



July 21, 2014

Armand Southall
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Re: Chevron U.S.A. Inc.'s Comments on Proposed Rule to Amend Civil Penalty Regulations, RIN-1012-AA05

Submitted via: <http://www.regulations.gov> and U.S. mail

Dear Mr. Southall:

Chevron U.S.A. Inc. (Chevron) appreciates the opportunity to comment on the Office of Natural Resources Revenue (ONRR) Proposed Rule issued May 20, 2014 "Amendments to Civil Penalty Regulations." 79 Fed. Reg. 28862.

Chevron is a member company of the American Petroleum Institute ("API"). As such Chevron endorses and supports the comments filed by API on the Proposed Rule and incorporates them by reference.

Introduction and Summary of Chevron's Comments

Chevron is committed to working with the Department of the Interior on valid efforts to improve and strengthen its production and royalty reporting and appeals processes. ONRR's Proposed Rule is not one of those valid efforts. Rather, the proposed rules unlawfully exceed the bounds of the Federal Oil and Gas Royalty Management Act (FOGRMA), is unreasonable and denies lessees due process. While it purports to merely "clarify and simplify" ONRR's existing civil penalty regulations, ONRR's proposed rule undermines the statutory hierarchy of civil penalty provisions for oil and gas leases and replaces it with unfettered administrative enforcement discretion that Congress denied the agency 30 years ago. Specifically, ONRR would expand "knowing or willful" civil penalties under 30 U.S.C. § 1719(d) – and the associated criminal exposure under § 1720 – to ultimately encompass virtually all alleged reporting errors. ONRR's interpretation of the statute remains insupportable, as is ONRR's simultaneous attempt to deny critical protections to entities that may now need to defend themselves against ONRR's substantially expanded enforcement discretion.

Unlawful Denial of Due Process and the Statutory Right to a Hearing on the Record

ONRR's Proposed Rule would impermissibly deprive lessees of due process, including their statutory right to appeal ONRR civil penalty determinations through a full "hearing on the record" before an Administrative Law Judge ("ALJ"). The Proposed Rule undermines the current compliance and penalty

system by simultaneously expanding “knowing or willful” civil penalty liability and limiting a lessee’s procedural protections to contest those penalties.

ONRR’s Discretion to Impose Civil Penalties Not Reviewable. - § 1241.8(h)(2)

Proposed Rule § 1241.8(h)(2) denies a hearing on the record by insulating ONRR’s “discretion” to issue a civil penalty from ALJ review. Considering that a premise for the penalty might be prior non-appealable non-order (*i.e.*, an email from an ONRR staff person), ONRR effectively eliminates a payor’s ability to appeal. This denial violates basic due process, as well as FOGPMA’s express terms, which guarantees that “[n]o penalty under this section shall be assessed until the person charged with a violation has been given the opportunity for a hearing on the record.”¹

Penalties Based Upon Non-Appealable Communications. - § 1241.8(h)(3)

ONRR suggests that it may pursue § 1719(d) penalties if a lessee has “received an email, preliminary determination letter, ... or any other written communication identifying a violation.” Under 30 C.F.R. Part 1290 a payor may not appeal anything that is not an “order.” The Proposed Rule would allow ONRR to assess any amount of penalties and leave a payor with no opportunity to appeal. Elsewhere in its Proposed Rule, ONRR seeks to now require payors to appeal an underlying alleged violation prior to appealing an associated civil penalty notice, and also seeks to assert unreviewable discretion to impose civil penalties. As a result, payors may not be able to challenge, and the ALJ may not be able to review, the threshold issue of whether the agency’s decision to impose a civil penalty was appropriate. This inability to appeal an underlying violation is particularly troubling given that the Proposed Rule also would premise civil penalty liability on communications (*e.g.*, an email) that are not appealable orders. As a result, a payor that receives such an agency communication may never have the opportunity to challenge either the underlying alleged violation for which ONRR claims a factual basis exists, or a subsequent penalty based on that non-appealable notice. A payor also would have no means to hold ONRR to its obligation to treat similar civil penalty cases in a similar manner; the aggrieved payor would be foreclosed from ever questioning the agency’s rationale for disparate treatment, and ONRR would have no obligation to provide one.²

Denial of a Hearing on the Record.

