

OIL AND GAS ENFORCEMENT POLICY AND PROCEDURES

XVI. PROCEDURES FOR COLLECTION OF ASSESSMENTS AND PENALTIES FOR NONCOMPLIANCE ON FEDERAL AND INDIAN OIL AND GAS LEASES

- A. Overview/General Requirements. If a Bill for Collection, Form 1371-22 is sent to the operator and the operator fails to pay the amount owed, the Field Office will send a demand letter to the operator. If the operator fails to make payment within the time allowed, the lease can be shut in (for Indian leases, only upon concurrence of the appropriate Bureau of Indian Affairs [BIA] office), and a second demand letter will be sent. If the operator fails to make payment within the time frame allowed in the second letter, the BLM will attach the bond for the amount owed without further notice.

If lease shut-in or bond attachment are not available or advisable (e.g., the lease is already shut in, there are other higher priority demands on the bond, the Indian lessor does not support such action, etc.), the BLM may be able to collect the outstanding debt through administrative offset or litigation against the operator. The BLM also may pursue lease cancellation as a result of continued noncompliance.

The following procedures provide detailed guidance on collecting outstanding assessments/ civil penalties. This guidance modifies existing guidance found in the debt collection portion of the BLM Collections Reference Guide. The modification applies only to outstanding debts from noncompliance on Federal and Indian oil and gas leases. Detailed guidance for attachment of a bond is found in the BLM Interim Guidance Manual 3104-1, Bonds, and Handbook 3104-1, Bonds.

B. Steps for Issuing a Billing Notice for Assessments or Civil Penalties

1. When an INC or an order of the AO has been issued and an assessment and/or civil penalty has resulted, a Bill for Collection, Form 1371-22, is to be sent to the operator. A bill for an assessment can be sent with the INC notice; however, by regulation civil penalties cannot be assessed until the party charged with the violation has been given the opportunity for a hearing on the record. 43 CFR 3165.2(c) provides that requests for such a hearing must be received within 30 days of receipt of the notice of proposed penalty. Therefore, a bill for civil penalties is to be sent only after the 30 day time frame has expired.

In order to determine whether bills originated from assessments or civil penalties on Federal or Indian leases, the preprinted alpha prefix "A" in the bill number is to be changed to an "I" for Indian Leases.

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The bill must include:

1. Lease Number
 2. INC Number
 3. Due Date (30 days from receipt).
 4. A statement that failure to pay will result in additional enforcement actions, including civil penalties, lease shut-in and/or attachment of the bond.
 5. A statement that failure to pay and subsequent attachment of the bond may also put the lease in jeopardy of cancellation (43 CFR 3104.7, 3108.3, and 3163.1(a)(5) for Federal leases and 25 CFR 211.27, 212.23, 213.40 or 225.36 for Indian leases).
2. The Field Office shall mail the bill to the operator by certified mail, return receipt requested, with a courtesy copy sent to the lessee(s) and the party holding the bond, e.g. surety. If the lease is an Indian lease the appropriate BIA office shall also receive a copy.
 3. After the bill is sent, the operator has 30 days from receipt of the bill to make payment. If, after 30 days, the operator fails to pay the assessment/civil penalty, a demand letter must be sent (refer to Item C for demand letter instructions). Under normal circumstances the BLM will shut in the lease before it takes steps to attach the bond or initiate litigation or lease cancellation. Prior to shut in however, the AO may take into consideration such things as operator history, number and amount of outstanding assessments/civil penalties, BIA concurrence if applicable, lease production and existing bond coverage in deciding the appropriate action to take.

Examples of when shut in action should not be initiated include: the lease is already shut in for other infractions or is in a temporarily abandoned status; BIA does not support the shut in of an Indian lease; shut in would result in damage to the well or loss of resources; or the lease is in bankruptcy and the trustee does not allow shut in. If the lease situation does not meet these example, then the Field Office should proceed with shut-in procedures.

4. Since continued operator noncompliance will result in additional enforcement actions ranging from lease shut-in to lease cancellation, it is important that the lessee of record is made aware of pending enforcement activities. As such, the lessee(s) shall receive copies of the bill and all subsequent correspondence to the operator.

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C. First Demand Letter

1. The first demand letter is to be sent to the operator by certified mail, return receipt requested, with a copy sent to the lessee and the party holding the bond. The letter shall include information that the payment is due 15 days from receipt and a statement that failure to pay the assessment/civil penalty, plus handling charges and accrued interest will result in lease shut in. The demand letter must also provide information on appeal rights under 43 CFR 3165.3(b).

In the case where lease operations are already shut in due to non-abatement, the Field Office is to start with the second demand letter.

