

# PUBLIC SUBMISSION

<b>As of:</b> September 24, 2013
<b>Received:</b> September 23, 2013
<b>Status:</b> Pending_Post
<b>Tracking No.</b> 1jx-87rv-r4q5
<b>Comments Due:</b> September 23, 2013
<b>Submission Type:</b> Web

**Docket:** ONRR-2013-0001

Amendments to ONRR's Service of Official Correspondence -- RIN 1012-AA14

**Comment On:** ONRR-2013-0001-0001

Amendments to Service of Official Correspondence

**Document:** ONRR-2013-0001-DRAFT-0014

Comment from Emily Kennedy,

---

## Submitter Information

**Name:** Emily Kennedy

---

## General Comment

Please accept the attached comment letter submitted on behalf of API and COPAS.

Thank you,

Emily Kennedy  
API

---

## Attachments

API Letter to ONRR Re Direct Final Rule Service of Official Correspondence RIN 1012-AA14



September 23, 2013

Ms. Rhea Suh  
Assistant Secretary – Policy, Management and Budget  
Department of the Interior  
1849 C Street NW  
Washington, DC 20240

**Re: Comments on Direct Final Rule to Amend ONRR’s Service of Official Correspondence, RIN 1012-AA14**

Dear Assistant Secretary Suh,

On August 23, 2013, the Office of Natural Resources Revenue (“ONRR”) issued a “Direct-Final” Rule entitled *Amendments to ONRR’s Service of Official Correspondence (RIN 1012-AA14)* (hereinafter “Rule”). The Rule amends the Service of Official Correspondence regulations “to allow ONRR to serve official correspondence using any electronic method of delivery that provides for a receipt of delivery, or, if there is no receipt, the date otherwise documented.” 78 Fed. Reg. 52431. The American Petroleum Institute (“API”) and the Council of Petroleum Accountants Societies (“COPAS”) believe the Rule to be a substantive and potentially problematic modification of the regulations that was adopted without any opportunity for notice and public comment. Therefore, API and COPAS respectfully request that ONRR withdraw the Rule and instead publish a notice of proposed rulemaking. Doing so is essential to provide an opportunity for companies to seek clarification from ONRR on how this regulation would function in practice and how important rights will be protected.

API is a national trade association that represents over 500 members involved in all aspects of the oil and natural gas industry, including the exploration and production of both onshore and offshore federal resources. The U.S. oil and natural gas industry supports 9.2 million U.S. jobs and more than 7.5 percent of the U.S. economy. The industry has paid more than 150 billion dollars in royalty revenues to the federal treasury.

COPAS is a professional organization comprised of the oil and gas industry's most knowledgeable and influential accounting professionals. COPAS has operated as a non-profit entity for 50 years and has over 3,800 members with 24 societies in the United States and Canada. COPAS was established in 1961 by representatives from various independent local societies throughout the U.S. and Western Canada. These societies recognized the need for standardized procedures and guidelines as the oil and gas industry expanded across the country so that common issues and problems could be



addressed in a central forum. The societies have developed standardized documents in areas such as joint interest accounting, auditing, production volume and revenue accounting, and financial reporting and tax matters so that companies operating in all parts of the U.S. and Canada can effectively and efficiently use the same standards and guidelines.

The Rule substantively and significantly modifies ONRR's regulations at 30 C.F.R. § 1218.540 regarding the means by which ONRR transmits official correspondence, impacting how companies receive important and time-sensitive official communications. Many ONRR communications, such as royalty payment orders, demand prompt action upon receipt with threatened penalties for delay. The Rule makes electronic forms of delivery such as email notifications or "any electronic method of delivery that provides for a receipt of delivery" an official and legal form of correspondence. The Rule adds a constructive service section that states that ONRR will consider correspondence sent electronically as officially served on the recipient 7 days from the date that ONRR makes a "reasonable effort" to send the document electronically, regardless of whether the document was actually received by the company or whether ONRR has any confirmation that it was received. Indeed, the Rule seems to suggest that the mere appearance of an email in the "sent" folder of an ONRR employee would suffice for service.