The statutory right to a “hearing on the record,” means that the recipient of a civil penalty is entitled to the full administrative review protections provided under §§ 554 and 556 of the Administrative Procedure Act (“APA”).³ With respect to civil penalties assessed under FOGPMA, payors should have the full opportunity to appeal an underlying violation and the amount of the penalty. Payors similarly should have the right to full discovery of the facts underlying the agency’s orders, and the right to do so before an independent arbiter.⁴ ONRR now seeks to erect myriad administrative barriers that severely limit – if not totally abrogate – payors’ statutory right to a hearing on the record and meaningful relief even if the agency is wrong. Collectively these restrictions “stack the deck” in favor of the agency as to deter or

¹ 30 U.S.C. § 1719(e).

² *Indep. Petroleum Ass’n of Am. v. Babbitt*, 92 F.3d 1248, 1258 (D.C. Cir. 1996).

³ 5 U.S.C. §§ 554 & 556; *Duquesne Light Co. v. EPA*, 698 F.2d 456, 480-81 (D.C. Cir. 1982); *United States v. Cheramie Bo-Truc # 5, Inc.*, 538 F.2d 696, 698-99 (5th Cir. 1977). The statutory right to an administrative hearing on the record comports with the constitutional right to due process under the Fifth Amendment. *See Gardner v. U.S.*, 239 F.2d 234 (5th Cir. 1956); *c.f. Mathews v. Eldridge*, 424 U.S. 319 (1976) (due process requires the right to be heard “at a meaningful time and in a meaningful manner”) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

⁴ 5 U.S.C. §§ 554 & 556; *see, e.g., Cheramie Bo-Truc # 5*, 538 F.2d at 698-99; *John A. Biewer Co. of Ohio, Inc.*, 2009 EPA ALJ LEXIS 20 (Dec. 23, 2009).

seriously compromise the payor's exercise of its administrative appeal rights, thereby impairing the payor's due process rights.⁵

Inability of ALJ or Board to Stay the Accrual of Penalties Pending Review. § 1241.12(b)

The Proposed Rule would preclude any stay of accrual of penalties pending administrative appeal. Courts and the ALJs/IBLA alike possess the discretion to stay the effectiveness of certain agency actions pending appeal in order to maintain the status quo. The primary purpose of a stay is to prevent a party's claim from becoming moot through interim performance and to keep the parties in their original positions pending the adjudication of their legal rights.⁶ Although a party might not seek a stay, or a stay petition may be denied when the facts and legal claims do not warrant a stay. But the critical point is the appellant – and arbiter – have the ability to effectuate a stay where it *is* warranted.

ONRR's rescission of the stay option appears intended to deter payors from exercising their right to appeal ONRR orders. In order to exercise its basic appeal rights, the payor would be forced to incur either additional penalties (up to \$27,500 per day per violation) or the costs (potentially hundreds of thousands of dollars) to comply with an order that the lessee may believe is incorrect. This unenviable choice would impermissibly "chill" the exercise of a lessee's statutory right to a hearing on the record.⁷ It also would needlessly burden the federal judiciary with otherwise premature federal court lawsuits to obtain preliminary injunctive relief (under nearly the same standard that the ALJ or IBLA would utilize).

