

# PUBLIC SUBMISSION

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

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

Amendments to Service of Official Correspondence

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Comment from Anonymous Anonymous,

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## Submitter Information

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## General Comment

Re: Regulation Identifier Number (RIN) 1012-AA14

Docket No. ONRR-2013-0001; DS63610300 DR2PS0000.CH7000 134D0102R2

### I. The Direct Final Rule

The Rule Amendment will “update the Service of Official Correspondence regulations in title 30 of the Code of Federal Regulations (CFR) 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 of delivery otherwise documented.”

Specifically, the Direct Final Rule adds paragraph (4) to 30 CFR 1218.540(a), and subparagraph (iv) to 30 CFR 1218.540(d)(4). This Direct Final Rule will update the ONRR Service of Official Correspondence regulations allowing service of official correspondence using any “electronic methods of delivery that provides for a receipt of delivery, or, if there is no receipt, the date of delivery otherwise documented.” ONRR proposes to use “electronic methods” that assure the information transmitted is “encrypted and secure.” The rule also amends the “Constructive Service” provision by allowing ONRR to assume service based on “a receipt or other documentation that ONRR attempted electronic service.” Following identification of these changes, the Direct Final Rule also states, “ONRR does not make any substantive changes in this direct final rule to the regulations or requirements in 30 CFR 1218.540(a) or (d).” (emphasis added). The statement that the Direct Final Rule makes no “substantive changes” is grossly inaccurate for the reasons set out in Section II below, and will have a substantial deleterious effect on companies under the purview of the ONRR.

### II. Proposed Changes Are Substantive

ONRR’s assertion that the changes in this direct final rule are not “substantive” overlooks the practical effects these changes in service of “official correspondence” will have on businesses required to comply with the information contained in such notices. The inclusion of paragraph (4) in 30 CFR 1218.540(a) effectively grants ONRR the authority to send blind notices in the form of electronically dated emails to company contacts on file with ONRR. This method of service is problematic and unreliable, and the proposed change completely overlooks the very likely possibility that notices may never reach the intended recipient. Electronic notices could be blocked

by electronic security (e.g., firewalls), caught in spam filters, remain in the inbox of an employee who is out of the office for an extended period, or worst of all, sit in the inbox of an individual who is no longer employed by the intended recipient producer. Despite the very real possibility of these breakdowns in electronic service, the addition of subparagraph (iv) to 30 CFR 1218.540(d)(4), would allow ONRR to deem official correspondence as “constructively served” seven days after it “electronically” transmits the document, even though no person may actually have received and become aware of the notice. Any such interruption or failure in actual notice could have devastating and very expensive repercussions on companies operating under the purview of ONRR. Failure to receive ONRR notices could result in companies continuing to operate, through no intention or fault of their own, under outdated regulations resulting in penalties of up to \$25,000 per day, per violation. Such penalties could result in substantial losses for companies operating on the false assumption they are in compliance with ONRR regulations. This result is far from remote given ONRR’s recent propensity to assess extraordinary and punitive penalties without hesitation in recent months and given that the ONRR Enforcement Division has made it very clear that companies who have received notice, but fail to respond or address the situation with ONRR, will face substantial “knowing and willful” penalties. It is entirely foreseeable that the electronic service provision of this proposed rule will cause lapses in response to the agency, and therefore, these proposed changes are indeed “substantive” changes.

### III. Conclusion

The changes in the Direct Final Rule are indeed substantive and could easily have an annual effect on the economy and on producers of more than \$100 million or more, primarily re-directed to ONRR coffers. The substantive changes to the rule will most likely have a very real and potentially devastating effect on those companies who fail to receive electronic notification for the reasons outlined above. Therefore, ONRR must not make the changes outlined in 78 Fed. Reg. 164 (August 23, 2013). In order to ensure fullest compliance with ONRR notices, the current requirements for ONRR actual and verified Service of Official Correspondence as originally constituted in 75 Fed. Reg. 61051(October 4, 2010) and codified at 30 CFR 1218.540(a) and (d) must remain in effect.