



July 21, 2014

Armand Southall  
Regulatory Specialist  
Office of Natural Resources Revenue  
P.O. Box 25165, MS 61030A  
Denver, Colorado 80225-0165

Comments on Proposed Rule on Amendments to the Civil Penalty Regulations (1012-AA05)

The Council of Petroleum Accountants Society or “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 4,000 members with 24 societies in the United States and 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 COPAS 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. Additionally, many of our members are responsible for the filing of the Federal royalty reports to the ONRR.

COPAS appreciates the opportunity to comment on the proposed amendments to the Civil Penalty Regulations. In addition to supporting the comments submitted by API, COPAS would like to specifically address the proposed changes involving common reporting errors; failure to produce all documents requested in an audit; and the proposed inappropriate use of the most severe penalty provision in these situations. FOGRMA lays out several penalty tiers up to the most serious which is the “knowing or willful” violation of FOGRMA. This is supposed to be reserved for theft and purposeful misreporting designed intentionally to defraud the government of royalty due. This was never intended to include incidental or accidental misreporting.

First, we disagree with defining “knowing or willful” at the lowest standard, meaning gross negligence. As stated in the proposal, any company that submits a report that contains a reporting error, would be subject to the same civil penalties reserved for companies that “knowingly or willfully prepare, submit, or maintain false, inaccurate, or misleading information.” This mischaracterization is particularly concerning given the fact that reporting Federal royalties and production has the most complex set of reporting requirements. When you combine detailed, multi-layered reporting with the complexity of oil and gas accounting,

recognizing the reporting guidelines change over time (sometimes in conflict with existing regulations or is given without sufficient lead time or reporting guidance), when you take into account the number of lines that must be reported, and the fact that each lease could be amended several times, it is easy to see where inadvertent errors could occur or amendments may not have been filed to reflect all ONRR required reporting changes. As previously stated, “Knowing or willful” is the most serious violation involving specific intent and is supposed to be reserved for theft and purposeful misreporting to defraud the government of royalty due. Congress never intended that it apply to incidental or accidental misreporting.

Similarly, the amendments propose to change the definition of “maintenance of false, inaccurate, or misleading information” to include situations where a reporter simply fails to correct errors or after being informed of an error, they fail to identify and correct all other information containing the same error. As previously stated, due to the complexity of the reporting, the fact reporting changes over time, the number of lines that must be reported, and all the associated amendments, errors could occur even with good faith compliance efforts. A reporter’s submission of such errors is not an intent to report false or misleading information, and it would be a mischaracterization to say they were, and inappropriate to apply the proposed highest level of civil penalty to them.

Additionally, the proposed change to redefine “submission of false, inaccurate, or misleading information” to include situations where a reporter submits information that they knew, or should have known was not correct, is another mischaracterization. As identified above, due to the complex reporting requirements and the fact they are frequently changing, along with the time it takes to make the necessary changes to accounting computer systems, as well as the time and effort to process all the correcting amendments, incorrect lines could be reported. Because of this, it is not appropriate to categorize these reporting errors as the “submission of false, inaccurate, or misleading information,” subjecting them to the incorrect civil penalty (30 U.S.C. 1719 (c) & (d)).

Similar to the proposed change in how reporting errors are to be penalized, COPAS finds the proposed change to treat the failure to keep, maintain, or produce documents to be a “knowing or willful failure or refusal to permit an audit” as another overreaching mischaracterization. With all the acquisitions and divestments of properties and companies, possible natural disasters, and just normal business, it is not practical to expect that every contract or piece of paper can be reproduced several years later. Additionally, companies are being asked to provide documents from downstream buyers, gatherers, transporters and processors that they do not have and that they lack access or legal authority to obtain. It is a mischaracterization to say that the inability for a company to produce a specific document is synonymous with “a knowing or willful failure or refusal to permit an audit.” Furthermore, assessing the same civil penalty in both situations would be inappropriate.

Another overreach is how the proposed penalties are to be assessed incorrectly using 30 U.S.C. 1719 (c) & (d) for the previously mentioned reporting errors and failure to produce a specific document during an audit. The applicable statutes for ONRR to use are 30 U.S.C. 1719 (a) & (b) or the Federal Oil and Gas Royalty and Simplification Act of 1996 (“RSFA”) Section 116 which provides specific guidelines for the issuance of penalties in these situations.

COPAS disagrees with proposed elimination of provisions in the current regulations at 30 CFR 1241.55(b) and 30 CFR 1241.63(b) that allow a hearing requester to petition for a stay of the

accrual of civil penalties during the pendency of the proceeding. Similarly, we disagree with the proposal to limit the administrative law judge's (ALJ's) ability to reduce the penalty below half of the amount initially assessed.

Due to many companies' internal control requirements, and their system limitations, COPAS disagrees with companies being required to use the Pay.gov website to pay the appeals processing fee. Companies should have additional options in how this payment is made.

The proposed rule also redefines when a lessee was "notified" of erroneous reporting. The proposal says that a written communication officially puts lessee on notice. This could include an e-mail, audit determination letter or any other written communication identifying a supposed violation. This creates several problems. First ONRR can't notify just anyone within an organization of a violation. Notices need to go to the primary contact for an area or someone that the company has designated as responsible for reporting as designated on ONRR Form 4444, which further highlights the need for ONRR to ensure that 4444's are updated throughout their system in a timely manner. Additionally, just because an accountant has been notified of a reporting error and that error was not corrected within the specified time period, it does not mean the company was attempting to defraud the government.

Lastly, the ONRR Notice of Proposed Rule Making on Civil Penalties will cause a series of disruptions and problems as it will create a hesitancy on the part of industry to seek ONRR feedback and approval for reporting problems and scenarios that may arise because of normal business operations. This will serve to break down communication between industry and ONRR and thereby make the ultimate goal of FOGRMA and the stated function of ONRR unattainable. Industry business practices change regularly, as a result we must have an open line of communication with ONRR. The threat of penalty and fines (whether outside their legal authority or not) reduces the willingness of industry to work with ONRR to ensure proper reporting and payment if such willingness is going to be turned against the lessees.

Once again, COPAS appreciates having the opportunity to comment on the proposed amendments to Civil Penalty Regulations. As noted above, FOGRMA lays out several penalty tiers up to the most serious which is the "knowing or willful" violation. This is supposed to be reserved for and should be limited to intentional theft and purposeful misreporting designed to defraud the government of royalty due. This was never intended to include incidental or accidental misreporting.

If you have any questions regarding our comments, please contact me at (832) 337-2592.

Sincerely,

A handwritten signature in cursive script that reads "Pam Williams".

Pam Williams  
COPAS Revenue Committee Chairperson