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PART 227—DELEGATION TO STATES

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Authority: 30 U.S.C. 1735; 30 U.S.C. 196; Pub L. 102–154.

Source: 62 FR 43084, Aug. 12, 1997, unless otherwise noted.

Delegation of MMS Royalty Functions



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§ 227.1 What is the purpose of this part?



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This part provides procedures to delegate Federal royalty management functions to States under section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (the Act), 30 U.S.C. 1735, as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. 104–185, August 13, 1996, as corrected by Pub. L. 104–200. This part also provides procedures to delegate only audit and investigation functions to States under Pub. L. 102–154 for solid mineral leases, geothermal leases and leases subject to section 8(g) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337(g). This part does not apply to any inspection or enforcement responsibilities of the Bureau of Land Management for onshore leases or the MMS Offshore Minerals Management program for leases on the Outer Continental Shelf.

§ 227.10 What is the authority for information collection?



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(a) The information collection requirements contained in this part have been approved by Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1010–0088. We will use the information collected to review and approve delegation proposals from States wishing to perform royalty management functions.

(b) Public reporting burden is estimated as follows. MMS estimates 400 annual burden hours per function for each State performing the delegated functions. The Federal Government will reimburse some of these costs as provided by statute. However, States could incur additional start-up costs, such as purchasing equipment necessary to perform a delegated function, that may not be reimbursable. MMS estimates that, if applicable, each payor or reporter would spend 50 burden hours annually coordinating their interactions and communications among the several States and with MMS. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, to the Information Collection Clearance Officer, Minerals Management Service, 1849 C Street, NW., Washington, DC 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Interior Department, OMB Control Number 1010–0088, 725 17th Street, NW., Washington, DC 20503.

§ 227.101 What royalty management functions may MMS delegate to a State?



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(a) If there are oil and gas leases subject to the Act on Federal lands within your State, MMS may delegate the following royalty management functions for all such Federal oil and gas leases to you under this part:

(1) Receiving and processing production or royalty reports;

(2) Correcting erroneous report data; and

(3) Performing automated verification.

(b) If there are oil and gas leases subject to the Act on Federal lands within your State, MMS may delegate the following royalty management functions for some or all of the Federal oil and gas leases to you under this part:

(1) Conducting audits and investigations; and

(2) Issuing demands, subpoenas, and orders to perform restructured accounting, including related notices to lessees or their designees, and entering into tolling agreements under section 115(d)(1) of the Act, 30 U.S.C. 1725(d)(1).

(c) If there are oil and gas leases offshore of your State subject to section 8(g) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337 (g), or solid mineral leases or geothermal leases on Federal lands within your State, MMS may delegate authority to conduct audits and investigations for some or all such Federal leases.

[64 FR 36784, July 8, 1999]

§ 227.102 What royalty management functions will MMS not delegate?



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This section lists the principal royalty management functions that MMS will not delegate to a State. MMS will not delegate to a State the following functions:

(a) MMS must collect all moneys received from sales, bonuses, rentals, royalties, civil penalties, assessments and interest. MMS also must collect any moneys a lessee or its designee pays because of audits or other actions of a delegated State;

(b) MMS must compare all cash and other payments it receives with payments shown on royalty reports or other documents, such as bills, to reconcile payor accounts. MMS also must disburse all appropriate moneys to States and other revenue recipients, including refunds and interest owed to lessees and their designees;

(c) The Department of the Interior will receive, process, and decide all administrative appeals from demands or other orders issued to lessees, their designees, or any other person, including demands or orders a delegated State issues;

(d) Only MMS may take enforcement actions other than issuing demands, subpoenas and orders to perform restructured accounting. MMS or the appropriate Federal agency will issue notices of non-compliance and civil penalties, collect debts, write off delinquent debts, pursue litigation, enforce subpoenas, and manage any alternative dispute resolution. MMS will conduct, coordinate and approve any settlement or other compromise of an obligation that a lessee or its designee owes;

(e) MMS will decide all valuation policies, including issuing valuation regulations, determinations, and guidelines, and interpreting valuation regulations; and

(f) MMS may reserve additional authorities and responsibilities not included in paragraphs (a) through (f) of this section.

Delegation Proposals



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§ 227.103 What must a State's delegation proposal contain?



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If you want MMS to delegate royalty management functions to you, then you must submit a delegation proposal to the MMS Associate Director for Minerals Revenue Management. MMS will provide you with technical assistance and information to help you prepare your delegation proposal. Your proposal must contain the following minimum information:

(a) The name and title of the State official authorized to submit the delegation proposal and execute the delegation agreement;

(b) The name, address, and telephone number of the State contact for the proposal;

(c) A copy of the legislation, State Attorney General opinion or other document that:

(1) States which State entity or entities are responsible for performing delegated functions, and if more than one entity is delegated such responsibility, the position of the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the State;

(2) Demonstrates the State's authority to:

(i) Accept a delegation from MMS; and

(ii) Receive State or Federal appropriations to perform delegated functions;

(d) The date you propose to begin performing delegated functions;

(e) A detailed statement of the delegable functions that you propose to perform. For each function, describe the resources available in your State to perform each function, the procedures you will use to perform each function, and how you will assure that you will meet all Federal laws, lease terms, regulations and relevant performance standards. As evidence that you have or will have the resources to perform each delegable function, provide the following information:

(1) A description of the personnel you have available to perform delegated functions, including:

(i) How many persons you will assign full-time and part-time to each delegated function;

(ii) The technical qualifications of the key personnel you will assign to each function, including academic field and degree, professional credentials, and quality and amount of experience with similar functions; and

(iii) Whether these persons are currently State employees. If not, explain how you propose to hire these persons or obtain their services, and when you expect to have those persons available to perform delegated functions;

(2) A description of the facilities you will use to perform delegated functions, including:

(i) Whether you currently have the facilities in which you will physically locate the personnel and equipment you will need to perform the functions you propose to assume. If not, how you propose to acquire such facilities, and when you expect to have such facilities available; and

(ii) How much office space is available;

(3) Describe the equipment you will use to perform delegated functions, including:

(i) Hardware and software you will use to perform each delegated function, including equipment for:

(A) Document processing, including compatibility with MMS automated systems, electronic commerce capabilities, and data storage capabilities;

(B) Accessing reference data;