2. If an Indian lease is involved, the BLM must consult with the BIA prior to sending out the letter to determine if lease shut in is an acceptable option to the tribe or allottee. If it is acceptable, the operator is to be reminded that the lease may be terminated if production ceases as provided for in the lease terms.
3. For Federal leases, a copy of the first demand letter must be sent to the appropriate fluid mineral adjudication personnel in the State Office to place in the lease case file and to the surety company or party holding the personal bond at the time the bond demand is made. If Indian leases are involved, the appropriate BIA office must receive a copy.
4. The operator has 15 days from receipt of the first demand letter to make the payment. If the operator has not made payment after 15 days, the BLM may shut-in lease operations using BLM Form 3160-12, Notice to Shut Down Operations. The operator then has 30 days from receipt of the Notice to Shut Down Operations to make payment. If payment is not received, the BLM will send a second demand letter. Failure to comply with the second demand letter will also result in assessments or civil penalties.

D. Second Demand Letter

1. If lease operations have been shut-in and the operator has not responded within the specified time frame (30 days), a second demand letter shall be sent to the operator by certified mail, return receipt requested with a copy sent to the lessee and the party holding the bond. The second demand letter shall state that the operator has 15 days from the date of receipt to make the payment and that it is the final notice before the BLM/BIA takes action to attach the bond under which operations are being conducted.

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The letter shall include a statement that failure to pay will result in:

- a. A request for payment by the surety or collection from other collateral posted as bond (after elapse of 15 days from date of receipt), and
 - b. If the amount owed is not fully covered by the bond, any amount outstanding after the attachment of the bond shall be reported as income to the Internal Revenue Service on Form 1099-G, Certain Government Payments.
2. For Federal leases, a copy of the second demand letter must be sent to the appropriate fluid mineral adjudication personnel in the State Office to be placed in the lease case file. Adjudication is required to send a copy of the letter to the surety company or party holding the personal bond at the time the bond demand is made. When the decision is issued by the adjudication staff to attach the bond, copies must be directed to the lessee, operator, surety company and principal or the party holding a personal bond. If Indian leases are involved, the appropriate BIA office takes the necessary action to attach the bond.

E. Attachment of Bond

If the operator fails to pay the assessment and accrued interest within 15 days after receipt of the second demand letter, the following steps are to be taken:

1. For Federal leases, the BLM Field Office requesting bond attachment must send a letter to the appropriate State Office fluid minerals adjudication personnel to initiate attachment of the bond for the outstanding amount. The bond to be attached is the bond under which the operations are conducted whether it is the operator's or lessee's bond. The standard procedures found in the BLM Interim Guidance Handbook H-3104-1, Bonds, are to be followed, including notification to other agencies, e.g., the Minerals Management Service (MMS) that the BLM will be attaching the bond. For Indian leases, the BLM Field Office shall send a letter to the appropriate BIA office with a request that the bond be attached.
2. After the bond has been attached, the principal/obligor has 6 months, or less at the discretion of the AO, to restore the bond to the face amount, post a new bond, or to establish alternate bonding coverage for the operator (see 43 CFR 3104/7(b)). The AO may require an increase in the amount of bond whenever it is determined that the operator poses a risk, as provided in 43 CFR 3104.5(b) or in 25 CFR 211.6(c), 212.10, 213.15(c)

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or 225.30(e). If the bond is not reestablished as required, lease operations shall remain shut in and the lease may be subject to cancellation under the provisions of 43 CFR 3108.3 for Federal leases, and 25 CFR 211.27, 212.23, 213.40 or 227.28 for Indian leases.

F. Surety Fails to Pay

In accordance with the Interim Guidance Handbook H-3104-1, Bonds, failure of a surety company to submit payment will result in a BLM recommendation to the Department of the Treasury for removal of the surety from the list of certified, acceptable sureties.

G. Bankrupt Entities

Bankruptcy proceedings do not stop the BLM's regulatory responsibilities. If violations are discovered and they are not abated timely, assessments and civil penalties shall be imposed. Close coordination with the Regional or Field Solicitor's Office is required for liabilities involving bankrupt parties. The Bankruptcy Court must be notified by the State Office minerals adjudication personnel through the Regional or Field Solicitor's Office that the bond is being attached. If a bankrupt operator has incurred assessments and/or civil penalties and has failed to pay, the bond covering the operations is to be attached with an information copy provided to the Regional or Field Solicitor's Office.

H. Credit Bureau Reporting

If there is still a portion of the debt outstanding after the bond is attached or if for some reason the bond is not attached, the Field Office must send written notification to the National Business Center (NBC), Division of Finance requesting that the details of the debt be reported to the appropriate credit bureaus.

I. Administrative Offset

The use of an administrative offset procedure allows agencies to collect debts from monies that otherwise would be refunded to the debtor for overpayment to other Federal agencies such as the MMS or the Internal Revenue Service. Although this procedure is not widely used at this time, opportunities for administrative offset should be pursued where available. The NBC, Division of Finance is to be contacted concerning administrative offset.

J. Litigation

In instances where there is no appeal pending, the statute of limitations has not

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been exceeded, the amount due, and the right to collect the debt are clear, the Department of Justice (DOJ) has established a system of direct referral which makes it unnecessary to send a request to the Regional or Field Solicitor's Office to initiate litigation. Using this process, debts over \$600 can be referred to the DOJ's National Center Intake Facility (NCIF) for litigation. The DOJ will consider litigation for amounts under \$600 if it is important to the enforcement of some agency program (see Page 2 of 7, Claims Collection Litigation Report (CCLR) Instructions). Although debts can now be referred directly to the DOJ, the Regional or Field Solicitor's Office is to be advised that such action is being taken.

