurring. In *Cabot Oil,* ALJ Sweitzer addressed whether the criminal law mens rea standard for the term ''*willfully''* should apply to knowing or willful violations under 30 U.S.C. 1719. ALJ Sweitzer concluded that ''Congress intended the civil mens rea of reckless disregard for the law should be applied . . . '' to willful violations under 30 U.S.C. 1719. Thus, the final rule's definition of the term ''*knowingly or willfully''* is in accordance with administrative rulings interpreting the term, and does not violate FOGRMA's hierarchical penalty system.

Industry also commented that our proposed rule would improperly create criminal exposure for an individual who does not have the requisite ''mens rea'' for criminal conduct. The Supreme Court considered a similar argument made in *Safeco Insurance Co. of America* v. *Burr,* 551 U.S. 47, 56–60 (2007), in which *Safeco* claimed that the word ''*willfully''* in the civil provision of the Fair Credit Reporting Act (FCRA) cannot include recklessness because the criminal penalty provisions of the FCRA are triggered by actions that are engaged in knowingly and willfully. The Supreme Court disagreed, stating that '' . . . in the criminal law, 'willfully' typically narrows the otherwise sufficient intent, making the government prove something extra, in contrast to its civil-law usage, giving the plaintiff a choice of mental states to show in making a case for liability.'' *Safeco Ins. Co.,* 551 U.S. at 60. ONRR recognizes the different standards for civil and criminal actions and will apply the civil standard for each civil penalty brought under 30 U.S.C. 1719.

The proposed 30 CFR 1241.75 notes that the United States may pursue a criminal penalty if a party committed an act for which a civil penalty is provided in 30 U.S.C. 1719(d) and 30 CFR 1241.60(b)(2). The proposed 30 CFR 1241.75 was intended to clarify and explain the application of 30 U.S.C. 1719(d) in a civil context. However, after further consideration, we do not believe that it is necessary to provide a regulation to discuss criminal prosecution. Therefore, 30 CFR 1241.75 is removed from the final rule. The removal of 30 CFR 1241.75 in no way limits our ability to refer a violation for criminal prosecution under 30 U.S.C. 1720 or another statute.

e. ''Strict Vicarious Liability'' of a Lessee for the Act and Knowledge of Its Employee or Agent Is Untenable

Public Comment: ONRR received nine comments from industry contending that proposed 30 CFR 1241.60(b)(2) untenably imposes ''strict vicarious liability'' on a lessee for the act and knowledge of its employee or agent. The proposed section describes what information we may use as evidence of a knowing or willful violation, including ''the acts and failures to act of [a lessee's] employees and agents.'' Industry opposes ''strict vicarious liability'' because ONRR would hold a lessee responsible for the knowledge of all its employees, even for a matter beyond the scope of the employee's ''employment, experience or responsibility.'' Further, industry notes that a ''specific intent criminal-type standard'' cannot be imputed to a corporation where an employee acts without apparent authority and outside of the scope of his or her responsibilities.

Industry states that ONRR is relying on the ''strict vicarious liability'' standards in the False Claims Act which imposes ''strict vicarious liability'' on a corporation for the act and knowledge of its employee. Industry contends that ONRR cannot apply those standards to FOGRMA because they are two entirely different statutes. Industry states that ONRR must conduct a case-by-case evaluation of the relevant factors and may impute liability to the corporation only if the agent's culpable act or knowledge is material to the agent's duties. Industry also states that, under FOGRMA, a lessee may designate an agent for a royalty related matter and that ONRR recognizes such designation when a company fills out and submits an Addressee of Record Designation for Service of Official Correspondence (form ONRR–4444). Industry states that the proposed regulation would circumvent an otherwise orderly system in which liability should only be imputed for an act or knowledge of a designated agent. Industry contends that it would be unfair to ''strictly and vicariously'' impose a large civil penalty on a lessee under proposed 30 CFR 1241.60(b)(2) if a lessee fails to comply with any communication that ONRR sends to any company employee. Industry likewise contends that it is unfair to impose a civil penalty if ONRR fails to send official correspondence to the designated person by authorized means.

ONRR Response: The proposed definition of the term ''*knowingly or willfully''* includes a situation where a corporation or individual in a corporation acts with actual knowledge, as well as a situation where the corporation acts with deliberate ignorance or reckless disregard. By holding the corporation vicariously liable for the employee's actions, the final rule deters management from recklessly disregarding or deliberately ignoring the actions of an employee or agent. To avoid the possibility of a civil penalty, a company must exercise sufficient quality control and management oversight to ensure that it reports and pays correctly. The principle that a company can be held liable for the conduct of its agent or employee acting under apparent or actual authority, regardless of the actual knowledge of corporate management, is especially applicable in a civil penalty case brought under FOGRMA. A corporation acts through its employee and empowers its employee to conduct business on its behalf. In dealing with us, a corporation designates an employee as a point of contact using