(C) Contacting production or royalty reporters;

(D) Issuing demands;

(E) Maintaining accounting records;

(F) Performing automated verification;

(G) Maintaining security of confidential and proprietary information; and

(H) Providing data to other Federal agencies;

(ii) Whether you currently have the equipment you will need to perform the functions you propose to assume. If not, how you propose to acquire such equipment and when you expect to have such equipment available;

(f) Your estimates of the costs to fund the following resources necessary to perform the delegation:

(1) Personnel, including hiring, employee salaries and benefits, travel and training;

(2) Facilities, including acquisition, upgrades, operation, and maintenance; and

(3) Equipment, including acquisition, operation, and maintenance;

(g) Your plans to fund the resources under paragraph (f) of this section, including any items you will ask MMS to fund under the delegation agreement;

(h) A statement identifying any areas where State law, including State appropriation law, may limit your ability to perform delegated functions, and an explanation of how you propose to remove any such limitation;

(i) A statement that in accordance with section 203 of the Act (30 U.S.C. 1733) persons who have access to information received under delegated functions are subject to the same provisions of law regarding confidentiality and disclosure of that information as Federal employees. Applicable laws include the Freedom of Information Act (FOIA), the Trade Secrets Act, and relevant Executive Orders. In addition, your statement must acknowledge that all documents produced, received, and maintained as part of any delegation functions are agency records for purposes of FOIA. Therefore, persons who have access to information received under delegated functions may not use such information or provide such information to any other person, including State personnel, for purposes other than performing delegated functions. However, this limitation does not apply if the person submitting the information consents in writing to its use for other State purposes.

[62 FR 43084, Aug. 12, 1997, as amended at 67 FR 19112, Apr. 18, 2002]

§ 227.104 What will MMS do when it receives a State's delegation proposal?



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When MMS receives your delegation proposal, it will record the receipt date. MMS will notify you in writing within 15 business days whether your proposal is complete. If it is not complete, MMS will identify any missing items §227.103 requires. Once you submit all required information, MMS will notify you of the date your application is complete.

Hearing Process



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§ 227.105 What are the hearing procedures?



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After MMS notifies you that your delegation proposal is complete, MMS will schedule a hearing on your proposal, if MMS determines a hearing is appropriate, as follows:

(a) The MMS Director will appoint a hearing official to conduct one or more public hearings for fact finding regarding your ability to assume the delegated functions requested. The hearing official will not decide whether to approve your delegation request;

- (b) The hearing official will contact you about scheduling a hearing date and location;
- (c) The MMS will publish notice of the hearing in the Federal Register and other appropriate media within your State;
- (d) MMS will publish notice of the proposal in the Federal Register. MMS will also post the proposal on the MMS Website, and upon request, MMS will send a copy of the delegation proposal to the trade associations to distribute to their members, as necessary;
- (e) At the hearing, you will have an opportunity to present testimony and written information in support of your proposal;
- (f) Other persons may attend the hearing and may present testimony and written information for the record;
- (g) MMS will record the hearing;
- (h) MMS will maintain a record of all documents related to the proposal process;
- (i) After the hearing, MMS may require you to submit additional information in support of your delegation proposal.

Delegation Process



§ 227.106 What statutory requirements must a State meet to receive a delegation?



The MMS Director will decide whether to approve your delegation request and will ask the Secretary of the Interior to concur in the decision. That decision is solely within the MMS Director's and the Secretary's discretion. The MMS Director's decision, which the Secretary concurs in, is the final decision for the Department of the Interior. The MMS Director may approve a State's request for delegation only if, based upon the State's delegation proposal and the hearing record, the MMS Director finds that:

- (a) It is likely that the State will provide adequate resources to achieve the purposes of the Act;
- (b) The State has demonstrated that it will effectively and faithfully administer the MMS regulations under the Act in accordance with subsections (c) and (d) of section 205 of the Act;
- (c) Such delegation will not create an unreasonable burden on any lessee;
- (d) The State agrees to adopt standardized reporting procedures MMS prescribes for royalty and production accounting purposes, unless the State and all affected parties (including MMS) otherwise agree;
- (e) The State agrees to follow and adhere to regulations and guidelines MMS issues under the mineral leasing laws regarding valuation of production; and
- (f) Where necessary for a State to carry out and enforce a delegated activity, the State agrees to enact such laws and promulgate such regulations as are consistent with relevant Federal laws and regulations.

§ 227.107 When will the MMS Director decide whether to approve a State's delegation proposal?



The MMS Director will decide whether to approve your delegation proposal within 90 days after your delegation proposal is considered complete under §227.104. MMS may extend the 90-day period with your written consent.

§ 227.108 How will MMS notify a State of its decision?



MMS will notify you in writing of its decision on your delegation proposal. If MMS approves your delegation proposal, then MMS will hold discussions with you to develop a delegation agreement detailing the functions that you will perform, the standards and requirements you must comply with to perform those functions, and any required transition period.

§ 227.109 What if the MMS Director denies a State's delegation proposal?



If the MMS Director denies your delegation proposal, MMS will state the reasons for denial. MMS also will inform you in writing of the conditions you must meet to receive approval. You may submit a new delegation proposal at any time following a denial.

§ 227.110 When and for how long are delegation agreements effective?



(a) Delegation agreements are effective for 3 years from the date the MMS Director signs the delegation agreement. However, during the development of the State's delegation proposal under §227.108 of this part, MMS, the delegated State, and any other affected person will determine an appropriate transition period for lessees and their designees to modify their systems to comply with any new requirements under a delegation agreement. MMS will publish notice of the effective date of a State's delegation agreement in the Federal Register and that notice will inform lessees and their designees of any transition period. MMS also will post the proposals on the MMS Website at www.mms.gov, and upon request, will send a copy of the delegation proposals to trade associations to distribute to their members.

(b) You may ask MMS to renew the delegation for an additional 3 years no less than 6 months before your 3-year delegation agreement expires. You must submit your renewal request to the MMS Associate Director for Minerals Revenue Management as follows:

(1) If you do not want to change the terms of your delegation agreement for the renewal period, you need only ask to extend your existing agreement for the 3-year renewal period. MMS will not schedule a hearing unless you request one;

(2) If you want to change the terms of your delegation agreement for the renewal period, you must submit a new delegation proposal under this part.

