

DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE MANUAL

TRANSMITTAL SHEET

Release No. 245

May 12, 1999

SUBJECT: Program Series
Part 650 Inspections
Chapter 2 OCS Civil/Criminal Penalties Program

EXPLANATION OF MATERIAL TRANSMITTED:

This release sets forth the policy and responsibilities for implementation of the Civil/Criminal Penalties Program within the Minerals Management Service as required by the Outer Continental Shelf Lands Act.

Director

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FILING INSTRUCTIONS:

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OPR: Performance and Safety Branch
Engineering and Operations Division
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1. Purpose. This chapter describes the Minerals Management Service (MMS) Outer Continental Shelf (OCS) Civil/Criminal Penalties Program. It sets the policy and establishes the responsibility for program management and implementation. It directs all personnel engaged in OCS civil/criminal penalty activities to comply with the requirements of this chapter.

2. Objectives. The MMS program for the assessment of civil/criminal penalties is intended to:

A. Assure safe and clean operations on the OCS.

B. Ensure that procedures followed in assessing penalties provide for fair, consistent, and appropriate treatment of any person conducting activities on the OCS.

C. Provide for effective and equitable assessment of civil penalties and referrals for the consideration of criminal penalties.

3. Authority. Section 24 of the OCSLA, (43 U.S.C. 1350(b)), as amended by the Oil Pollution Act (OPA) of 1990, Public Law No. 101-380, Section 8201, 104 Stat. 570.

4. References.

A. Oil and Gas and Sulphur Operations in the Outer Continental Shelf (30 CFR 250, Subpart N).

B. Appeals Procedures (30 CFR Part 290)

C. Department Hearings and Appeals Procedures (43 CFR Part 4).

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5. Definitions.

A. Person means a natural person, an association, or a private, public, or municipal corporation.

B. Record means the documentary and other evidence compiled by MMS in connection with the civil penalty proceedings.

C. Violation means failure to comply with the OCSLA or the OPA, or with any regulations, or the terms or provisions of leases, licenses, permits, or rights-of-way issued under the OCSLA or OPA.

6. Policy.

A. Through the pursuit, assessment, and collection of civil penalties and referrals for the consideration of criminal penalties, the program is designed to encourage compliance with OCS statutes and regulations.

B. Not all regulatory violations warrant review for initiation of civil penalty proceedings and criminal penalty referrals. However, violations that cause injury, death, or environmental damage, or pose a threat to human life or the environment will trigger such review. At a minimum:

(1) Unsafe and unworkmanlike operations involving injury to humans or pollution.

(2) Safety devices (e.g., surface and subsurface safety valves, emergency shut-down systems, etc.) which are:

(i) bypassed or removed without a valid reason; prior approval; or lockout-tagout, flagging or monitoring, or

(ii) inoperable (i.e. failures) but are left in service without repair.

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C. Violations that are not corrected within the time allowed by MMS (e.g., failure to submit operational or G&G data and information, bond requirements, office INC's, etc.), must also be reviewed for initiation of civil penalty proceedings and criminal penalty referrals.

D. Violations of the Financial Responsibility section of OPA must be reviewed for civil penalties.

7. Responsibilities.

A. Associate Director for Offshore Minerals Management is responsible for ensuring that appropriate resources are made available to review and assess OCS Civil Penalties and refer possible OCS criminal cases to the Office of the Inspector General or the Department of Justice.

B. Associate Director for Royalty Management is responsible for collection of OCS civil penalties.

C. Regional Directors are responsible for:

(1) Ensuring the proper implementation of the OCS Civil/Criminal Penalties Program and that the proper priorities and emphasis are placed on the various elements of the program to meet the objectives of the MMS.

(2) Ensuring that appropriate resources are made available to review and assess OCS Civil Penalties.

D. Regional Supervisors are responsible for:

(1) Ensuring the proper implementation of the OCS Civil/Criminal Penalties Program and that the proper priorities and emphasis are placed on the various elements of the program to meet the objectives of the MMS.

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(2) Providing assistance, upon request, on matters related to determining if a violation constitutes or could have constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment.

(3) Ensuring that necessary information relative to the OCS Civil/Criminal Penalties Program is available and provided to the Regional Director.

(4) Appointing one employee to serve as the Regional OCS Civil/Criminal Penalties Program Coordinator from Regional staff.

E. Regional OCS Civil/Criminal Penalties Program Coordinators are responsible for:

(1) Appointing an MMS employee(s) to serve as a Reviewing Officer(s) for civil penalties reviews. If reliance is to be made on a Reviewing Officer from outside the Region, coordination for obtaining a Reviewing Officer should be made with either another Regional Coordinator, or with the National Coordinator.

(2) Ensuring that necessary information relative to the OCS Civil/Criminal Penalties Program is available and provided to the Regional Supervisors.