form ONRR–4444. See 30 CFR part 1218, subpart H. A corporate employee who is designated or in regular contact with us, is an agent with the actual or apparent authority to communicate on behalf of, and bind, the corporation. And we reasonably and necessarily rely on the agent's authority to speak for the corporation. Further, relevant case law holds that knowledge of a non-managerial employee is imputed to a corporation regardless of the principal's or management's actual knowledge. See, for example, *United States* v. *Shackelford,* 484 F. Supp. 2d 669 (E.D. Mich. 2007) (*''Shackelford''*) (False Claims Act); *ASME* v. *Hydrolevel Corp.,* 456 U.S. at 566–568 (1957) (antitrust); *United States ex rel. Bryant* v. *Williams Bldg. Corp.,* 158 F. Supp. 2d 1001, 1006–1009 (D. S.D. 2001) (*''Bryant''*) (False Claims Act); see also *United States ex rel. Ann Fago* v. *M&T Mortgage Corp.,* 518 F. Supp. 2d 108, 124–125 (D.D.C. 2007) (False Claims Act) (rejecting the principle that a corporation is not liable for the acts of a non-managerial employee absent knowledge or recklessness by the corporation as going ''against the great weight of authority in [False Claims Act] cases''). Indeed, in *Cabot Oil,* ALJ Sweitzer agreed with us that the scienter of an oil and gas company's non-managerial employee should be imputed to the company—at least when the company designates the employee as its point of contact. Therefore, our application of the knowingly or willfully standard under this final rule is in accordance with judicial and administrative rulings and does not circumvent or undercut FOGRMA's intent or authority.

2. Legal Principles

a. The Omnibus Appropriations Act, 2009, P.L. 111–8, Sec. 115, 123 Stat. 524 (2009 Appropriations Act) and the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, P.L. 111–88, Sec. 114, 123 Stat. 2928 (Codified at 30 U.S.C. 1720a) (2010 Appropriations Act) Authorizing the Application of FOGRMA to Solid Mineral Leases

Public Comment: One commenter expressed concern regarding the application of the proposed rule to solid mineral leases. Since FOGRMA did not cover solid mineral leases until mandated by the 2009 and 2010 Appropriations Acts, the commenter believes that solid mineral leases were shoehorned into FOGRMA with no consideration of the unique provisions of these leases. In addition, this commenter suggested that a conflict exists with the Bureau of Land Management (BLM) regulation at 43 CFR 3485.1(e), which prescribes a different penalty for misreporting on a coal lease.

ONRR Response: FOGRMA established civil penalties relating to oil and gas development on Federal lands and the OCS. The 2009 and 2010 Appropriations Acts expanded the application of Section 109 of FOGRMA to any lease authorizing exploration for or development of coal, any other solid mineral, or any geothermal resource on any Federal or Indian lands and any lease, easement, right of way, or other agreement, regardless of form, for use of the OCS. If BLM issues a violation for misreporting on a coal lease, BLM regulation 43 CFR 3485.1(e) and any other pertinent BLM regulation will govern the penalty assessment. However, if we issue the violation for misreporting on a coal lease, we will follow the authority set forth in FOGRMA section 109 and any applicable lease terms.

b. ONRR Already Possesses Sufficient Civil Penalty Tools To Address a Reporting Error and Failure To Correct

Public Comment: ONRR received 14 comments stating that ONRR already possesses sufficient civil penalty tools to address a reporting error and failure to correct. Industry comments that ONRR does not explain why it is proposing wholesale changes to the current civil penalty regulation, given its existing clear and adequate enforcement path to address the conduct that it now seeks to shoehorn under 30 U.S.C. 1719(c) and (d).

Industry asserts that, under ONRR's preferred formulation, ONRR could sweep any reporting violation into 30 U.S.C. 1719(d), however alleged, that is not immediately corrected, thus merging the FOGRMA civil penalty provisions and eliminating the various hierarchy of violations that FOGRMA clearly established. Industry contends that ONRR lacks the authority to erase the graduated, proportionate, and strictly defined hierarchy of ascending civil penalties that Congress prescribed.

ONRR Response: We already possess the authority to issue a NONC, FCCP, or ILCP. This rule seeks to increase transparency and to clarify the purpose of each notice. Therefore, this final rule sets out more specific guidelines regarding the types of violations and how these violations prescribe the selection and issuance of each type of enforcement notice.

Moreover, in the 2009 and 2010 Appropriations Acts, Congress directed the Secretary to apply FOGRMA section 109 (30 U.S.C. 1719) to Federal and Indian solid mineral leases, geothermal leases, and agreements for OCS energy development under 43 U.S.C. 1337(p). This rule is necessary to effectively announce and clarify the authority set out in the 2009 and 2010 Appropriations Acts. The new 30 CFR 1241.2 states that this part will apply to all Federal mineral leases onshore and on the OCS, to all Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners' lands, and to all easements, rights of way, and other agreements on the OCS.

Title 30 CFR 1241.3 provides definitions for terms that are not comprehensively defined or, in most instances, not defined at all in the current 30 CFR 1241. For example, we already possess the authority to issue a civil penalty for knowing or willful violations under 30 U.S.C. 1719(c) and (d). This rule simply clarifies what the term *''knowingly or willfully''* means. Additionally, the definitions in this rule clarify broad terms. For instance, *''information''* is a broad term that the final rule defines as it pertains to royalty collection and management.

FOGRMA established a tiered system of civil penalties and structured liabilities for relatively minor or inadvertent violations to major, complex, or severe violations. Congress delegated to the Secretary the authority to impose a civil penalty to deter FOGRMA violations. We may issue either a NONC or ILCP, depending upon the type of violation we discover and whether it is knowing or willful. 30 CFR part 1210 provides specific requirements for reporting, including discovering errors and submitting corrections. Thus, a party's action or inaction dictates the type of 30 U.S.C. violation assessed.

c. ONRR's Application of 30 U.S.C. 1719(d)(1) Is Contrary to Law

Public Comment: ONRR received five comments asserting that ONRR is expanding 30 U.S.C. 1719(d)(1) contrary to law. Industry contends that ''a plain reading of 30 U.S.C. 1719(d)(1), particularly within its statutory context, reveals that it does not apply to mere delays in correcting alleged errors not knowingly or willfully made when originally submitted.'' Further, industry contends that ONRR ''parses out individual statutory terms and separately assigns new definitions created out of thin air,'' then uses these definitions to manufacture a new violation under 30 U.S.C. 1719(d)(1). The commenters state that the proposed rule does not faithfully interpret the

governing statute, but, instead, seeks to re-draft it.