(c) The MMS Director may approve your renewal request only if MMS determines that you are meeting the requirements of the applicable standards and regulations. If the MMS Director denies your renewal request, MMS will state the reasons for denial. MMS also will inform you in writing of the conditions you must meet to receive approval. You may submit a new renewal request any time after denial.

(d) After the 3-year renewal period for your delegation agreement ends, if you wish to continue performing one or more delegated functions, you must request a new delegation agreement from MMS under this part. MMS will schedule a hearing on your request, if MMS determines a hearing is appropriate. As part of the decision whether to approve your request for a new delegation, the MMS Director will consider whether you are meeting the requirements of the applicable standards and regulations under your existing delegation agreement.

(e) If you do not request a hearing under paragraphs (b)(1) or (d) of this section, any other affected person may submit a written request for a hearing under those paragraphs to the MMS Associate Director for Minerals Revenue Management.

[62 FR 43084, Aug. 12, 1997, as amended at 67 FR 19112, Apr. 18, 2002]

Existing Delegations



§ 227.111 Do existing delegation agreements remain in effect?



This section explains your options if you have a delegation agreement in effect on the effective date of this regulation.

(a) If you do not want to perform any royalty management functions in addition to those authorized under your existing agreement, you may continue your existing agreement until its expiration date. Before the agreement expires, if you wish to continue to perform one or more of the delegated functions you performed under the expired agreement, you must request a new delegation agreement meeting the requirements of this part and the applicable standards.

(b) If you want to perform royalty management functions in addition to those authorized under your existing agreement, you must request a new delegation agreement under this part.

(c) MMS may extend any delegation agreement in effect on the effective date of this regulation for up to 3 years beyond the date it is due to expire.

Compensation



§ 227.112 What compensation will a State receive to perform delegated functions?



You will receive compensation for your costs to perform each delegated function subject to the following conditions:

(a) Compensation for costs is subject to Congressional appropriations;

(b) Compensation may not exceed the reasonably anticipated expenditures that MMS would incur to perform the same function;

(c) The cost for which you request compensation must be directly related to your performance of a delegated function and necessary for your performance of that delegated function;

(d) At a minimum, you must provide vouchers detailing your expenditures quarterly during the fiscal year. However, you may agree to provide vouchers on a monthly basis in your delegation agreement;

(e) You must maintain adequate books and records to support your vouchers;

(f) MMS will pay you quarterly or monthly during the fiscal year as stated in your delegation agreement; and

(g) MMS may withhold compensation to you for your failure to properly perform any delegated function as provided in section 227.801 of this part.

States' Responsibilities To Perform Delegated Functions



§ 227.200 What are a State's general responsibilities if it accepts a delegation?



For each delegated function you perform, you must:

(a) Operate in compliance with all Federal laws, regulations, and Secretarial and MMS determinations

and orders relating to calculating, reporting, and paying mineral royalties and other revenues. You must seek information or guidance from MMS regarding new, complex, or unique issues. If MMS determines that written guidance or interpretation is appropriate, MMS will provide the guidance or interpretation in writing to you and you must follow the interpretation or guidance given;

(b) Comply with Generally Accepted Accounting Principles (GAAP). You must:

- (1) Provide complete disclosure of financial results of activities;
- (2) Maintain correct and accurate records of all mineral-related transactions and accounts;
- (3) Maintain effective controls and accountability;
- (4) Maintain a system of accounts that includes a comprehensive audit trail so that all entries may be traced to one or more source documents; and
- (5) Maintain adequate royalty and production information for royalty management purposes;

(c) Assist MMS in meeting the requirements of the Government Performance and Results Act (GPRA) as well as assisting in developing and endeavoring to comply with the MMS Strategic Plan and Performance Measurements;

(d) Maintain all records you obtain or create under your delegated function, such as royalty reports, production reports, and other related information. You must maintain such records in a safe, secure manner, including taking appropriate measures for protecting confidential and proprietary information and assisting MMS in responding to Freedom of Information Act requests when necessary. You must maintain such records for at least 7 years;

(e) Provide reports to MMS about your activities under your delegated functions. MMS will specify in your delegation agreement what reports you must submit and how often you must submit them. At a minimum, you must provide periodic statistical reports to MMS summarizing the activities you carried out, such as:

- (1) Production and royalty reports processed;
- (2) Erroneous reports corrected;
- (3) Results of automated verification findings;
- (4) Number of audits performed; and
- (5) Enforcement documents issued.

(f) Assist MMS in maintaining adequate reference, royalty, and production databases as provided in the *Standards* issued under §227.201 of this part and the delegation agreement;

(g) Develop annual work plans that:

- (1) Specify the work you will perform for each delegated function; and
- (2) Identify the resources you will commit to perform each delegated function;

(h) Help MMS respond to requests for information from other Federal agencies, Congress, and the public;

(i) Cooperate with MMS's monitoring of your delegated functions; and

(j) Comply with the *Standards* as required under §227.201 of this part.

§ 227.201 What standards must a State comply with for performing delegated functions?



- (a) If MMS delegates royalty management functions to you, you must comply with the *Standards*. The *Standards* explain how you must carry out the activities under each of the delegable functions.
- (b) Your delegation agreement may include additional standards specifically applicable to the functions delegated to you.
- (c) Failure to comply with your delegation agreement, the *Standards*, or any of the specific standards and requirements in the delegation agreement, is grounds for termination of all or part of your delegation agreement, or other actions as provided under §§227.801 and 227.802.
- (d) MMS may revise the *Standards* and will provide notice of those changes in the Federal Register. You must comply with any changes to the *Standards*.

§ 227.300 What audit functions may a State perform?



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An audit consists of an examination of records to verify that royalty reports and payments accurately reflect actual production, sales, revenues and costs, and compliance with Federal statutes, regulations, lease terms, and MMS policy determinations.

- (a) If you request delegation of audit functions, you must perform at least the following:
- (1) Submitting requests for records;
 - (2) Examining royalty and production reports;
 - (3) Examining lessee production and sales records, including contracts, payments, invoices, and transportation and processing costs to substantiate production and royalty reporting;
 - (4) Providing assistance to MMS for appealed demands or orders, including preparing field reports, performing remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.
- (b) If necessary for a particular audit, you may also perform any of the following:
- (1) Issuing engagement letters;
 - (2) Arranging for entrance conferences;
 - (3) Scheduling site visits; and
 - (4) Issuing record releases and audit closure letters; and
 - (5) Holding closeout conferences.

