

DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE MANUAL

TRANSMITTAL SHEET

Release No. 206

January 7, 1993

SUBJECT: Royalty Program Series
Part 800 Enforcement
Chapter 1 Late Payment Charges and Assessments for
Liquidated Damages
Chapter 2 Civil and Criminal Penalties

EXPLANATION OF MATERIAL TRANSMITTED:

These chapters establish Minerals Management Service policies and delineate responsibilities for late payment charges, assessments for liquidated damages, and civil/criminal penalties that may be charged by its Royalty Management Program.

Scott Jewell

Director

FILING INSTRUCTIONS:

REMOVE:

<u>Part</u>	<u>Chapter</u>	<u>Pages</u>	<u>Release</u>
None			

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<u>Part</u>	<u>Chapter</u>	<u>Pages</u>	<u>Release</u>
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OPR: Rules and Procedures
Royalty Management Program

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Royalty Program Series Part 800 Enforcement
Chapter 1 Late Payment Charges and
Assessments for Liquidated Damages 800.1

1. Purpose. This chapter establishes Minerals Management Service (MMS) policies and delineates responsibilities for late payment charges and assessments for liquidated damages that may be charged to royalty payors, lease operators, lessees, or other parties who do not comply with statutes, regulations, contracts, orders, or terms of Federal or Indian mineral leases.

2. Objectives. Late payment charges and assessments for liquidated damages are intended to:

A. Ensure compliance with existing laws, regulations, lease terms, orders, and notices by administering an effective and equitable enforcement program.

B. Ensure compliance with regulations governing the reporting of production and payment of royalties and other revenues due.

C. Allow MMS to recover the time value of money as the result of late payments.

D. Allow MMS to recover administrative costs incurred as the result of payor or operator reporting errors and to improve the efficiency of MMS' disbursement of royalties and other monies to states and Indians.

3. Authority.

A. Public Law/United States Code. 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

B. Code of Federal Regulations (CFR).

(1) Late-Payment Charges. 30 CFR 206.105(d), 206.157(d), 206.159(d), 206.259(d), 206.262(d), 218.54, 218.102, 218.150(d), 218.202, and 218.302.

(2) Reporting Assessments. 30 CFR 216.40 and 218.40.

(3) Nonperformance Assessments. 30 CFR 241.53.

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4. Policy. It is the policy of MMS to collect late payment interest charges and assessments for liquidated damages in accordance with authorities vested in MMS by statutes and regulations.

5. Late-Payment Charges and Assessments for Liquidated Damages. Late payment charges and assessments for liquidated damages and nonperformance will be imposed as provided by MMS regulations. However, MMS may elect not to invoice late payment interest and assessments if the charges do not exceed the administrative costs that may be incurred for billing and collection activities.

A. Late-Payment Charges. Late-payment interest may be charged for failure of payors, operators, lessees, or other parties to pay amounts owed by the established date due, or failure to maintain sufficient estimated payment balances.

B. Assessments for Liquidated Damages. Assessments for liquidated damages may be charged for failure to submit timely or accurate royalty or production reports required by the MMS Auditing and Financial System (AFS) and Production Accounting and Auditing System (PAAS).

(1) Assessment Amounts. The amount of the assessment to be imposed shall be established periodically by MMS. The assessment amount, within predetermined limits, for each violation will be based on MMS' experience with costs and improper reporting. The MMS will publish a notice of the assessment amount to be applied in the Federal Register.

(a) An assessment of an amount not to exceed a predetermined limit may be charged for each report not received by the designated due date.

(b) An assessment of an amount not to exceed a predetermined limit may be charged for each report which is incorrectly completed.

(2) Definition of Report.

(a) For purposes of royalty reports, a report is defined in 30 CFR 218.40(c) as each line item on a Report of Sales and Royalty Remittance (Form MMS-2014). The line item consists of various information, such as product code or selling arrangement code, relating to each accounting identification number.

(b) For purposes of production reports, a report is defined in 30 CFR 216.40(c) as each line of production information required on the Monthly Report of Operations

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(Form MMS-3160), Oil and Gas Operations Report (Form MMS-4054), Gas Analysis Report (Form MMS-4055), Gas Plant Operations Report (Form MMS-4056), and Production Allocation Schedule Report (Form MMS-4058).

(3) Assessment Limitations. Limitations on the total amount of reporting assessments that will be charged may be established to prevent an unreasonable accumulation of assessments.