ONRR as Sole Gatekeeper to a Hearing on the Record. - § 1241.5

ONRR's proposed regulations would permit ONRR alone to decide whether ALJ jurisdiction has been timely triggered. For example, new § 1241.5 would require that the appeal request "explains your reasons for challenging the notice" within the first 30 days, but does not indicate whether this explanation means a summary paragraph or prematurely requires a full-blown statement of reasons before the appeal and administrative record are even filed. ONRR then claims 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. If ONRR alleges on day 30 that there is a defect in any portion of the payor's appeal request, the right to a hearing on the record is forever lost. This unwavering hard-line proposal lacks any justification.⁸

Motion for Summary Decision. - §§ 1241.8, 1241.9

The Proposed Rule would allow the agency to move for "summary decision" based on alleged facts before the appellant can initiate discovery to determine those facts. No appellant should have to face a dispositive motion before having an opportunity to review and assess the administrative record. The

⁵ As threshold matter, 43 C.F.R. part 4 delegates the Secretary's authority to review the actions of subordinate bureaus, including ONRR, to the Office of Hearings and Appeals ("OHA"). As the following comments illustrate, ONRR proposes in this rule to severely constrain OHA's traditional role as appellate tribunal acting on behalf of the Secretary. Nowhere does ONRR provide any justification for depriving lessees of their traditional rights to administrative review of ONRR decisions, or for interfering with OHA's ability to determine which cases it hears.

⁶ See *Anadarko Petroleum Corporation*, IBLA 2014-168 (June 23, 2014) (citing *Neely v. Bankers Trust Co. of Tex.*, 848 F.2d 658, 661 (5th Cir. 1988)).

⁷ See also *Dan Sheehan Co. v. Occupational Safety and Health Rev. Comm.*, 520 F.2d 1036, 1041-42 (5th Cir. 1975) (constitutional due process case treating as impermissible deterrents to administrative appeals in the absence of a statutory right to a "hearing on the record").

⁸ E.g., *Duquesne Light Co. v. EPA*, 698 F.2d 456, 480-81 (D.C. Cir. 1982) (where statute requires "hearing on the record," agency cannot by regulation create circumstance where a hearing timely and reasonably requested does not in fact occur); *Cheramic Bo-Truc # 5, Inc.*, 538 F.2d at 698-99.

IBLA routinely grants a request for extension of time to submit a Statement of Reasons until after the agency submits its administrative record. Likewise, Section 556 of the APA, governing hearings on the record, requires that a party have an opportunity for factual development before final adjudication.⁹ ONRR also seeks to reverse the black-letter rule that on a motion for summary judgment disputed facts should be construed in favor of the *non-movant*.¹⁰ Under ONRR's formulation in proposed §1241.9(c), all facts set forth by the "moving party" must be "taken as true and considered undisputed for the purpose of a summary decision...[.]" ONRR cites no authority to support this position. As written, proposed § 1241.9 cannot stand.

Fixed 20-Day Period to Correct. - § 1241.50(c)

Under proposed § 1241.50(c), the period to correct a violation identified in a Notice of Non Compliance (NONC) cannot be extended "for any reason." This absolute barrier to an extension is patently unreasonable. A NONC may require the lessee to perform a scope of work that is impossible to complete within 20 days, e.g., a systemic fix in the royalty reporting procedures that could include several years, multiple leases, and thousands of lines of royalty reports. ONRR should not disavow its inherent discretion to extend the period to correct identified in a NONC as appropriate in the circumstances of each case.

Unreviewable Enforcement Actions. - § 1241.7(b)

For any ONRR communication to form the basis for liability or civil penalties, that communication must be appealable. Alternatively, no appeal clock or civil penalties should run until ONRR issues an "order" recognized under its regulations at 30 C.F.R. Part 1290. ONRR cannot deny this proposition and simultaneously insist on appeals of earlier violation notices in order to later contest liability for a civil penalty. Yet, 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. For example, the Proposed Rule refers to "courtesy notices" informing lessees that "additional penalties have accrued." These are made enforceable under proposed §§ 1241.12 and 1241.60(b)(2), but are exempt from appeal under § 1241.7(b). At bottom, these "notices" are really civil penalty communications that impose additional liability yet are unreviewable. ONRR cannot have it both ways.