§ 227.301 What are a State's responsibilities if it performs audits?



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If you perform audits you must:

- (a) Comply with the *MMS Audit Procedures Manual* and the *Government Auditing Standards* issued by the Comptroller General of the United States;
- (b) Follow the MMS Annual Audit Work Plan and 5-year Audit Strategy, which MMS will develop in consultation with States having delegated audit authority;
- (c) Agree to undertake special audit initiatives MMS identifies targeting specific royalty issues, such as valuation or volume determinations;
- (d) Prepare, construct, or compile audit work papers under the appropriate procedures, manuals, and

guidelines;

(e) Prepare and submit MMS Audit Work Plans. You may modify your Audit Work Plans with MMS approval; and

(f) Comply with procedures for appealed demands or orders, including meeting timeframes, supplying information, and using the appropriate format.

§ 227.400 What functions may a State perform in processing production reports or royalty reports?



Production reporters or royalty reporters provide production, sales, and royalty information on mineral production from leases that must be collected, analyzed, and corrected.

(a) If you request delegation of either production report or royalty report processing functions, you must perform at least the following:

(1) Receiving, identifying, and date stamping production reports or royalty reports;

(2) Processing production or royalty data to allow entry into a data base;

(3) Creating copies of reports by means such as electronic imaging;

(4) Timely transmitting production report or royalty report data to MMS and other affected Federal agencies as provided in your delegation agreement and the *Standards* ;

(5) Providing training and assistance to production reporters or royalty reporters;

(6) Providing production data or royalty data to MMS and other affected Federal agencies; and

(7) Providing assistance to MMS for appealed demands or orders, including meeting timeframes, supplying information, using the appropriate format, performing remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.

(b) If you request delegation of either production report or royalty report processing functions, or both, you may perform the following functions:

(1) Granting exceptions from reporting and payment requirements for marginal properties; and

(2) Approving alternative royalty and payment requirements for unit agreements and communitization agreements.

(c) You must provide MMS with a copy of any exceptions from reporting and payment requirements for marginal properties and any alternative royalty and payment requirements for unit agreements and communitization agreements you approve.

§ 227.401 What are a State's responsibilities if it processes production reports or royalty reports?



In processing production reports or royalty reports you must:

(a) Process reports accurately and timely as provided in the *Standards* and your delegation agreement;

(b) Identify and resolve fatal errors to use in subsequent error correction that the State or MMS performs;

(c) Accept multiple forms of electronic media from reporters, as MMS specifies;

- (d) Timely transmit required production or royalty data to MMS and other affected Federal agencies;
- (e) Access well, lease, agreement, and reporter reference data from MMS and provide updated information to MMS;
- (f) For production reports, maintain adequate system software edits to ensure compliance with the provisions of 30 CFR part 210—Forms and Reports, the MMS *Minerals Production Reporter Handbook* , any interagency memorandum of understanding to which MMS is a party, and the *Standards* ;
- (g) For royalty reports, maintain adequate system software edits to ensure compliance with the provisions of 30 CFR part 218, the *Oil and Gas Payor Handbook, Volume II*, “Dear Payor” letters, and the *Standards* ; and
- (h) Comply with the procedures for appealed demands or orders, including meeting timeframes, supplying information, and using the appropriate format.

[62 FR 43084, Aug. 12, 1997, as amended at 67 FR 19112, Apr. 18, 2002; 73 FR 15898, Mar. 26, 2008]

§ 227.500 What functions may a State perform to ensure that reporters correct erroneous report data?



Production data and royalty data must be edited to ensure that what is reported is correct, that disbursement is made to the proper recipient, and that correct data are used for other functions, such as automated verification and audits. If you request delegation of error correction functions for production reports or royalty reports, or both, you must perform at least the following:

- (a) Correcting all fatal errors and assigning appropriate confirmation indicators;
- (b) Verifying whether production reports are missing;
- (c) Contacting production reporters or royalty reporters about missing reports and resolving exceptions;
- (d) Documenting all corrections made, including providing production reporters or royalty reporters with confirmation reports of any changes;
- (e) Providing training and assistance to production reporters or royalty reporters;
- (f) Issuing notices, orders to report, and bills as needed, including, but not limited to, imposing assessments on a person who chronically submits erroneous reports; and
- (g) Providing assistance to MMS for appealed demands or orders, including preparing field reports, performing remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.

§ 227.501 What are a State's responsibilities to ensure that reporters correct erroneous data?



To ensure the correction of erroneous data, you must:

- (a) Ensure compliance with the provisions of 30 CFR parts 216 and 218, any applicable handbook specified under 30 CFR 227.401 (f) and (g), interagency memorandums of understanding to which MMS is a party, and the *Standards* ;
- (b) Ensure that reporters accurately and timely correct all fatal errors as designated in the *Standards*. These errors include, for example, invalid or incorrect reporter/payor codes, incorrect lease/agreement numbers, and missing data fields;
- (c) Submit accepted and corrected lines to MMS to allow processing in a timely manner as provided in the *Standards* and 30 CFR part 219; and

(d) Comply with the procedures for appealed demands or orders, including meeting timeframes, supplying information, and using the appropriate format.

[62 FR 43064, Aug. 12, 1997, as amended at 67 FR 19112, Apr. 18, 2002]

§ 227.600 What automated verification functions may a State perform?