ONRR Response: Industry comments that we are applying 30 U.S.C. 1719(d)(1) in matters of ''mere delays in correcting alleged reporting errors.'' In fact, we apply 30 U.S.C. 1719(d)(1) after confirming that the violator knowingly or willfully maintained incorrect information on our financial system and failed to make corrections on our financial system within a reasonable period of time. See, also, the discussion under Part II.B.1.a., above.

d. ONRR's Application of 30 U.S.C. 1719(c) Is Contrary to Law

Public Comment: ONRR received three comments requesting that ONRR not revise its regulations implementing 30 U.S.C. 1719(c). Industry takes issue with proposed 30 CFR 1241.60(b)(1)(ii) setting forth the penalty for ''knowingly or willfully fail[ing] to make any royalty payment . . .,'' 30 CFR 1241.60(a)(1), or for ''fail[ing] or refus[ing] to permit lawful entry, inspection, or audit.'' 30 CFR 1241.60(a)(2). Industry objects to the addition of a new sentence in the proposed 30 CFR 1241.60(b)(1)(ii) that: ''[ONRR] may consider [a party's] failure to keep, maintain, or produce documents to be a knowing or willful failure or refusal to permit an audit.'' Industry states that ''The proposed rule tries to impose a uniform 'knowing or willful' definition for both [30 U.S.C.] 1719(c) and (d), when the applicable standard for [30 U.S.C.] 1719(d) must be considerably more strict.'' Commenters state that ONRR ''would convert any internal recordkeeping issue into an impediment of a hypothetical audit and thereby trigger greater penalties without notice.'' And commenters state that ''as written, proposed [30 CFR] 1241.60(b)(1)(ii) potentially could allow knowing or willful civil penalties based on an audit not even occurring.'' The commenters state that ONRR cannot automatically impute 30 U.S.C. 1719(c) liability to a company for any alleged impediment of an audit by an employee.

ONRR Response: As stated in the preamble of the proposed rule, we issued a Dear Reporter Letter on March 10, 2011, explaining the recordkeeping requirements and the consequences of failing or refusing to produce requested documents. This letter warns of the penalty consequence for the failure to keep, maintain, or provide in a timely manner a document for an audit, compliance review, or investigation. Additionally, 30 U.S.C. 1713 and 30 CFR part 1212 include recordkeeping obligations that require a reporter to establish and maintain a record, make a report, provide information needed to implement FOGRMA, determine compliance with a regulation or order, and produce a record upon request. Moreover, 30 CFR part 1212 states, ''When an audit or investigation is underway, records shall be maintained until the record holder is released by written notice of the obligation to maintain records.'' Therefore, 30 CFR 1241.60(b)(1)(ii) does not deviate from existing regulations or practice.

A company is legally required to have records available and ready for inspection. If an audit cannot be performed because of a company's failure to produce documents, we are authorized to issue an ILCP for failing or refusing to permit an audit.

e. The Proposed Knowing and Willful Provisions Do Not Work With the Unbundling Issue

Public Comment: The Independent Petroleum Association of New Mexico (IPANM) contends that the proposed knowing and willful provisions do not work with the unbundling issue. IPANM states that unbundling requires ''all natural gas producers to use specific formulae for each processing plant when calculating royalty payments to the [F]ederal government.'' IPANM asserts that ONRR requires the use of an outdated unbundling cost allocation (UCA) to estimate a UCA for current and future reporting, which later requires replacement with an actual value. IPANM contends that this system creates uncertainty and will, ultimately, unfairly expose a company to liability for a knowing or willful violation.

ONRR Response: We are not required to provide a UCA, and a party is not required to use an ONRR-generated UCA. The use of an ONRR-generated UCA does not waive our statutory right to audit reasonable and actual costs for transportation and processing deductions. We will not assess a civil penalty simply because a party chooses to use an ONRR-generated UCA. A civil penalty may be assessed if a party is notified that an ONRR-generated UCA has changed and they knowingly or willfully failed to update their reporting.

f. ONRR's Proposed Rule Contravenes the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA)

Public Comment: ONRR received two comments from industry stating that ONRR's proposed rule contravenes FOGRMA as amended by RSFA because it treats a reporting error as a knowing or willful violation punishable under 30 U.S.C. 1719(d). Industry explains that RSFA amendments to FOGRMA reflect Congressional intent to establish a ''fairer and more moderate approach to enforcing accurate royalty reporting.'' Industry contends that ''RSFA demonstrated Congress' intent that even 'chronically submitted erroneous reports,' let alone minor reporting errors, do not warrant knowing or willful civil penalties under 30 U.S.C. 1719(d).'' Industry continues to explain that, under 30 U.S.C. 1724(d)(4)(B), ONRR may issue an order to perform restructured accounting (RSO) when ONRR or a delegated State determines, during an audit, that a lessee ''has made identified underpayments or overpayments . . . based upon repeated, systemic reporting errors. . . . '' However, industry notes that ONRR's proposed rule would do away with the statutory RSO requirements and, in effect, define the failure to comply with an RSO as a knowing or willful maintenance of an inaccurate report. Therefore, industry concludes that ''the RSFA amendments enacted in 1996 collectively demonstrate that Congress did not contemplate that reporting errors, even chronic reporting errors, were routinely in the scope of 30 U.S.C. 1719(d) knowing or willful civil penalties.''