(3) Ensuring that sufficient resources are available to support the OCS Civil/Criminal Penalties Program.

(4) Processing cases investigated and referred by other Agencies, and establishing case files and appointing a Reviewing Officer as needed.

(5) Coordinating with the National Coordinator, Office of the Solicitor, and the Office of the Inspector General, referrals of cases for the initiation of possible criminal reviews.

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F. Reviewing Officer is responsible for:

(1) Receiving civil penalty case files prepared by the MMS and by other Federal Agencies that have regulatory responsibilities under the OCSLA and OPA.

(2) Initiating proceedings, when appropriate, for each civil penalty case file received.

(3) Determining, in accordance with 30 CFR 250, Subpart N, that a civil penalty is to be assessed for a specific violation and/or that an apparent criminal violation is to be referred for review. If the Reviewing Officer determines that the violation does not warrant a civil penalty, the Reviewing Officer notifies the appropriate District Supervisor/Section Chief or other Federal Agency as appropriate.

(4) Setting the assessed value of the civil penalty (not to exceed the maximum allowed legal amount for each day of the continuation of each violation).

(5) Presenting the Offshore Minerals Management findings, decision, and basis for the decision, in any appeal proceedings for any civil penalties case in which he/she prepared a Reviewing Officer decision.

(6) Ensuring that necessary information relative to the OCS Civil/Criminal Penalties Program is available and provided to the Regional Coordinator.

G. District Supervisors/Section Chiefs are responsible for:

(1) Reviewing the recommendations of the Chief Inspector/Unit Supervisor for the initiation of civil/criminal penalties proceedings.

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(2) Specifying a time period (if one has not already been specified by an MMS employee), in accordance with MMS regulations for correction of the specified violation and ensuring that operations/records are reinspected to determine whether the violation has been corrected.

H. Chief Inspector/Unit Supervisor reviews all violations and forwards to the District Supervisor/Section Chief any violations that may warrant civil/criminal penalty review.

I. MMS Inspector/Employee is responsible for:

(1) Performing inspections of OCS facilities, reviewing permits, monitoring OSFR or bonding requirements, etc. to ensure the operator's/lessee's/permittee's compliance with MMS regulations and terms of the leases, rights-of-way, licenses, and permits.

(2) Issuing warning and/or shut-in INC's, violation letters, etc. for the correction of each violation and re-inspecting the facility or reviewing additional information submitted, when or if appropriate, to confirm that the violations have been corrected.

(3) Specifying a time period, in accordance with MMS regulations or by direction of the District Supervisor/Section Chief for correction of the specified violation and confirming that violations are corrected.

(4) Forwarding to the Chief Inspector/Unit Supervisor violations that may warrant civil/criminal penalty review.

J. Chief, Engineering and Operations Division is responsible for:

(1) Ensuring the proper administration of the OCS Civil/Criminal Penalties Program and that the proper priorities and emphasis are placed on the various elements of the program to meet the objectives of the MMS.

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(2) Publishing an annual public report of the activities of the OCS Civil/Criminal Penalties Program and providing summary information to the Associate Director for Offshore Minerals Management.

K. Chief, Performance and Safety Branch is responsible for:

(1) Ensuring that necessary information relative to the OCS Civil/Criminal Penalties Program is available and provided to the Chief, Engineering and Operations Division.

(2) Providing oversight to ensure that the OCS Civil/Criminal Penalties Program is documented and conducted in a fair, consistent, and appropriate manner.

(3) Appointing a National OCS Civil/Criminal Penalties Program Coordinator from Branch staff.

L. National OCS Civil/Criminal Penalties Program Coordinator is responsible for:

(1) Ensuring the proper administration of the OCS Civil/Criminal Penalties Program.

(2) Ensuring that necessary information relative to the OCS Civil/Criminal Penalties Program is available and provided to the Chief, Performance and Safety Branch.

(3) Coordinating all OCS Civil/Criminal Penalty activities with the Regional Coordinators to ensure that the OCS Civil/Criminal Penalties Program is conducted in a fair, consistent, and appropriate manner.

(4) Assisting the Regional Coordinators in arranging for a Reviewing Officer to be appointed from outside the Region.

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(5) Preparing an annual status report for internal Department of the Interior use. This report should address the activities and statistics of the OCS Civil/Criminal Penalties Program for the previous year and should be prepared for distribution in February of each year.

(6) Developing a notice of civil penalties paid within the preceding year, for publication in the Federal Register and on the MMS web site.

(7) Coordinating with other Federal, State, and local agencies, activities related to the OCS Civil/Criminal Penalties Program.

8. Guidelines. The operational controls for the OCS Civil/Criminal Penalties Program are contained in a guidebook available in the Engineering and Operations Division, Performance and Safety Branch.