Automated verification involves systematic monitoring of production and royalty reports to identify and resolve reporting or payment discrepancies. States may perform the following:

(a) Automated comparison of sales volumes reported by royalty reporters to sales and transfer volumes reported by production reporters. If you request delegation of automated comparison of sales and production volumes, you must perform at least the following functions:

- (1) Performing an initial sales volume comparison between royalty and production reports;
- (2) Performing subsequent comparisons when reporters adjust royalty or production reports;
- (3) Checking unit prices for reasonable product valuation based on reference price ranges MMS provides;
- (4) Resolving volume variances using written correspondence, telephone inquiries, or other media;
- (5) Maintaining appropriate file documentation to support case resolution; and
- (6) Issuing orders to correct reports or payments;

(b) Any one or more of the following additional automated verification functions:

- (1) Verifying compliance with lease financial terms, such as payment of rent, minimum royalty, and advance royalty;
- (2) Identifying and resolving improper adjustments;
- (3) Identifying late payments and insufficient estimates, including calculating interest owed to MMS and verifying payor-calculated interest owed to MMS;
- (4) Calculating interest due to a lessee or its designee for an adjustment or refund, including identifying overpayments and excessive estimates;
- (5) Verifying royalty rates; and
- (6) Verifying compliance with transportation and processing allowance limitations;

(c) Issuing notices and bills associated with any of the functions under paragraphs (a) and (b) of this section; and

(d) Providing assistance to MMS for any of these delegated functions on appealed demands or orders, including meeting timeframes, supplying information, using the appropriate format, taking remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.

§ 227.601 What are a State's responsibilities if it performs automated verification?



To perform automated verification of production reports or royalty reports, you must:

(a) Verify through research and analysis all identified exceptions and prepare the appropriate billings, assessment letters, warning letters, notification letters, Lease Problem Reports, other internal forms required, and correspondence required to perform any required follow-up action for each function, as

specified in the *Standards* or your delegation agreement;

(b) Resolve and respond to all production reporter or royalty reporter inquiries;

(c) Maintain all documentation and logging procedures as specified in the *Standards* or your delegation agreement;

(d) Access well, lease, agreement, and production reporter or royalty reporter reference data from MMS and provide updated information to MMS; and

(e) Comply with procedures for appealed demands and orders, including meeting time frames, supplying information, and using the appropriate format.

§ 227.700 What enforcement documents may a State issue in support of its delegated function?



This section explains what enforcement actions you may take as part of your delegated functions.

(a) You may issue demands, subpoenas, and orders to perform restructured accounting, including related notices to lessees and their designees. You also may enter into tolling agreements under section 15(d)(1) of the Act, 30 U.S.C. 1725(d)(1).

(b) When you issue any enforcement document you must comply with the requirements of section 115 of the Act, 30 U.S.C. 1725.

(c) When you issue a demand or enter into a tolling agreement under section 15(d)(1) of the Act, 30 U.S.C. 1725(d)(1), the highest State official having ultimate authority over the collection of royalties or the State official to whom that authority has been delegated must sign the demand or tolling agreement.

(d) When you issue a subpoena or order to perform a restructured accounting you must:

(1) Coordinate with MMS to ensure identification of issues that may concern more than one State before you issue subpoenas and orders to perform restructured accounting; and

(2) Ensure that the highest State official having ultimate authority over the collection of royalties signs any subpoenas and orders to perform restructured accounting, as required under section 115 of the Act, 30 U.S.C. 1725. This official may not delegate signature authority to any other person.

Performance Review



§ 227.800 How will MMS monitor a State's performance of delegated functions?



This section explains MMS's procedures for monitoring your performance of any of your delegated functions.

(a) A monitoring team of MMS officials will annually review your performance of the delegated functions and compliance with your delegation agreement, the *Standards*, and 30 U.S.C. 1735, including conducting fiscal examination to verify your costs for reimbursement.

(b) The monitoring team also will:

(1) Periodically review your statistical reports required under §227.200(e) to verify your accuracy, timeliness, and efficiency;

(2) Check for timely transmittal of production report or royalty report information to MMS and other affected agencies, as applicable, to allow for proper disbursement of funds and processing of

information;

(3) Coordinate on-site visits and Office of the Inspector General, General Accounting Office, and MMS audits of your performance of your delegated functions; and

(4) Maintain reports of its monitoring activities.

§ 227.801 What if a State does not adequately perform a delegated function?



If your performance of the delegated function does not comply with your delegation agreement, or the *Standards*, or if MMS finds that you can no longer meet the statutory requirements under §227.106, then MMS may:

(a) Notify you in writing of your noncompliance or inability to comply. The notice will prescribe corrective actions you must take, and how long you have to comply. You may ask MMS for an extension of time to comply with the notice. In your extension request you must explain why you need more time; and

(b) If you do not take the prescribed corrective actions within the time that MMS allows in a notice issued under paragraph (a) of this section, then MMS may:

(1) Initiate proceedings under §227.802 to terminate all or a part of your delegation agreement;

(2) Withhold compensation provided to you under §227.112; and

(3) Perform the delegated function, before terminating or without terminating your delegation agreement, including, but not limited to, issuing a demand or order to a Federal lessee, or its designee, or any other person when:

(i) Your failure to issue the demand or order would result in an underpayment of an obligation due MMS; and

(ii) The underpayment would go uncollected without MMS intervention.

§ 227.802 How will MMS terminate a State's delegation agreement?



This section explains the procedures MMS will use to terminate all or a part of your delegation agreement:

(a) MMS will notify you in writing that it is initiating procedures to terminate your delegation agreement;

(b) MMS will provide you notice and opportunity for a hearing under §227.803 of this part;

(c) The MMS Director, with concurrence from the Secretary, will decide whether to terminate your delegation agreement.

(d) After the hearing, MMS may:

(1) Terminate your delegation agreement; or

(2) Allow you 30 days to correct any remaining deficiencies. If you do not correct the deficiency within 30 days, MMS will terminate all or a part of your delegation agreement.

(e) MMS will determine the date your agreement is terminated and will notify you of that date in writing. MMS will determine the termination date based on the number of delegated functions and the impact of the termination on all affected parties.

§ 227.803 What are the hearing procedures for terminating a State's delegation agreement?



- (a) The MMS Director will appoint a hearing official to conduct one or more public hearings for fact finding and to determine any actions you must take to correct the noncompliance. The hearing official will not decide whether to terminate your delegation agreement;
- (b) The hearing official will contact you about scheduling a hearing date and location;
- (c) The hearing official will publish notice of the hearing in the Federal Register and other appropriate media within your State;
- (d) At the hearing, you will have an opportunity to present testimony and written information on your ability to perform your delegated functions as required under this part, your delegation agreement, and the *Standards* ;
- (e) Other persons may attend the hearing and may present testimony and written information for the record;
- (f) MMS will record the hearing;
- (g) After the hearing, MMS may require you to submit additional information; and
- (h) Information presented at each public hearing will help MMS to determine whether:
 - (1) You have complied with the terms and conditions of your delegation agreement; or
 - (2) You have the capability to comply with the requirements under §227.106 of this part.

