Shell Exploration & Production Company
P.O. Box 61933
New Orleans, LA 70161
United States of America

Armand Southall
Regulatory Specialist, ONRR
P.O. Box 25165, MS 61030A
Denver, CO 80225

Website: www.shell.com
Tel: +1 504 425 4143
Fax: +1 504 425 4567
Mob: +1 713 992 9634
Email: kent.satterlee@shell.com

Submitted via: http://www.regulations.gov

July 18, 2014

Dear Mr. Southall:

SUBJECT: Shell Offshore Inc.'s Comments on Proposed Rule to Amend Civil Penalty Regulations, RIN-1012-AA05

Shell Offshore Inc., along with its affiliates supporting offshore and onshore exploration and production (Shell), is pleased to provide comments on the subject rulemaking. Shell is one of the largest leaseholders in the Outer Continental Shelf (OCS), including the Gulf of Mexico and Alaska, and one of the largest producers of oil and natural gas from federal leases in the United States.

Shell endorses and adopts the comments submitted by the American Petroleum Institute ("API") and the Counsel of Petroleum Accountants Societies ("COPAS") to the proposed rule to amend the civil penalty regulations, RIN-1012-AA05 (the "Proposed Rule"). In addition to endorsing and adopting the detailed comments presented by API and COPAS, Shell provides the following specific comments to a few of the more significant changes proposed by the Interior Department's Office of Natural Resources Revenue (ONRR).

<u>Improperly defining "knowing or willful" as a threshold that may be met by demonstrating the lesser standard of "gross negligence."</u> ONRR has proposed to expand the most severe and highest category of civil penalties allowed for federal royalty payment violations under 30 U.S.C. § 1719(d) – and the

associated criminal exposure under § 1720 – by removing the critical requirement of specific intent. Under the proposed rule, a lessee could be held liable for the most severe penalties and have potential criminal exposure based on the minimum showing of recklessness, without specific intent. This proposed change is contrary to the way "knowing or willful" has been defined and applied by the federal courts. It also completely contradicts the original intent of the Federal Oil and Gas Royalty Management Act ("FOGRMA"), which was to reserve this highest category of civil penalties for situations involving theft and intentional misreporting. As such, Shell strenuously objects to the proposed amendment.

Improperly defining "maintenance of false, inaccurate, or misleading information" to include situations where a reporter simply fails to correct an error. Under the existing law and general usage in other contexts, "maintenance" refers to a reporter's internal record keeping, having nothing to do with records a lessee submits to ONRR. The proposed amendment to 30 U.S.C. § 1241.3, however, improperly and unlawfully changes this framework and definition such that a reporter is deemed to be continually (and passively) "maintaining" reports after they are submitted to ONRR. This results in a "failure to correct errors" provision that can be triggered by notice through something as informal as an e-mail to any company employee at any location, which is of course non-appealable under the proposed amendments. When you take into account the various assets that a lessee may report on, the number of lines that are reported to ONRR, and that penalties are often assessed on a per-line basis, a reporter could be subjected to a severe penalty multiplied by the lines the error appears in, which could cross numerous assets. This improper interpretation of the term "maintenance" defies logic, reason, and traditional rules of statutory construction and is contrary to FOGRMA. For these reasons, Shell objects to the proposed amendment.

Unfairly limiting a hearing requester's ability to obtain appellate review, seek a stay of the accrual of civil penalties during appeal, and reduce the size of the penalty assessed by ONRR. Finally, Shell objects to: (1) proposed 30 U.S.C. § 1241.5, which effectively gives ONRR the ability to shutdown an appeal before it ever gets to the Administrative Law Judge ("ALJ"); (2) the proposed elimination of existing provisions in § 1241.55(b) and 1241.63(b) that allow a hearing requester to petition for a stay of the accrual of civil penalties during the pendency of an appeal; and (3) proposed § 1241.8(h)(1), which limits the ALJ's ability to reduce the size of the penalty assessed by ONRR. These three amendments are unfairly designed with the sole purpose to discourage lessees from taking appeals. The proposed amendments make the process less certain (ONRR may reject an appeal before it gets to the ALJ) and more costly (accrual of penalties could not be stayed during appeal). The amendments would also reduce the motivation for appealing in the first place (the ALJ would only have authority to reduce the penalty by a maximum of fifty percent). Sound administrative policy should provide for fairness and an impartial review of agency decisions with serious consequences, rather than discourage appeals. Shell, therefore, objects to these proposed amendments.

Use of Pay.gov. Due to internal SOX control requirements, and system limitations, Shell disagrees with companies being required to use the Pay.gov website to pay the appeals processing fee. There should be additional options available in how this payment is made.

We appreciate the opportunity to submit these comments. If there are any questions, please contact me.

Yours sincerely,
Shell Exploration & Production Company

Kent Satterlee III
Manager Regulatory Policy – Offshore
Upstream Americas

cc: Gregory Gould