ONRR Response: As discussed elsewhere in this preamble, FOGRMA established a tiered system of civil penalties and structured liabilities for relatively minor or inadvertent violations and major, complex, or severe violations. Congress delegated to the Secretary the authority to impose a civil penalty to sanction and deter FOGRMA violations. Industry commented that the proposed rule would impact statutory RSO requirements. If ONRR issues a RSO, a party may appeal and exhaust all available administrative and judicial remedies. Should a party not timely appeal a RSO, or should a final determination be made that a RSO is valid, and the company fails to comply with the RSO, a civil penalty may be assessed under 30 U.S.C. 1719. Furthermore, neither FOGRMA nor its amendments in RSFA define the term ''*knowingly or willfully,*'' leaving the definition to be clarified and established by regulations, judicial and administrative decisions, or both.

g. The Proposed Rule Understates Its Economic Impact

Public Comment: ONRR received three comments in which industry argues that ONRR's estimation of the proposed rule's annual financial impact is not credible. Commenters elaborate that ''[t]he allowable daily civil penalties that could now accrue under ONRR's expanded use of [30 U.S.C.] 1719(c) [and] (d) are several times

greater than penalties properly assessed under [30 U.S.C.] 1719(a) [and] (b).'' Moreover, they assert that ''under the Proposed Rule, penalty accrual could no longer be stayed and steep penalties could be pursued even when the lessor has not been deprived of substantial royalty.'' Industry contends that ''since ONRR could accumulate [civil] penalties without notice, there would be little to prevent ONRR from running up civil penalties before issuing an ILCP.'' Additionally, industry states that ''ONRR . . . relies on outdated gas penalty assessment data from 2007–2011.'' Further, industry asserts that ONRR ''seeks to bootstrap its ad hoc 'initiative' and apply more severe penalties on a widespread basis, even absent to date any final Departmental or judicial determination of ONRR's novel interpretation of FOGRMA.'' Finally, industry contends that ONRR's proposed rule does not accurately depict the economic impact on small businesses and Indian Tribes and individual Indian mineral interest owners.

ONRR Response: As required by the 2009 and 2010 Appropriations Acts, we are expanding the application of Section 109 of FOGRMA to any lease authorizing exploration for or development of coal, any other solid mineral, or any geothermal resource on any Federal or Indian lands and any lease, easement, right of way, or other agreement, regardless of form, for use of the OCS. Further, we have updated our economic analysis of the impact of this rule with data through the end of October 2015. See, the discussion under Part III.1.A.–D., below. With respect to industry's concern regarding the accrual of a steep penalty due to the removal of industry's right to a stay of the accrual of a penalty, the final rule leaves intact the right to request a stay. Furthermore, ONRR cannot ''run up'' a civil penalty before issuing an ILCP. The date on which the ILCP is issued has no effect on the amount of the civil penalty because a knowing or willful civil penalty only accrues for as many days as the violating party allows it to accrue. A party that knowingly or willfully commits a violation can stop the accrual of the civil penalty at any time by simply correcting the violation.

h. ONRR's Proposed Rule May Have Unintended Consequences

Public Comment: ONRR received five comments in which industry asserts that ONRR's proposed rule may have unintended consequences. Industry contends that the rule ''would chill communication with ONRR out of fear that any agency feedback or guidance would be construed as notice forming the basis for potential knowing or willful civil penalties if that informal guidance is not strictly followed.'' Additionally, industry argues that ''total royalty collections may decrease as ONRR's significant expansion of the most egregious civil penalty provision provides a disincentive to lessees, particularly smaller entities, from producing on Federal lands, Indian lands, and the OCS in the first instance.''

ONRR Response: We disagree that the final rule will ''chill'' communications. Indeed, the final rule will improve communications because the language clarifies ambiguity and simplifies the process for issuing and contesting a notice. Although industry contends that this rule will have unintended consequences, a majority of its provisions are already in practice, especially with the changes made between the proposed and final rule, as discussed elsewhere in this preamble. Further, the final rule will (1) apply the regulations to all Federal mineral leases onshore and on the OCS, to all Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners' lands, and to all easements, rights of way, and other agreements on the OCS; (2) incorporate the civil penalty inflation adjustments made pursuant to the 2015 Act; (3) clarify and simplify the existing regulations for issuing a NONC, FCCP, and ILCP; and (4) provide notice that we will post matrices for civil penalty assessments on our Web site. These are the dominant consequences of the final rule, all of which are intended.

i. ONRR's Royalty and Reporting Obligations Regarding Multiple Lessees or Leases

Public Comment: ONRR received one comment from industry regarding complying with ONRR's royalty and reporting obligations in a situation where there are multiple lessees or leases. Industry stated that a lack of timely action from another surface management agency will result in a civil penalty action, specifically BLM's delay in approving a unit revision.

ONRR Response: We appreciate industry's comments; however, the action or inaction of another surface management agency is beyond the scope of this final rule. Further, we will evaluate each potential civil penalty matter on a case-by-case basis.

3. Due Process

a. Un-Reviewable Discretion of the Agency To Issue a Civil Penalty

Public Comment: ONRR received five comments asserting that the proposed rule circumvents the ALJ's authority to review the appropriateness of a civil penalty. Further, industry expresses concern that civil penalty liability will be based on a communication that is not an appealable order. Moreover, industry states that ''[a] lessee also would have no means to hold ONRR to its obligation to treat similar civil penalty cases in a similar manner; the aggrieved lessee would be foreclosed from ever questioning the agency's rationale for disparate treatment, and ONRR would have no obligation to provide one.''