§ 227.804 How else may a State's delegation agreement terminate?



You may request MMS to terminate your delegation at any time by submitting your written notice of intent 6 months prior to the date on which you want to terminate. MMS will determine the date your agreement is terminated and will notify you of that date in writing. MMS will determine the termination date based on the number of delegated functions and the impact of the termination on all affected parties.

§ 227.805 How may a State obtain a new delegation agreement after termination?



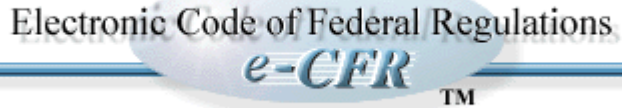
After your delegation agreement is terminated, you may apply again for delegation by beginning with the proposal process under this part.

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PART 228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES

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Authority: Sec. 202, Pub. L. 97–451, 96 Stat. 2457 (30 U.S.C. 1732).

Source: 49 FR 37348, Sept. 21, 1984, unless otherwise noted.

Subpart A—General Provisions



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§ 228.1 Purpose.



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It is the purpose of cooperative agreements to effectively utilize the capabilities of the States and Indian

tribes in developing and maintaining an efficient and effective Federal royalty management system as indicated at 30 U.S.C. 1701.

§ 228.2 Policy.



It shall be the policy of DOI to enter into cooperative agreements with States and Indian tribes to carry out audits and related investigations and enforcement actions whenever a State or tribe initiates a request to enter into an agreement and a finding is made that a State or tribe has the ability to carry out cooperative activities in a timely and efficient manner.

§ 228.3 Limitation on applicability.



As of the effective date of this rule, September 11, 1997, this part does not apply to Federal lands.

[62 FR 43091, Aug. 12, 1997]

§ 228.4 Authority.



The Secretary of the Interior is authorized to enter into cooperative agreements with States and Indian tribes (30 U.S.C. 1732) to share oil or gas royalty management information, and to carry out auditing and related investigation or enforcement activities in cooperation with the Secretary.

§ 228.5 Delegation of authority.



(a) Authority to enter into cooperative agreements to carry out audit and related investigation and enforcement activities with State and tribal governments has been delegated to the Director of the Minerals Management Service (MMS).

(b) Authority to enter into cooperative agreements with State and tribal governments to carry out inspection and related investigation and enforcement activities has been delegated to the Director of the Bureau of Land Management (BLM) and is not covered by this part.

(c) The entry into a cooperative agreement with either MMS or BLM will not affect the ability of a State or Indian tribe to choose to enter into such an agreement with the other agency. A State may enter into a delegation agreement (30 U.S.C. 1735) with MMS to perform certain functions without affecting its ability to enter into a cooperative agreement with either MMS or BLM, or both, to cooperate in the performance of those functions which are not delegated in this part.

§ 228.6 Definitions.



For the purposes of this part, terms shall have the same meaning as in 30 U.S.C. 1702. In addition, the following definition shall apply:

Audit means an examination of the financial accounting and lease related records of the lessee and other interest holders, who by lease or contract pay royalties or are obligated to pay royalties, rents, bonuses or other payments on Federal or Indian leases. An examination is to be conducted in accordance with generally accepted audit standards as adopted by the American Institute of Certified Public Accountants. Activities to be examined which are considered to be an audit function include reconciliation of lease accounts under the Royalty Accounting System; records of lease activities related to Federal leases located within the boundaries of the State entering into a cooperative agreement; records of lease activities related to leases located on Indian lands, and the review and resolution of exceptions processed by the official accounting systems for royalty reporters and payors maintained by

the MMS.

[49 FR 37348, Sept. 21, 1984, as amended at 67 FR 19112, Apr. 18, 2002]

§ 228.10 Information collection.



(a) The information collection requirements contained in this part have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned OMB Clearance Number 1010–0087. The information collected will be used to prepare a cooperative agreement with a State or Indian tribe wishing to perform royalty audits. The information should be submitted voluntarily in order to enter into a cooperative agreement authorized by 30 U.S.C. 1732.

(b) Public reporting burden is estimated to average 136 hours for the preparation of the original request for consideration and application to enter into a cooperative agreement. Subsequent requests for renewal of the agreement may require about 40 hours for the preparation of an annual budget and work plan, and an estimated 8 hours per quarter for preparation of a reimbursement voucher and an audit progress report. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, to the Information Collection Clearance Officer, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 1010–0087, Washington, DC 20503.

[57 FR 41868, Sept. 14, 1992, as amended at 58 FR 64903, Dec. 10, 1993]

Subpart B—Oil and Gas, General [Reserved]



Subpart C—Oil and Gas, Onshore



§ 228.100 Entering into an agreement.



(a) A State or Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from the governor, tribal chairman, or other appropriate official with delegation authority, to the Director of MMS.

(b) The request for an agreement shall be in a format prescribed by MMS and should include at a minimum the following information:

(1) Type of eligible activities to be undertaken.

(2) Proposed term of the agreement.

(3) Evidence that the State or Indian tribe meets, or can meet by the time the agreement is in effect, the standards established by the Secretary for the types of activities to be conducted under the terms of the agreement.

(4) If the State is proposing to undertake activities on Indian lands located within the State, a resolution from the appropriate tribal council indicating their agreement to delegate to the State responsibilities under the terms of the cooperative agreement for activities to be conducted on tribal or allotted land.

(c) The eligible activities to be conducted under the terms of a cooperative agreement may be funded or unfunded by the Department. See §228.105 of this subpart for funding of cooperative agreements.

[49 FR 37348, Sept. 21, 1984, as amended at 56 FR 10512, Mar. 13, 1991]

§ 228.101 Terms of agreement.



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(a) Agreements entered into under this part shall be valid for a period of 3 years and shall be renewable or additional consecutive 3-year periods upon request of the State or Indian tribe which is a party to the agreement.

(b) An agreement may be terminated at any time by mutual agreement and upon any terms and conditions as agreed upon by the parties.

(c) A State or Indian tribe may unilaterally terminate an agreement by giving a 120-day written notice of intent to terminate.