Inability of ALJ to Reduce Civil Penalty Amounts. § 1241.8(h)(1)

ONRR proposes that in cases where ONRR would prevail on the substance of an appeal, the ALJ may not, under any circumstance, reduce a penalty below half of the amount assessed. In light of ONRR's proposed rules discussed above this could result in extreme injustice. For example, if a payor committed a "knowing or willful" violation subjecting it to a penalty under FOGRMA § 1719(d), that penalty could begin to run on the day the violation occurred. ONRR could wait years before issuing the payor an Immediate Liability Civil Penalties (ILCP), thereby assessing multiple years' worth of daily penalties against the payor. Under the proposed rules, the process for obtaining approval from ONRR to file an appeal could take months, and it could take more months for an ALJ to make his findings of fact. All the while, these daily penalties would be piling up without the possibility for a stay, and under ONRR's proposed §1241.8(h)(1), the ALJ would be powerless to reduce the accrued amount of the penalties below 50 percent of the amount ONRR assessed. It is plainly unreasonable to bar the ALJ from substantially

⁹ See 5 U.S.C. § 556(d) (...[a] sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence....[a] party is entitled to present his case or defense by oral or documentary evidence...and to conduct such cross-examination as may be required for a full and true disclosure of the facts.).

¹⁰ See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

reducing the penalty in such a circumstance, or where the amount of the penalty ONRR seeks to obtain is wildly disproportionate to the harm caused by the lessee's violation. ONRR should eliminate proposed § 1241.8(h)(1) from this rule.

FOGRMA's Civil Penalty Hierarchy

Congress enacted FOGRMA as a response to allegations in the late 1970s and early 1980s that federal and Indian oil and gas lessees effectively were on an "honor system," and that there existed significant underpayment of royalties and theft of production.¹¹

FOGRMA provides the Secretary of the Interior with civil penalty authority to address these without granting authority to impose broad-ranging "knowing or willful" civil penalties entirely at its discretion. Rather, Congress established a purposeful hierarchy of civil penalties codified as 30 U.S.C. § 1719(a)-(d). The Proposed Rule undermines existing law by reaches penalty liability beyond statutory limits.

Proposed Rule Exceeds ONRR's Rule Making Authority.

ONRR lacks the authority to create its own rules to erase the proportionate and strictly defined hierarchy of ascending civil penalties that Congress prescribed. Thirty years ago, Congress expressly denied the agency the same level of administrative discretion that ONRR seeks to create now.¹² Enacting FOGRMA, Congress intended to create a comprehensive system of penalties to "balance" between correction of violations and fairness of enforcement, particularly given the context of "necessarily complex regulations."¹³

Congress' four-tier hierarchy specifies civil penalty limits and procedural requirements for, on the low end of the hierarchy, "failure[s] to take corrective action" upon "notice of violation," which are set forth in § 1719(b). These provisions, and ONRR's implementing regulations, enable ONRR to assess up to \$500 per day per violation beginning a mere 20 days after a Notice of Noncompliance is issued and remains uncorrected. If corrections remain outstanding after another 20 days, under § 1719(b) ONRR may increase the civil penalties up to tenfold, or \$5,000 per day per violation,¹⁴ providing a strong incentive for royalty reporters and payors to promptly correct violations, including errors ONRR identifies in previously submitted reports.

FOGRMA distinguishes failures to correct penalized under § 1719(a) & (b) from the separate civil penalties under § 1719(d) for "knowingly or willfully ... maintain[ing] ... false, inaccurate, or misleading

¹¹ See REPORT OF THE COMMISSION OF FISCAL ACCOUNTABILITY OF THE NATION'S ENERGY RESOURCES [hereinafter Linowes Commission] at pp. __.