ONRR Response: In light of industry comments and upon further consideration, the final rule will leave intact the ALJ's discretion and authority to review our issuance of a civil penalty. Proposed 30 CFR 1241.8 is removed from the final rule and replaced with 30 CFR 1241.8 addressing the ALJ holding a hearing and rendering a decision.

b. Inability of ALJ or Board to Stay the Accrual of a Penalty Pending Review

Public Comment: ONRR received 11 comments asserting that proposed 30 CFR 1241.12(b) would preclude any stay of the accrual of a penalty pending a hearing request before the ALJ or an IBLA appeal. Commenters argue that this proposed section prevents the appellant and the administrative tribunal from effectuating a stay in circumstances in which it is warranted, thereby taking away a lessee's basic appeal right. Consequently, proposed 30 CFR 1241.12(b) would force a lessee ''to either (i) subject itself to additional penalties . . . plus accumulating interest . . . or (ii) comply with a directive (possibly informal) that the lessee may believe is incorrect. . . .'' Additionally, the section ''would needlessly burden the Federal Judiciary with otherwise premature Federal Court lawsuits to obtain preliminary injunctive relief.''

ONRR Response: In light of industry comments and upon further consideration, the final rule leaves intact the right to request a stay of the accrual of a penalty. Thus, proposed 30 CFR 1241.12(b) is modified and the hearing requester's opportunity to petition the ALJ to stay the accrual of a civil penalty is re-designated to 30 CFR 1241.11.

c. ONRR as Sole Gatekeeper to a Hearing on the Record

Public Comment: ONRR received eight comments asserting that the proposed rule makes ONNR the sole gatekeeper to a hearing on the record. Industry argues that proposed 30 CFR 1241.5 ''would permit ONRR alone to decide whether [the] ALJ jurisdiction has been timely triggered to review either a NONC, [FCCP,] or [an ILCP.]'' Proposed 30 CFR 1241.5 requires the hearing requester to provide certain information and a surety instrument or demonstration of financial solvency for an unpaid and accrued penalty plus interest within 30 days after service of the NONC, FCCP, or ILCP, and provides that, if a hearing request is incomplete, ONRR would not consider it to be filed and would return it to the lessee. Industry contends that proposed 30 CFR 1241.5 allows ''unreviewable discretion to determine whether the appeal request is satisfactory, and imposes a blanket ban on extensions of the original 30-day period to provide that information.'' Thus, the proposed rule potentially allows for a ''right to a hearing on the record [to be] forever lost.''

Industry contends that the prerequisites to request a hearing set forth in proposed 30 CFR 1241.5 are burdensome and ambiguous. For instance, they contend that ONRR does not clearly articulate what is necessary for industry to explain its reasons for challenging a NONC, FCCP, or ILCP. Industry also contends that ONRR requires the submission of a surety instrument based on uncertain dollar amounts due, which is similar to using a ''moving target to find the submitted security insufficient and deny a hearing on the record.'' Moreover, industry disagrees with the requirement in proposed 30 CFR 1241.6 to use Pay.gov to pay the hearing request processing fee. Industry asserts that ''ONRR must withdraw or revise and re-propose these proposed [hearing request] requirements.''

ONRR Response: The proposed rule invited public comment on new requirements pertaining to the filing of a hearing request on a NONC, FCCP, or ILCP. In light of industry comments and upon further consideration, the final rule does not include the proposed 30 CFR 1241.5 and 1241.6, which contained these new requirements. Title 30 CFR 1241.7 describes the method for filing all hearing requests, and 30 CFR 1241.5 and 1241.6 clarify which enforcement actions are and are not subject to a hearing.

Currently under 30 CFR 1241.54, a recipient of a NONC can request a hearing on its liability for the NONC. Under the current 30 CFR 1241.56, the recipient may request a hearing on only the amount of the penalty. Likewise, under the current regulations, a recipient of an ILCP can request a hearing on its liability for the ILCP under 30 CFR 1241.62, or on the amount of the penalty under 30 CFR 1241.64. We believe that having four sections to request a hearing that result in the same process is confusing and redundant. Therefore, 30 CFR 1241.7 consolidates all four sections.

Under the final 30 CFR 1241.7, a party may still request a hearing on a NONC, FCCP, or ILCP before an ALJ. A party will have 30 days from receipt of a 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 a NONC) and 30 CFR 1241.62 (hearing request for liability for an ILCP). However, this provision will change current regulations at 30 CFR 1241.56(b) (hearing request for a FCCP) and 1241.64(b) (hearing request on the amount of a civil penalty assessed in an ILCP). The current regulations allow only 10 days for a party to request a hearing on a civil penalty assessment. Title 30 CFR 1241.7 extends the period within which to request a hearing to 30 days. Final 30 CFR 1241.7 also clarifies that the 30-day period may not be extended.

d. Motion for Summary Decision

Public Comment: ONRR received seven comments asserting that proposed 30 CFR 1241.8 allows ONRR to move for summary decision based on an alleged fact prior to an appellant initiating discovery to contravene that fact. Furthermore, they contend that ONRR is seeking to ''reverse the black-letter rule that on a motion for summary [decision] disputed facts should be construed in favor of the non-movant.'' Thus, they claim that ONRR is depriving a lessee of its right to a hearing on the record.