1. The DOJ Litigation Referral Process Handbook, which was previously issued under WO IM 95-81 should be reviewed carefully. When referring a debt to the DOJ, it is important that the seven page CCLR, Exhibit 3 in the handbook, be filled out as completely as possible. Instruction for completing it are on the back of the form. Items 1, 3, and 4 of the form are particularly important to facilitate timely distribution of the claim and to ensure that all correspondence from the NCIF and U.S. Attorney is sent to the appropriate BLM office.
 - a. Item 1 is the agency claim number: enter the document identification number from the Bill for Collection (Form 1371-22).
 - b. Item 2 is an address block: enter the address of the U.S. Attorney's Office.
 - c. Item 3 is a return address block: enter the address of the BLM office initiating the claim.
2. The CCLR package must also contain certain other information (see page 5 of the CCLR), including a credit report. The NBC, Division of Finance, is to be contacted to obtain credit bureau information. Fees for credit reporting must be added to the amount due. In order for credit bureaus to provide the most accurate and up to date information possible, the BLM must be able to supply them with a company (or individual's) name and current address. If the taxpayer identification number (TIN) or Social Security Number (SSN) is available, it also is to be provided. Although the BLM does not require lessees or operators to provide a TIN/SSN, this number may be available from the Debt Collection Section of the MMS, Accounts Receivable Division.

Additional sources of financial information include State corporation

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commissions and special credit bureau reports such as business profiles. Questions relating to the administrative aspects of the direct referral process or forms that are to be submitted can be directed to the NCIF at (301) 585-2391.

3. At the point that the debt is referred to the DOJ, all other agency collection actions for that debt must cease. When the NCIF receives a referral, it screens it prior to litigative action. Once the referral has been screened and accepted, the NCIF sends an acknowledgment of receipt to the client agency. The package is then forwarded to either the U.S. Attorney or private counsel, on contract to the DOJ, for action. Any payments that are collected as a result of such action are deposited to a DOJ lock box at a bank in Atlanta, Georgia. The bank processes the payments, wires the funds directly to the appropriate Departmental account, and provides any necessary follow-up information to the NCIF. The NCIF is able to provide its client agencies with reports on the debts referred, the litigating office handling the debt, and information on the disposition of closed debts.
4. If there is some question as to whether litigation should be pursued through the Solicitor's Office or by direct referral to the DOJ, or if there is some uncertainty regarding the legal existence or litigative merits of the debt, the Solicitor or local U.S. Attorney's Office is to be consulted.

K. Uncollectible Assessments/Civil Penalties

1. When bankruptcy is not involved, or there is no bond, and all available steps have been taken, the matter is to be turned over to the Regional or Field Solicitor's Office for final determination that the debt is uncollectible.
2. If the Solicitor's Office makes a determination that the debt is uncollectible and recommends that the debt be written off, the case is to be turned over to the NBC, Division of Finance, for official write-off. A Cover Sheet for Write-Off (Form 1370-45) must be submitted by the State Director to the Service Center to write off a debt. In the comments section (item number 19) a notation is to be made that the data is to be sent to the Credit Bureau and the amount being written off will be reported as income to the Internal Revenue Service.
3. The Division of Finance will notify the Internal Revenue Service via Form 1099-G, Certain Government Payments, that the amount of uncollected debt is to be considered income for tax purposes.

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L. Lease Cancellation

1. For a Federal lease, if the decision is made to initiate lease cancellation, the regulations at 43 CFR 3108.3 provide that a lease may be canceled by the Secretary only if the leasehold does not contain a well capable of producing in paying quantities, or the lease is not committed to a unit or communitization agreement that contains a well capable of production of communitized substances in paying quantities. If the lease does contain such a well or is committed to an agreement with such a well, the lease may be canceled only by judicial proceedings in Federal court. Lease cancellation proceedings are handled by the State Office fluid minerals adjudication personnel (see Handbook 3108.1).
2. For an Indian lease, the BLM shall make a recommendation to the BIA that the lease be canceled under the appropriate sections of Title 25 CFR.

M. Appeals Process

The filing of an appeal with the State Director shall not result in the suspension of the requirement for compliance or stop the accumulation of assessments or civil penalties unless the State Director so determines.

In some instances, the timing of a State Director Review (SDR) decision may come on or shortly after the deadline for payment if the operator waits until the last minute to file an appeal. The Field Office actions from this point shall be contingent upon the decision rendered by the State Director. Questions from Field Offices may arise on whether or not to continue pursuing payment until the decision is rendered. Such questions should be directed to the State Office for resolution. In most cases, Field Offices shall continue pursuit of payment of the assessments/civil penalties in a timely manner despite the filing of an appeal.