Under the ONRR regulatory regime, the date that a lessee/royalty payor receives official correspondence has major legal significance. Most importantly, ONRR regulations provide that ONRR orders must be appealed "within 30 days from service of the order." 30 C.F.R. § 1290.105(a). If a Notice of Appeal is not timely filed, "the ONRR Director will not consider the Notice of Appeal and the case will be closed." It is a well-established legal principle that the deadline for filing an appeal is jurisdictional and may not be extended. *E.g., Union Oil Co. of California*, 48 IBLA 145 (1980); *Mobil Oil Exploration and Producing Southeast, Inc.*, 90 IBLA 173 (1986). Therefore, it is critically important that lessees and other royalty payors have actual notice that they received an order from ONRR and that the date of receipt can be confirmed.

Documentation of receipt of official ONRR correspondence also has potential implications for regulatory compliance and enforcement. A lessee/royalty payor's failure to comply with an order or other official royalty valuation communication from ONRR could subject the recipient to civil penalties under 30 U.S.C. § 1719 and 30 C.F.R. part 1241. Therefore, it is critically important that service of ONRR official correspondence be demonstrated through a well-established process, and due process requires in these types of circumstances that actual delivery be ensured. *Cf. Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950).



ONRR adopted the Rule without any notice or opportunity for public comment. As a result, there is no administrative record demonstrating that electronic service is adequate to meet legal standards for actual notice, or even that this is a service method that has been adopted by any other federal agency for official correspondence of such potential significance. The Rule's preamble does not even designate a specific electronic delivery system. It instead references an example of an electronic method, "MessageWay," and states that ONRR already has email addresses for companies' points of contacts provided through its Form ONRR-4444. It does not indicate whether companies will have the ability to select a specific form of electronic notification and correspondence with ONRR, or whether companies can expect to receive the same method of electronic or mail delivery (e.g., traditional mail, an email to its point of contact, a message in MessageWay, etc.) from all ONRR regulatory programs which provide correspondence. This will create great uncertainty regarding how companies will receive official notices from ONRR.

API and COPAS are also concerned regarding the reliability of receiving official notices through these suggested electronic methods. Some companies do not regularly monitor MessageWay, and there is no requirement that they do so. Unless ONRR provides notice that it has sent a document via MessageWay, the notice could sit unopened for a period of time. The record also is unclear whether MessageWay sends to ONRR a confirmation of delivery receipt when a company receives its notification, or a read receipt once the notification is read. Additionally, once a company accesses MessageWay, it is unclear whether it must immediately download or print the document or risk the document disappearing from the system. For smaller, less sophisticated lessees/royalty payors, some of whom may have designated personal email accounts such as Gmail or AOL on their Form ONRR-4444 because that is all they have, the issues related to electronic service constituting adequate actual notice in all circumstances are even more problematic. API is understandably concerned that adopting an electronic notification system that is legally binding as constructive service without addressing these and other issues could create new obstacles to effective notice and timely compliance.

While API and COPAS support government efforts to increase efficiency and save time and costs, the principle of ensuring timely and fair notice must govern in the first instance. ONRR's "direct final" Rule replaces the longstanding and proven practice of utilizing hardcopy mail as the primary vehicle for official correspondence, and substitutes an unspecified and unproven electronic notice system. Hardcopy notice remains the default in many contexts, including in federal courts, notwithstanding the availability of electronic case filing. ONRR's tried and true hardcopy method that has conveyed effective notice for decades and protected companies' rights should not be summarily brushed aside in a direct final rule.



The above issues merely represent the initial questions and concerns raised by our members since the rule was published on August 23 and are not exhaustive. In view of the significance and substance of the regulatory change, the Administrative Procedure Act, 5 U.S.C. § 553, requires that ONRR first provide notice and opportunity for public comment before adopting any change to the methods of serving official correspondence.

Thank you for your time and attention. As always, API and COPAS hope to work with the ONRR in its efforts to improve and strengthen the royalty collection program. However, we strongly urge the Department to withdraw the Rule and instead follow the process outlined under the Administrative Procedure Act to ensure that impacted stakeholders have an opportunity to participate meaningfully in the rulemaking process. Please contact Emily Kennedy ([kennedy@api.org](mailto:kennedy@api.org), 202-682-8260) if additional information is needed.

Sincerely,

A handwritten signature in black ink that reads "Emily Kennedy".

---

Emily Kennedy, API

A handwritten signature in black ink that reads "L. Wade Hopper".

---

L. Wade Hopper, COPAS