(d) The MMS may commence termination of an agreement by giving a 120-day written notice of intent to terminate. MMS shall provide the State or Indian tribe with the reasons for the proposed termination in writing if the termination is proposed because of alleged deficiencies by the State or Indian tribe in carrying out the provisions of the agreement. The State or Indian tribe will be given 60 days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies. No final action on termination shall be taken until any submission of the State or Indian tribe provided within the above prescribed 60 days has been reviewed by MMS for content or merit.

(e) Termination of a cooperative agreement shall not bar a later request by a State or Indian tribe to enter into a subsequent cooperative agreement.

§ 228.102 Establishment of standards.



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The MMS, after consultation with States and Indian tribes, shall establish standards for carrying out the activities under the provisions of this part. The standards will be incorporated into the agreement and shall be no more stringent than those applicable to similar activities of the MMS. The States and Indian tribes shall coordinate their planned auditing activities with MMS. Where an MMS audit team is permanently assigned to a lessee/payor, contact by State and Indian tribal auditors with the lessee/payor shall be through the MMS auditor in residence.

§ 228.103 Maintenance of records.



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(a) The State or Indian tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup materials for a period specified by MMS. All records and support materials must be available for inspection and review by appropriate personnel of the Department including the Office of the Inspector General.

(b) The State or Indian tribe shall maintain all books and records as may be necessary to assure compliance with the provisions of chapter 1, 48 CFR 31.107 and 48 CFR subpart 31.6 (Contracts with State, local, and federally recognized Indian tribal Governments).

[56 FR 10512, Mar. 13, 1991]

§ 228.104 Availability of information.



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(a) Under the provisions of this part, information necessary to carry out the activities authorized under the terms of a cooperative agreement will be provided by DOI to the States and Indian tribes entering into such agreements. The information will consist of data provided from all relevant sources on a lease level basis for leases located within the boundaries of the State or Indian tribe which has entered into the agreement. This information will include any records or data held by the lessee or other person that have not been submitted to MMS, but that affect Federal lease interests and could be required to be submitted under the lease terms or Federal regulations.

(b) None of the provisions of this subpart should be construed as limiting information already being provided to Indian tribes and allottees regarding their lease interests.

(c) Information will be provided by MMS on a monthly basis and will include data on royalties, rents, and bonuses collected on the lease, volumes produced, sales made, value of products disposed of as a sale and used as a basis for royalty calculation, and other information necessary to allow the State or tribe to carry out its responsibilities under the cooperative agreement.

(d) Proprietary data that is made available to a State or tribe under provisions of 30 U.S.C. 1733 shall be subject to the constraints of 18 U.S.C. 1905. To receive proprietary data, the State or tribe must—

(1) Demonstrate what audit, investigation, or litigation under provisions of 30 U.S.C. 1734 is planned for or underway for which this data is essential;

(2) Demonstrate why this particular data is necessary; and

(3) Agree to safeguard proprietary data as provided.

§ 228.105 Funding of cooperative agreements.



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(a)(1) The Department may, under the terms of the cooperative agreement, reimburse the State or Indian tribe up to 100 percent of the costs of eligible activities. Eligible activities will be agreed upon annually upon the submission and approval of a workplan and funding requirement.

(2) A cooperative agreement may be entered into with a State or Indian tribe, upon request, without a requirement for reimbursement of costs by the Department.

(b) All cooperative agreements under this part are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

(c) The State or Indian tribe shall submit a voucher for reimbursement of eligible costs incurred within 30 days of the end of each calendar quarter. The State or Indian tribe must provide the Department a summary of costs incurred, for which the State or Indian tribe is seeking reimbursement, with the voucher.

[49 FR 37348, Sept. 21, 1984, as amended at 56 FR 10512, Mar. 13, 1991]

§ 228.107 Eligible cost of activities.



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(a) If a cooperative agreement provides for Federal funding, only costs directly associated with eligible activities undertaken by the State or Indian tribe under the terms of a cooperative agreement will be eligible for reimbursement. Costs of services or activities which cannot be directly related to the support of activities specified in the agreement will not be eligible for Federal funding or for inclusion in the State's share or in the Indian tribe's share of funding that may be established in the agreement.

(b) Eligible costs are the cost of salaries and benefits associated with technical, support, and clerical personnel engaged in eligible activities; direct cost of travel, rentals, and other normal administrative activities in direct support of the project or projects; basic and specialized training for State and tribal participants; and cost of any contractual services which can be shown to be in direct support of the activities covered by the agreement. Each cooperative agreement shall contain detailed schedules identifying those activities and costs which qualify for funding and the procedures, timing, and mechanics for implementing Federal funding.

[49 FR 37348, Sept. 21, 1984, as amended at 56 FR 10512, Mar. 13, 1991]

§ 228.108 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.



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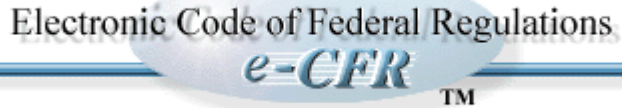
As provided at 30 U.S.C. 1736, 50 percent of any civil penalty collected as a result of activities under a cooperative agreement will be shared with the State or Indian tribe performing the cooperative agreement; however, the amount of the civil penalty shared will be deducted from any Federal funding owed under that cooperative agreement. MMS shall maintain records of civil penalties collected and distributed to the States and tribes involved in cooperative agreements. Each quarterly payment of the Federal share of a cooperative agreement will be reduced by the amount of the civil penalties paid to the State or tribe during the prior quarter.

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PART 229—DELEGATION TO STATES

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Authority: 30 U.S.C. 1735.

Subpart A—General Provisions



Source: 49 FR 37350, Sept. 21, 1984, unless otherwise noted.

§ 229.1 Purpose.



The purpose of this part is to promote the effective utilization of the capabilities of the States in developing and maintaining an efficient and effective Federal royalty management system.

§ 229.2 Policy.



It shall be the policy of the Department of the Interior (DOI) to honor any properly made petition from the Chief Executive or other appropriate official of a State seeking delegation of authority under the provisions of 30 U.S.C. 1735 and to make a delegation to conduct audits and related investigations when the Secretary finds that the provisions of 30 U.S.C. 1735 have been complied with or can be complied with by a State seeking the delegation.

§ 229.3 Limitation on applicability.



As of the effective date of this rule, September 11, 1997, this part does not apply to Federal lands.