¹² As the Senate Report explained, "the Committee feels strongly that administrative discretion should not be the principal mechanism through which the severity of punishment is matched to the seriousness of the offense." S. REP. NO. 97-512 (1982), at 17. The House Report similarly rejected ONRR's proposed approach and instead provided "lesser penalties for failure to comply with a term of an oil and gas lease, . . . regulations, or orders" other than a narrow set of articulated violations. H. REP. NO. 97-859 (1982), at 34.

¹³ "Therefore, the Committee amendment attempts to distinguish between those violations which ought to lead to a very large civil penalty and those for which liability should be reduced. In making this distinction, 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. The Committee attempted to achieve this balance by providing a requirement of notice of violation and a lower civil penalty for certain violations of the Act and a steeply rising civil penalty liability for serious violations knowingly or willfully committed." S. REP. NO. 97-512 (1982), at 17.

¹⁴ API offers no comment on the adjustments for inflation in the Proposed Rule.

reports,” i.e., intentionally retaining internal false or inaccurate documents to mislead auditors and deprive an unknowing lessor of financial benefits from oil and gas production on federal and Indian leases. Such violations and civil penalties require no prior notice or opportunity to correct.

Proposed Rule § 1241.60 holds payors to the “knowingly and willfully” standard for, “fail[ure] to correct” any reporting error “communicated” to the payor. Meanwhile, in proposed § 1241.52 implementing the lower end of the hierarchy at § 1719(a) & (b), the Proposed Rule retains lesser civil penalties if a lessee “do[es] not correct,” and even provides for a “Failure to Correct Civil Penalty” or FCCP. Under ONRR’s preferred formulation, ONRR could instead sweep into § 1719(d) any reporting violation, however alleged, that is not immediately corrected. Indeed, ONRR would have no occasion to *ever* use a FCCP to pursue lesser penalties because in ONRR’s view the same “failure to correct” would suffice for an Immediate Liability Civil Penalty (“ILCP”) notice. Simply put, FOGRMA provides no escalation pathway for ONRR to jump from § 1719(b) to § 1719(d) for the conduct identified in the Proposed Rule. ONRR cannot claim a need to rely on an inapplicable provision by ignoring its specifically available remedy afforded by Congress.

ONRR’S Expansion Of FOGRMA § 1719(D)(1) Is Contrary To Law

The Proposed Definition of “Knowing or Willful” Is Invalid.

A. The Proposed Mens Rea Standard Is Insufficient. - §1241.3

Section 1719(d) applies only to enumerated acts committed “knowingly and willfully.” The Proposed Rule defines “knowing or willful” to mean “gross negligence.”¹⁵ The preamble further articulates gross negligence as only requiring ONRR to show that a person has “failed to exercise even that care which a careless person would use.”¹⁶ This standard is not legally sufficient to reach a knowing or willful standard. ONRR cites no legal authority for equating “knowing or willful” under FOGRMA with “gross negligence.” However, case law interpreting the FCA, to which ONRR analogizes throughout its Proposed Rule, has explicitly stated that gross negligence by itself is not enough to give rise to “knowing” civil liability for submitting false information.¹⁷ Instead, courts have required proof of at least “gross negligence plus” or “aggravated gross negligence” regarding the falsity of statements or omissions for “knowing” liability.¹⁸ The Proposed Rule tries to impose a uniform “knowing or willful” definition for both § 1719(c) & (d), when the applicable standard for § 1719(d) necessarily is considerably more strict.

¹⁵ 79 Fed. Reg. 28,873.

¹⁶ *Id.* at 28,863.