C. Nonperformance Assessments. Assessments for failure of payors, operators, lessees, and other parties to comply with statutes, regulations, contracts, orders, or terms of a Federal or Indian mineral lease may be assessed as provided for by MMS regulations at 30 CFR 241.53.

6. Responsibilities.

The Associate Director for Royalty Management (or designee) is responsible for:

A. Initiating enforcement actions to collect civil penalties and interest charges related to findings of audits, inspections, and investigations.

B. Taking appropriate enforcement action against a company or payor resulting from a demand letter prepared by a state.

C. Issuing assessments to payors for incorrectly completed reports regarding collection of royalties, bonuses, and other monies due the Government.

D. Issuing AFS late-payment invoices.

E. Issuing assessments for late, missing, or erroneous reporting on PAAS production reports.

F. Granting to payors exceptions for late payment charges when estimated payments on mineral production have previously been made in accordance with instructions.

G. Authorizing exemptions from late payment charges to lessees and operators.

H. Compromise or forgive assessments for late and erroneous reporting to AFS and PAAS when such assessments offend a reasonable sense of justice.

7. Procedures. See the "Royalty Management Program Procedures Handbook for Assessments and Civil Penalties".

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Chapter 2 Civil and

Criminal Penalties

800.2.1

1. Purpose. This chapter establishes Minerals Management Service (MMS) policies and delineates responsibilities for civil/criminal penalties that may be charged to royalty payors, lease operators, lessees, or other parties who do not comply with statutes, regulations, contracts, orders, or terms of Federal or Indian mineral leases.

2. Objectives. Ensure compliance with existing laws, regulations, lease terms, orders, and notices by administering an effective and equitable enforcement program.

3. Authority.

A. Public Law/United States Code. 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

B. Code of Federal Regulations.

(1) Civil Penalties. 30 CFR 241.20 and 241.51.

(2) Criminal Penalties. 30 CFR 241.52.

4. Policy. It is the policy of MMS to assess civil and criminal penalties in accordance with authorities vested in MMS by statutes and regulations. Separate statutes and regulations apply to oil and gas leases and to other than oil and gas leases.

5. Lease Violations. A civil penalty is intended for use in those circumstances where a payor, operator, lessee, or other party has demonstrated unwillingness to voluntarily correct a violation or has committed a particular violation repeatedly over a sustained period of time without having taken action which precluded further incidence of the violation. Because separate statutes and regulations apply to oil and gas leases and to other than oil and gas leases, MMS has different civil penalty policies depending on the type of lease. Statutes and regulations also provide for criminal penalties.

A. Oil and Gas Leases. Violations committed on oil and gas leases subject to the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 et seq., will be subject to a Notice of Noncompliance (Notice) and civil penalties under 30 CFR 241.51. Civil penalties for violations considered to be

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nonintentional will be issued under 30 CFR 241.51(a). However, if the payor, operator, lessee, or other party has demonstrated knowing and willful disregard to statutes, regulations, orders, or lease terms, as determined on a case-by-case basis, the incident will be considered an intentional violation and will be subject to higher civil penalties under 30 CFR 241.51(b). Any person who commits an act on an oil or gas lease for which a civil penalty is provided at 30 CFR 241.51 shall be subject to criminal penalties as provided at 30 CFR 241.52. Violations subject to civil penalties include the following:

(1) Nonintentional Violations - 30 CFR 241.51(a).

(a) Failure to Provide Records. Failure to comply with an MMS order to provide records required by law, rule, regulation, or lease terms. However, a subpoena generally will be served for records needed for audit purposes prior to issuance of a notice.

(b) Failure to Pay. Failure to timely submit payment of an amount associated with a report or specified on any bill for collection issued by MMS provided that the payor, operator, lessee, or other party has not filed for bankruptcy or payment has not been suspended by administrative action of MMS, Interior Board of Land Appeals (IBLA), or judicial direction. However, if in the administrative appeals process a payment date is established and no payment is made, the incident will be considered an intentional violation under 30 CFR 241.51(b).

(c) Failure to a Post Surety. Failure to submit an acceptable surety, in lieu of payment of a bill for collection or an order letter for payment issued by MMS pending a decision on an appeal.

(d) Failure to Perform. Failure to comply with an MMS order to perform, submit information collection forms, or provide information necessary to ensure that the prompt and proper payment of mineral lease revenues has occurred and to enable timely disbursement of such payments.

(2) Intentional Violations - 30 CFR 241.51(b).

