

Overview

Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. §§ 1701 et seq.)

- Primary purpose was to give the Secretary expanded authority to audit and enforce royalty payment obligations on Federal and Indian oil and gas leases
- Authorized the Secretary to impose civil penalties for violations, and to seek imposition of criminal penalties in certain cases
- Authorized the Secretary to delegate audit and enforcement activities to the states
- Requires payment of interest on late royalty payments
- Requires lessee to maintain records for six years

Royalty Simplification and Fairness Act of 1996 (amending FOGRMA)

- Added new provisions applicable to Federal oil and gas leases (not Indian leases)
- Expanded states' authority under delegation agreements, including ability to issue demands for royalty payments
- Prescribed a seven-year statute of limitations on collecting underpaid royalties, specifying only very limited circumstances in which the running of the seven-year period would be tolled
- Prescribed a 33-month limitation on the time the Department may take to issue a final decision in administrative adjudications
- Authorized lessee to make voluntary adjustments to previous royalty payments
- Authorized ONRR to refund and/or credit royalty overpayments

FOGRMA/RSFA - Coal

- **Provisions Currently Referencing Coal are Minimal**

- § 1720a – applies FOGRMA’s civil and criminal penalties to coal leases, effective Oct. 30, 2009
- § 1753 (b) – clarifies that nothing in FOGRMA reduces the responsibility of the Secretary “to ensure prompt and proper collection of revenues from coal ... on Federal and Indian lands, or to restrain the Secretary from entering into cooperative agreements or other appropriate arrangements with States and Indian tribes to share royalty management responsibilities and activities for such minerals under existing authorities.”

FOGRMA / RSFA Time Limits

- **§ 1724(b) Seven Year Limitations Period**

- “A judicial proceeding or demand which arises from, or relates to an obligation, shall be commenced within seven years from the date on which the obligation becomes due and if not so commenced shall be barred. If commencement of a judicial proceeding or demand for an obligation is barred by this section, the Secretary, a delegated State, or a lessee or its designee (A) shall not take any other or further action regarding that obligation, including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, payment, principal, interest, assessment, or penalty or the initiation, pursuit or completion of an audit with respect to that obligation; and (B) shall not pursue any other equitable or legal remedy, whether under statute or common law, with respect to an action on or an enforcement of said obligation.”

FOGRMA / RSFA Time Limits

- **§ 1724(d) Tolling of Limitations Period**

- By agreement with ONRR
- Upon the issuance of a subpoena
- Misrepresentation of concealment on the part of the lessee
- Upon the issuance of an order to perform restructured accounting

FOGRMA / RSFA Time Limits

- **§ 1724(h)(1) Appeals and final agency action – 33 month period for decision**

- “The Secretary shall issue a final decision in any administrative proceeding, including any administrative proceedings . . . within 33 months from the date such proceeding was commenced . . . The 33-month period may be extended by any period of time agreed upon in writing by the Secretary and the appellant.”

- **§ 1724(h)(2) Effect of failure to issue decision**

- “If no such decision has been issued by the Secretary within the 33-month period referred to in paragraph (1)-
 - (A) the Secretary shall be deemed to have issued and granted a decision in favor of the appellant as to any nonmonetary obligation and any monetary obligation the principal amount of which is less than \$10,000; and
 - (B) the Secretary shall be deemed to have issued a final decision in favor of the Secretary, which decision shall be deemed to affirm those issues for which the agency rendered a decision prior to the end of such period, as to any monetary obligation the principal amount of which is \$10,000 or more, and the appellant shall have a right to judicial review of such deemed final decision in accordance with Title 5.”

FOGRMA /RSFA Interest Provisions

- **§ 1721 Royalty terms and conditions, interest, and penalties**
 - § 1721(a) - “In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments at the rate applicable under section 6621 of Title 26. In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount due.”
- § 1721(h), which formerly required ONRR to pay interest to the lessee on overpayments, was deleted in 2015 (Pub. L. 114-94 § 32301).

FOGRMA / RSFA Adjustments and Refunds

- **Definitions in § 1702**

- “(17) ‘adjustment’ means an amendment to a previously filed report on an obligation, and any additional payment or credit, if any, applicable thereto, to rectify an underpayment or overpayment on an obligation;”
- “(21) ‘credit’ means the application of an overpayment (in whole or in part) against an obligation which has become due to discharge, cancel or reduce the obligation;”
- “(27) ‘overpayment’ means any payment by a lessee or its designee in excess of an amount legally required to be paid on an obligation and includes the portion of any estimated payment for a production month that is in excess of the royalties due for that month;”
- “(30) ‘refund’ means the return of an overpayment;”
- “(32) ‘underpayment’ means any payment or nonpayment by a lessee or its designee that is less than the amount legally required to be paid on an obligation;”

FOGRMA / RSFA Adjustments and Refunds

- **§ 1721a Adjustments and Refunds (highlights)**

- (a)(1) “If, during the adjustment period, a lessee or its designee determines that an adjustment or refund request is necessary to correct an underpayment or overpayment of an obligation, the lessee or its designee shall make such adjustment or request a refund within a reasonable period of time and only during the adjustment period.”
 - (a)(4) “For purposes of this section, the adjustment period for any obligation shall be the six-year period following the date on which an obligation became due. The adjustment period shall be suspended, tolled, extended, enlarged, or terminated by the same actions as the limitation period in section 1724 of this title.”
 - (b)(3) “Payment period. A refund under this subsection shall be paid or denied (with an explanation of the reasons for the denial) within 120 days of the date on which the request for refund is received by the Secretary. Such refund shall be subject to later audit by the Secretary or the applicable delegated State and subject to the provisions of this chapter.”
- Note: § 1721a does not address recoupment from future production

FOGRMA / RSFA Record Retention

- **§ 1713(a) Maintenance and availability of records, reports, and information for inspection and duplication**
 - “Upon the request of any officer or employee duly designated by the Secretary or any State or Indian tribe conducting an audit or investigation pursuant to this chapter, the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by such officer or employee, State, or Indian tribe.”
- **§ 1713(b) Length of time maintenance required**
 - “Records required by the Secretary with respect to oil and gas leases from Federal or Indian lands or the Outer Continental Shelf shall be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records.”