¹⁷ *See, e.g., United States ex rel. Ervin & Assocs. v. Hamilton Sec. Group, Inc.*, 298 F. Supp. 2d 91, 101 (D.D.C. 2004) (“innocent mistakes, mere negligence, or *even gross negligence* (without more) are not actionable under the [FCA].”) (emphasis added); *United States ex rel. Longhi v. Lithium Power Techs., Inc.*, 513 F. Supp. 2d 866, 876 (S.D. Tex. 2007) (“Courts have consistently found that innocently-made faulty calculations, flawed reasoning, and disputed legal issues arising from vague provisions or regulations cannot support liability under the FCA.”); *Hindo v. Univ. of Health Scis.*, 65 F.3d 608, 613 (7th Cir. 1995) (to violate the FCA, the “requisite intent is knowing presentation of what is known to be false”); *Hagood v. Sonoma Cnty. Water Agency*, 81 F.3d 1465, 1478 (9th Cir. 1996) (“[FCA]...requires a showing of knowing fraud....Bad math is no fraud, proof of mistakes is not evidence that one is a cheat, and the common failings of engineers and other scientists are not culpable under the Act.”) (citations and internal quotation marks omitted); *United States ex rel. Wright v. Comstock Res. Inc.*, 456 Fed. App’x 347, 351 (5th Cir. 2011) (to prove knowledge under the FCA, in the context of federal mineral leases and royalty payments, means that “the evidence must demonstrate guilty knowledge of a purpose on the part of the defendant to cheat the government or knowledge or guilty intent”) (original alterations and internal citations and quotations omitted).

¹⁸ *See, e.g., Hamilton Sec. Group*, 298 F. Supp. 2d at 101; *Lithium Power Techs.*, 513 F. Supp. 2d at 876; *see also United States ex rel. Burbaw v. Orenduff*, 548 F.3d 931, 945 n.12 (10th Cir. 2008) (“[A]n aggravated form of gross negligence (*i.e.*, reckless disregard) will satisfy the scienter requirement for an FCA violation.”).

B. Strict Vicarious Liability of Lessees for the Acts and Knowledge of its Employees and Agents is Untenable. - §§ 1241.3, 1241.60(b)(2)

ONRR's proposed definition of "knowing or willful" "means that a person, including its employee or agent, with respect to the prohibited act, acts with gross negligence." ONRR would even go so far as to hold a payor liable for the "knowledge" of all of its employees, even if the royalty matters at issue is beyond the scope of the employee's employment, experience, or responsibility, and even if the company's designated agents and managers have no knowledge of the matter and have no reason to know of it. ONRR further seeks to consider all employees as de-facto "designated agents," legally responsible for handling official correspondence from ONRR on behalf of the company. These proposals are inconsistent with FOGRMA.

ONRR's attempt to hold a payor responsible for the knowledge of all of its employees ignores the regulatory system currently in place for delegating actual authority, notifying ONRR of delegations of authority, serving official notices to lessees, and assigning liability. As ONRR recognizes in its Proposed Rule, under § 1712 of FOGRMA, lessees may officially designate agents for the purpose of transacting business with the agency.¹⁹ The existing regulations require lessees to notify ONRR of such designations by filing Form ONRR-4425, which ensures that the agency is aware of the identity of the designee, where and how to contact the designee, and that the designee has authority to legally bind the lessee.²⁰ If the lessee does not assign a designee, it must instead submit to the agency Form ONRR-4444, identifying the "addressee of record" responsible for meeting royalty obligations, and for receiving official ONRR correspondence and "all other documents."²¹ If the lessee has not submitted Form ONRR-4444, the regulations provide that ONRR will hold either the registered agent, or any corporate officer, or an addressee of record filed with a state government responsible for compliance, and specify how ONRR will identify an addressee for the purpose of serving official correspondence.²² This regulatory scheme clearly facilitates identification of the parties that are actually responsible, mooted any need to divine imputed knowledge. The current regulations also provide for three methods of service to the agent(s): U.S. Mail, Personal Delivery, and private mailing service (e.g., FedEx).

In any given case, particularly those where ONRR invokes the most severe FOGRMA penalties, ONRR must use the appropriate outlet for dissemination of information and attribute corporate responsibility for such information on that basis alone. It cannot circumvent these rules by including "email" or a similar informal communication from ONRR as notice of a violation. ONRR must also ensure that it updates Form 4444s in a timely manner.