ONRR Response: Proposed 30 CFR 1241.8 allowed a motion for summary decision to be filed at any time after the case is referred to the DCHD, including before discovery commenced. Additionally, proposed 30 CFR 1241.8 included a new provision indicating that industry had the burden of showing by a preponderance of the evidence that it was not liable or that the penalty amount should be reduced. Furthermore, proposed 30 CFR 1241.9 outlined the requirements and standards for both parties to follow when filing a motion for summary decision, response, and reply.

After consideration of industry comments, we removed proposed 30 CFR 1241.8 and 1241.9 from the final rule. Nevertheless, the option of filing a motion for summary decision is available to either party upon the commencement of the case, and the burden will remain with the movant to demonstrate that there is no issue of material fact and that, as a matter of law, judgment is appropriate. The ALJ has the discretion to schedule and rule on any motion for summary decision. Additionally, even without a regulatory amendment, both parties should adhere to the customary standards for a motion for summary decision. Because proposed 30 CFR 1241.8 and 1241.9 are removed, 30 CFR 1241.8 is replaced with 30 CFR 1241.8 addressing the ALJ holding a hearing and rendering a decision, and proposed 30 CFR 1241.10, addressing the appeal of an ALJ's decision, is re-designated as 30 CFR 1241.9.

e. Fixed Period To Correct

Public Comment: ONRR received five comments asserting that ONRR's ''absolute barrier'' to providing an extension to correct a violation identified in a NONC is ''patently unreasonable.'' See proposed 30 CFR 1241.50(c). Industry alleges that ''[a] NONC may require the lessee to perform a scope of work that is impossible to complete within the default 20-day period.'' Industry believes that an extension should be considered for a justifiable reason on a case-by-case basis.

ONRR Response: A company's compliance dictates whether or not we will issue a NONC. We are removing the language from 30 CFR 1241.50(c) that no extension will be given for a NONC. We provide a minimum of 20 days to correct a violation identified in a NONC, but hold the right to set out a longer cure period for a violation identified after taking into account all relevant factors and circumstances to achieve compliance.

f. Unreviewable Enforcement Actions

Public Comment: ONRR received five comments stating that ONRR should only base liability for a civil penalty on an appealable communication. Furthermore, the appeal clock or civil penalty should only run upon ONRR's issuance of an order recognized under 30 CFR part 1290. Consequently, ''the Proposed Rule creates unreviewable enforcement actions exempt from a hearing on the record, which could apply even where no opportunity existed to appeal the earlier communication.''

ONRR Response: When we issue an order, a company has the opportunity to appeal the order under 30 CFR part 1290 and can present new information and testimony (in the form of written affidavits) as part of that appeal. When we issue a FCCP or ILCP, a company has the opportunity to request a hearing. This rule clarifies that, if a party receives an ONRR order and does not appeal that order under current 30 CFR part 1290, that order is the final decision of the Department, and the order cannot be changed by subsequently requesting a hearing on a NONC, FCCP, or ILCP issued for failing to comply with that order.

g. Inability of the ALJ To Reduce a Civil Penalty Amount

Public Comment: ONRR received 12 comments requesting that ONRR eliminate proposed 30 CFR 1241.8(h)(1) in the final rule. Industry contends that the proposed rule is imposing on the ALJ's discretion and bars the ALJ from substantially reducing a penalty in circumstances where a reduction may be warranted. Additionally, industry alleges that ONRR may purposely delay the issuance of an ILCP in order to further penalize industry monetarily.

ONRR Response: The proposed rule would have prohibited the ALJ from reducing the penalty below half of the amount assessed, precluded the ALJ from reviewing our exercise of discretion to impose a civil penalty, and prohibited the ALJ from considering any factors in reviewing the amount of the penalty other than those specified in 30 CFR 1241.70. In light of industry's comments and upon further consideration, we dropped these provisions from the final rule.

We do not purposely delay the issuance of an ILCP in order to escalate the amount of a penalty assessment. Indeed, the date on which the ILCP is issued has no effect on the amount of the civil penalty because a knowing or willful civil penalty only accrues for as many days as the violating party allows it to accrue. A party that knowingly or willfully commits a violation can stop the accrual of the civil penalty at any time by simply correcting the violation, regardless of when we issue the ILCP.

h. ONRR's Stacked Deck

Public Comment: ONRR received two comments stating that the incorporation of the combined proposed amendments will stack the deck in ONRR's favor. This would result in an ''interference with due process and the statutory right to a hearing on the record.''

ONRR Response: In light of industry comments and upon further consideration, we have removed or modified portions of the proposed rule so that the final rule addresses industry concerns. Those changes are indicated in our responses to industry's comments in this preamble under the subheadings 3.a. Unreviewable Discretion of the Agency to Issue a Civil Penalty, 3.b. Inability of the ALJ or Board to Stay the Accrual of a Penalty Pending Review, 3.c. ONRR as Sole Gatekeeper to a Hearing on the Record, 3.d. Motion for Summary Decision, 3.e. Fixed Period to Correct, 3.f. Unreviewable Enforcement Actions, and 3.g. Inability of the ALJ to Reduce a Civil Penalty Amount.

i. Refusal To Consider Royalty Implication in Determining Whether the Civil Penalty Amount Is Arbitrary