Intentional violations are violations that indicate intentional disregard to statutes, regulations, orders, or lease terms. These violations will be subject to higher civil penalties provided under 30 CFR 241.51(b).

(a) Failure to Provide Records. Knowing or willfull failure to comply with an MMS order to provide records required by law, rule, regulation, or lease terms. However, a

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subpoena generally will be served for records needed for audit purposes prior to issuance of a notice.

(b) Failure to Pay. Knowing or willfull failure to comply with an MMS order to pay substantial amounts of money, defined as amounts over \$100,000, without a request for stay of the order and posting of an acceptable surety.

(c) Failure to Perform. Knowing or willfull failure to comply with a prior MMS written warning to a company or lessee for violation of regulations or statute.

(i) Failure to comply with a judicial order involving failure to make payment by the required date without an appeal of the decision.

(ii) Failure to comply with a decision by the Director of MMS, or decision of IBLA directed to a specific company or lessee without further appeal and stay of the order.

(iii) Repeated violations which indicate intentional disregard of lease terms. Examples include:

- Repeated underreporting of revenues or royalties of such magnitude as to preclude or negate an inference that it resulted from oversight or neglect.

- Repeated violations of the same type when the payor, lease operator, lessee, or other party previously has been served with a Notice of Noncompliance.

- Repeated violations where MMS has given prior written warning to a company to correct prior violations and those violations recur.

- Continued refusal to comply with an MMS order to perform, such as failure to provide requested records or to file information collection forms required by MMS regulations.

(d) Any indication of any act showing intentional disregard described in 30 U.S.C. 1719(c)(2) (refusal to permit audit, entry, or inspection) or 30 U.S.C. 1719(d) (false or misleading reports, records, or other documentation; unlawful removal or diversion of oil or gas from a lease site; or purchasing, selling, or transporting stolen oil or gas).

B. Leases Other Than Oil and Gas (Non-FOGRMA) Leases.
A Notice of Noncompliance for violations committed on leases

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other than oil and gas, which are not subject to FOGRMA (referred to as Non-FOGRMA leases), will be issued under 30 CFR 241.20. Violations subject to civil penalties include the following.

(1) Failure to Provide Records. Failure to comply with an MMS order to provide records required by law, rule, regulation, or lease terms. However, a subpoena generally will be served for records needed for audit purposes prior to issuance of a Notice.

(2) Failure to Pay. Failure to timely submit payment of an amount associated with a report or specified on any Bill for Collection issued by MMS provided that the payor, operator, lessee, or other party has not filed for bankruptcy or payment has not been suspended by administrative action of MMS, IBLA, or judicial direction.

(3) Failure to Post a Surety. Failure to submit an acceptable surety, in lieu of payment of a Bill for Collection, or an order letter for payment issued by MMS pending a decision on an appeal.

(4) Failure to Perform. Failure to comply with an MMS order to perform, submit information collection forms, or provide information necessary to ensure that prompt and proper payment of mineral lease revenues has occurred and to enable timely disbursement of such payments.

C. Criminal Penalties. Any violations involving potential criminal activities and penalties will be referred to the Office of the Solicitor for coordination.

6. Responsibilities.

A. The Associate Director for Royalty Management (or designee) is responsible for:

(1) Initiating enforcement actions to collect civil penalties and interest charges related to findings of audits, inspections, and investigations.

(2) Taking appropriate enforcement action against a company or payor resulting from a demand letter prepared by a state.

(3) Holding hearings with a person charged with a violation prior to assessing a penalty authorized by statutes other than the FOGRMA.

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(4) Issuing a penalty notice to any person subject to civil penalties authorized by FOGRMA.

(5) Suspending the requirement to correct violations pending completion of hearings for civil penalties authorized by FOGRMA.

(6) Issuing any written order assessing civil penalties after the notice of noncompliance and civil penalty notice has been issued.

(7) Issuing any written determination of the civil penalty amount after the order assessing the civil penalty has been issued.

(8) Compromising or reducing the final civil penalty amount due on a case.

(9) Issuing subpoenas.

B. The Offshore Minerals Management (OMM) has established a civil/criminal penalties program for operating violations on OCS, which is administered by the Associate Director for Offshore Minerals Management. In support of the OCS program, the Associate Director for Royalty Management is responsible for the collection of civil/criminal penalties that may be assessed by OMM. A Memorandum of Understanding has been established with OMM on the procedures to be followed by RMP for collection of penalties that may be assessed by OMM.

7. Procedures. See the "Royalty Management Program Procedures Handbook for Assessments and Civil Penalties".