ONRR claims support for vicarious liability in "judicial precedent, primarily interpreting the False Claims Act, which imposes strict vicarious liability on corporations for the knowledge of their employees and agents. However, before ONRR can impose strict vicarious liability on payors, ONRR must show that such a rule is compatible with FOGRMA's controlling statutory scheme. ONRR cannot do so.

The Proposed Definition of "Maintenance" is Invalid. - § 1241.3

The Proposed Rule defines "maintenance of false, inaccurate, or misleading information" as: "you *provided information to an ONRR data system*, or otherwise to us for our official records, and *you later learn* the information you provided was false, inaccurate and misleading, and *you do not correct* that

¹⁹ 30 U.S.C. § 1712(a).

²⁰ See 30 C.F.R. § 1218.52.

²¹ See 30 C.F.R. § 1218.540.

²² 30 C.F.R. § 1218.540(b).

information or other information you provided to us that you *know* contains the *same* false, inaccurate, or misleading information.”²³ “Maintenance” becomes a “failure to correct errors,” after “ONRR informs you” that you have an error and you fail to search out and correct all other information that ONRR may deem contains the “same” errors. This definition, payors to potentially limitless “knowing or willful” liability under § 1719(d) for potential errors based solely on assumed knowledge of what the agency may deem “the same.”²⁴

While not expressly defining “maintain,” the surrounding text of FOGRMA clarifies that “maintain,” as used in § 1719(d)(1) overall, applies to actions equivalent to the intentional defrauding of the federal government out of oil and gas production or revenues through internally-managed records – not mere delay in correcting previously-submitted unintentional reporting. Likewise, conduct within § 1719(d)(1) must rise to the level of being criminally punishable because § 1720 covers precisely the same conduct. FOGRMA § 1719(b) contains an express enforcement provision to address “failure to take corrective action that is ONRR’s proper recourse for the sorts of more common violations, not § 1719(d).

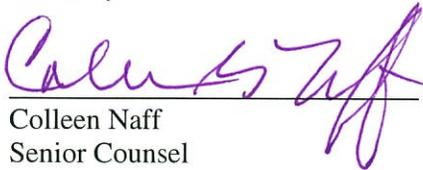
The Proposed Definition of “Submission” Is Invalid. - §1241.3

The Proposed Rule overreaches by defining “submission of false, inaccurate, or misleading information” as: “you provide information to an ONRR data system, or otherwise to us for our official records, and you knew, or should have known, the information that you provided was false, inaccurate, or misleading at the time you provided the information.”²⁵ A “should have known” standard directly contradicts the knowing or willful to fit standard in § 1719(d). In essence, ONRR is nonsensically seeking to penalize submission of “errors that a lessee knowingly or willfully should have known.” Further, the scope of what ONRR might consider as “substantially the same violation in the future” remains unclear. The hypothetical posed in the preamble offers no sideboards, as it appears to suggest that ONRR’s notice to a lessee of any product code error on a Form ONRR-2014 would subsequently trigger § 1719(d) civil penalties for any future product code error on any Form ONRR-2014 for any lease at any time. Such limitless discretion and liability directly subverts Congress intent in FOGRMA.

Chevron is committed to working with ONRR to ensure compliance with royalty reporting and payment regulations consistent with their lease obligations and the applicable regulations, guidance, and mineral leasing statutes. Chevron strongly urges ONRR to revise this proposed rule before issuing a Final Rule.

Thank you for your time and attention to Chevron’s comments. If you have any questions please feel free to contact Colleen Naff (colleen.naff@chevron.com - 713-372-9023) or Greg Morby, Manager-Production Services (gmorby@chevron.com - 713-372-1671).

Sincerely,



Colleen Naff
Senior Counsel
Chevron U.S.A. Inc.

²³ 79 Fed. Reg. 28,873 (emphasis added).

²⁴ *Id.* at 28,864.

²⁵ 78 Fed. Reg. 28,873.