Public Comment: ONRR received four comments stating that the proposed amendments to 30 CFR 1241.70(b) explicitly disregards the royalty consequence of an underlying violation when ONRR is determining the amount of the civil penalty to assess. Industry suggests that a paperwork error should not be in the same tier as a royalty underpayment because the central purpose and motivation behind the enactment of FOGRMA is royalty collection. Industry further suggests that ''when enacting FOGRMA, Congress was keenly aware of the need to preserve basic principles of proportionality between the amount of the penalty and the severity of the underlying offense.'' Industry declares that ONRR ''not only ignores [the] basic tenet of proportionality but also explicitly calls for the agency to disregard it in imposing civil penalties.'' Industry states that this is especially true regarding ONRR's new proposed definitions of ''*maintains*'' and ''*submits*'' in proposed 30 CFR 1241.3. ''ONRR's disregard of the royalty consequences of alleged reporting errors ignores Congressional intent to impose penalties that will deter violators but not jeopardize future leasing and operations.'' Finally, industry purports that ''[s]ome of the factors that ONRR states it does intend to consider in setting penalty amounts also may result in unjust outcomes under ONRR's Proposed Rule.'' Specifically, industry objects to ONRR considering prior violations when assessing a future civil penalty assessment. Moreover, industry contends that the '''size of [a party's] business' should only be a mitigating factor for a small business, and not an arbitrary multiplier for larger entities.''

ONRR Response: FOGRMA does not link the amount of a civil penalty to the royalty consequence of an underlying violation, and we will not issue a reduced penalty because the violation produced little or no royalty consequence. Civil penalties are designed to promote compliance with lease terms and royalty statutes and regulations, and to encourage accurate and timely reporting. As a result, Congress authorized the secretary to impose civil penalties for reporting errors and failing to submit data, regardless of the royalty consequence of those violations. Indeed, many reporting errors and failures to submit data delay an audit or prevent ONRR or a delegated State from performing an audit, which can be penalized under FOGRMA. Accurate reporting is paramount to our obligation to collect and disburse revenues in a timely manner. Regardless of whether a party owes an additional royalty, or if there is any royalty consequence to the violation, misreporting can lead to a myriad of repercussions that affect not only us, but also surface management agencies, States, Indian Tribes, and others that rely on that reported data.

ONRR determines the amount of the civil penalty by considering the three factors set forth in 30 CFR 1241.70. Industry is aware of the factors considered by ONRR when determining the amount of a civil penalty. Additionally, industry is aware of its reporting requirements set forth in the regulations. FOGRMA authorizes steep penalties for 30 U.S.C. 1719 violations, but our assessments are already far below the maximum allowable under the law. We determine the amount of the civil penalty in accordance with 30 CFR 1241.70 which is consistent with our current practice.

j. Inconsistency in ONRR's Communication and Accountability

Public Comment: ONRR received two comments from industry stating that the proposed rule does not account for a situation when ONRR is erroneous in its assessment of wrongdoing or misreporting. Additionally, industry comments that ONRR's unresponsiveness, unwillingness to communicate, or both, is detrimental to the resolution of a time-sensitive issue.

ONRR Response: A party's right to request a hearing before an ALJ, and the right to appeal any ALJ decision, provides a party with recourse should we err in our assessment of wrongdoing or misreporting. Moreover, we evaluate each matter on a case-by-case basis. If we were unresponsive or unwilling to communicate, and our actions contributed to the delay giving rise to the civil penalty, we may consider this when determining whether to issue a civil penalty or as a mitigating factor

when determining the appropriate amount of the civil penalty.

k. A Penalty Will Accrue From the Date When a NONC Is Served

Public Comment: ONRR received one comment from industry requesting clarification regarding the start date of the civil penalty calculation.

ONRR Response: We typically serve a NONC, FCCP, or ILCP as set forth 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 and will consider the notice served on the date when it was delivered. For an FCCP, the penalty calculation will begin running on the day when a party is served with the NONC. The penalty calculation for an ILCP will begin running from the day when the violation was committed.

III. Procedural Matters

1. Summary Cost and Royalty Impact Data

This is a technical rule that will (1) apply the regulations to all Federal mineral leases onshore and on the OCS, to all Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners' lands, and to all easements, rights of way, and other agreements on the OCS; (2) incorporate the civil penalty inflation adjustments made pursuant to the 2015 Act; (3) clarify and simplify the existing regulations for issuing a NONC, FCCP, and ILCP; and (4) announce our practice of publishing our civil penalty assessment matrices on our Web site. These changes will have no royalty impacts on industry; State and local governments; Indian Tribes; individual Indian mineral owners; or the Federal Government. As explained below, industry will not incur significant additional administrative costs under this final rule. However, industry can realize some increased penalties under this final rule. The Federal Government, and any States and Tribes that are eligible to share civil penalties under 30 U.S.C. 1736, will benefit from penalty amounts that we imposed, for the first time, on solid mineral and geothermal lessees. The cost and benefit information in item 1 of the Procedural Matters is used as the basis for Departmental certifications in items 2 through 10.

A. Industry

(1) Royalty Impacts. None.

(2) Administrative Costs—Processing Fee. None.

(3) Penalties. This final rule may result in some increase in civil penalties that lessees must pay. We collected an average of $1,879,264 in civil penalties annually for fiscal years 2007–2015. 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 October 2015. That estimate came to 9 percent of our current mineral reporter universe (135 solids and geothermal payors and reporters divided by 1,514 total payors and reporters (oil and gas; solids; and geothermal)). Therefore, we multiplied the $1,879,264 in average annual civil penalties by 9 percent (solid mineral and geothermal payors and reporters) to estimate an increase in civil penalties that we collect of $169,134.

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 will receive a 50-percent share of civil penalties collected as a result of their activities under our delegation of authority (30 U.S.C. 1736). However, the amount that a State government will receive due to the estimated increase discussed above is purely speculative.

C. Indian Tribes and Individual Indian Minerals Owners

(1) Royalty Impacts. None.

(2) Administrative Costs. None.

(3) Penalties. Indian Tribal governments that have cooperative agreements with us under 30 U.S.C. 1732 will receive a 50-percent share of civil penalties collected as a result of their activities under our delegation of authority (30 U.S.C. 1736). However, the amount that a Tribal government will receive due to the estimated increase discussed above is purely speculative.

D. Federal Government

(1) Royalty Impacts. None.

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

(3) Penalties. As discussed above, we estimate that the Federal Government can receive $169,134 in increased civil penalties for solid and geothermal leases as a result of this rule if no State or Tribe shares in these 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 the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. 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 developed this rule in a manner consistent with these requirements.

3. Regulatory Flexibility Act

The Department certifies that this rule will 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 rule will affect lessees under Federal mineral leases onshore and the OCS and all Federally administered mineral lease on Indian Tribal and individual Indian mineral owners' lands. Federal and Indian mineral lessees are, generally, companies classified under the North American Industry Classification System (NAICS), as follows:

- Code 211111, which includes companies that extract crude petroleum and natural gas.
- Code 212111, which includes companies that extract surface coal.
- Code 212112, which includes companies that extract underground coal.

For these NAICS code classifications, a small company is one with fewer than 500 employees. The Department estimates that 1,855 companies that this rule affects are small businesses that submit royalty and production reports from Federal and Indian leases to us each month.

Per our analysis shown in item 1 above, we do not estimate that this rule will result in a significant economic effect on a substantial number of small entities because this rule will cost

approximately a collective total of $169,134 per year to affected small businesses. Therefore, a Regulatory Flexibility Analysis will not be required, and, accordingly, a Small Entity Compliance Guide will not be required.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and ten Regional Fairness Boards receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates the enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on our actions, call 1–(888) 734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination, retaliation, or both filed with the Small Business Administration will be investigated for appropriate action.

4. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. We estimate that the maximum effect on all of industry will be $169,134 annually. As shown in item 1 above, the economic impact on industry; State and local governments; Indian Tribes and individual Indian mineral owners; and the Federal government will be well below the $100 million threshold that the Federal government uses to define a rule as having a significant impact on the economy.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, local government agencies; or geographic regions. See item 1 above.

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

5. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, we are not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) requires because this rule is not an unfunded mandate. See item 1 above.

6. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this rule does not have any significant takings implications. This rule will not impose conditions or limitations on the use of any private property. This rule will apply to all Federal and Indian leases. Therefore, this rule does not require a Takings Implication Assessment.

7. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The management of all Federal and Indian leases is the responsibility of the Secretary, and we distribute monies that we collect from the leases to States, Tribes, and individual Indian mineral owners. This rule does not substantially and directly affect the relationship between the Federal and State governments. Because this rule does not alter that relationship, this rule does not require a Federalism summary impact statement.

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

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

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

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

9. Consultation With Indian Tribal Governments (E.O. 13175)

The Department strives to strengthen its government-to-government relationship with the Indian Tribes through a commitment to consultation with the Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this rule and determined that it will have no substantial effects on Federally-recognized Indian Tribes. Likewise, these amendments to 30 CFR part 1241, subpart B, will not affect Indian Tribes because the changes are only technical in nature.

10. Paperwork Reduction Act

This rule:

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

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

11. National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major Federal action, significantly affecting the quality of the human environment. We are not required to provide a detailed statement under NEPA because this rule qualifies for categorical exclusion under 43 CFR 46.210(i) in that this rule is ''. . . *of an administrative, financial, legal, technical, or procedural nature.* . . .'' This rule also qualifies for categorical exclusion under the Departmental Manual, part 516, section 15.4.(C)(1) in that its impacts are limited to administrative, economic, or technological effects. We also have determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments have no consequences on the physical environment. This rule will not alter, in any material way, natural resources exploration, production, or transportation.

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

This rule is not a significant energy action under the definition in E.O. 13211; therefore, a Statement of Energy Effects is not required.

List of Subjects in 30 CFR Part 1241

Civil penalties, Notices of noncompliance.

Dated: June 22, 2016.

Kristen J. Sarri,

Principal Deputy Assistant Secretary for Policy, Management and Budget.

Authority and Issuance

For the reasons discussed in the preamble, ONRR revises 30 CFR part 1241 to read as follows:

PART 1241—PENALTIES

Subpart A—General Provisions

Sec.

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 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.

(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.

§ 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 $1,177 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 $11,774 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.

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) $23,548 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) $58,871 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.

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

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).

[FR Doc. 2016–17598 Filed 7–29–16; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–1018]

Special Local Regulation; Seattle Seafair Unlimited Hydroplane Race, Lake Washington, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Seattle Seafair Unlimited Hydroplane Race special local regulation on Lake Washington, WA from 8 a.m. on August 2, 2016 through 11 p.m. on August 7, 2016 during hydroplane race times. This action is necessary to ensure public safety from the inherent dangers associated with high-speed races while allowing access for rescue personnel in the event of an emergency. During the enforcement period, no person or vessel will be allowed to enter the regulated area without the permission of the Captain of the Port, Puget Sound, the on-scene Patrol Commander, or a designated representative.

DATES: The regulations in 33 CFR 100.1301 will be effective from 8 a.m. on August 2, 2016 through 11 p.m. on August 7, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LT Kate Haseley, Sector Puget Sound Waterways Management Division, Coast Guard; telephone (206) 217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the Seattle Seafair Unlimited Hydroplane Race special local regulation in 33 CFR 100.1301 from 8 a.m. on August 2, 2016 through 11 p.m. on August 7, 2016.