[62 FR 43091, Aug. 12, 1997]

§ 229.4 Authority.



The Secretary of the DOI is authorized under provisions of 30 U.S.C. 1735 to delegate authority to States to conduct audits and related investigations with respect to all Federal lands within a State, and to those Indian lands to which a State has received permission from the respective Indian tribe(s) or allottee(s) to carry out audit activities under a delegation from the Secretary.

§ 229.6 Definitions.



The definitions contained in 30 U.S.C. 1702 and in part 228 of this chapter apply to the activities carried out under the provisions of this part.

§ 229.10 Information collection requirements.



The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

Subpart B—Oil and Gas, General [Reserved]



Subpart C—Oil and Gas, Onshore



Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Administration of Delegations



§ 229.100 Authorities and responsibilities subject to delegation.



(a) All or part of the following authorities and responsibilities of the Secretary under the Act may be delegated to a State authority:

(1) Conduct of audits related to oil and gas royalty payments made to the MMS which are attributable to leased Federal or Indian lands within the State. Delegations with respect to any Indian lands require the written permission, subject to the review of the MMS, of the affected Indian tribe or allottee.

(2) Conduct of investigations related to oil and gas royalty payments made to the MMS which are attributable to leased Federal lands or Indian lands within the State. Delegation with respect to any Indian lands require the written permission, subject to the review of the MMS, of the affected Indian tribe or allottee. No investigation will be initiated without the specific approval of the MMS or the Secretary's designee and in accordance with the Departmental Manual.

(b) The following authorities and responsibilities are specifically reserved to the MMS and are not delegable under these regulations:

(1) Enforcement actions to assess and collect additional royalties identified as a consequence of audits, inspections, and investigations. These include all actions related to resolution of royalty obligations so identified, and the establishment and maintenance of payment performance bonds which may be required during the resolution process.

(2) Enforcement actions to collect civil penalties and interest charges related to findings of audits, inspections, and investigations.

(3) Administration of all appeals and all actions of the Department related to administrative and judicial litigation.

(4) Issuance of subpoenas.

(c) The provisions of this section do not limit the authority provided to the States by section 204 of the Act.

[49 FR 40026, Oct. 12, 1984]

§ 229.101 Petition for delegation.



(a) The governor or other authorized official of any State which contains Federal oil and gas leases, or Indian oil and gas leases where the Indian tribe and allottees have given the State an affirmative indication of their desire for the State to undertake certain royalty management-related activities on their lands, may petition the Secretary to assume responsibilities to conduct audits and related investigations of royalty related matters affecting Federal or Indian oil and gas leases within the State.

(b) A State may enter into a delegation of authority under this part without affecting a State's ability to enter into a cooperative agreement under Part 228 of this chapter.

(c) The Secretary shall carry out all factfinding and hearings he may decide are necessary in order to approve or disapprove the petition.

(d) In the event that the Secretary denies the petition, the Secretary must provide the State with the specific reasons for denial of the petition. The State will then have 60 days to either contest or correct specific deficiencies and to reapply for a delegation of authority.

[49 FR 37350, Sept. 21, 1984. Redesignated and amended at 49 FR 40025, Oct. 12, 1984]

§ 229.102 Fact-finding and hearings.



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(a) Upon receipt of a petition for delegation from a State, the Secretary shall appoint a representative to conduct a hearing or hearings to carry out factfinding and determine the ability of the petitioning State to carry out the delegated responsibilities requested in accordance with the provisions of this part.

(b) The Secretary's representative, after proper notice in the Federal Register and other appropriate media within the State, shall hold one or more public hearings to determine whether:

(1) The State has an acceptable plan for carrying out delegated responsibilities and if it is likely that the State will provide adequate resources to achieve the purposes of this part (30 U.S.C. 1735);

(2) The State has the ability to put in place a process within 60 days of the grant of delegation which will assure the Secretary that the functions to be delegated to the State can be effectively carried out;

(3) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary in accordance with the requirements at 30 U.S.C. 1735;

(4) The State's plan to carry out the delegated authority will be in accordance with the MMS standards; and

(5) The State's plan to carry out the delegated authority will be coordinated with MMS and the Office of Inspector General audit efforts to eliminate added burden on any lessee or group of lessees operating Federal or Indian oil and gas leases within the State.

(c) A State petitioning for a delegation of authority shall be given the opportunity to present testimony at a public hearing.

[49 FR 37350, Sept. 21, 1984. Redesignated and amended at 49 FR 40025, Oct. 12, 1984]

§ 229.103 Duration of delegations; termination of delegations.



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(a) Delegations of authority shall be valid for a period of 3 years and may be renewable for an additional consecutive 3-year period upon request of the State and after the appropriate factfinding required in §229.101. Delegations are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

(b) A delegation of authority may be terminated at any time and upon any terms and conditions as mutually agreed upon by the parties.

(c) A State may terminate a delegation of authority by giving a 120-day written notice of intent to terminate.

(d) The Department may terminate a delegation of authority when it is determined, after opportunity for a hearing, that the State has failed to substantially comply with the provisions of the delegation of authority.

(e) No action to initiate formal hearing proceedings for termination shall be taken until the Department has notified the State in writing of alleged deficiencies and allowed the State 120 days to correct the deficiencies.

(f) Termination of a delegation shall not bar a subsequent request by a State to regain a delegation of authority.

[49 FR 37351, Sept. 21, 1984, as amended at 49 FR 40025, Oct. 12, 1984]

§ 229.104 Terms of delegation of authority.



Each delegation of authority under this part shall be in writing, shall incorporate all the requirements of this part, and shall specifically include:

- (a) Terms obligating the State to conduct audit and investigative activities for a specific period of time;
- (b) Terms describing the authorities and responsibilities reserved by the MMS, including, but not limited to, those specified under §229.100;
- (c) Terms requiring the State to provide annual audit workplans to include the lease universe by company, or by individual lease accounts, a description of the audit work product(s) to be delivered, and the State resources (staff and otherwise) to be committed to the delegation;
- (d) Terms requiring the State to notify the MMS of any changed circumstances which would affect the State's ability to carry out the terms of the delegation;
- (e) Terms requiring coordination of delegated activities among the State, the MMS, and the land management agencies responsible for management of the leases included in the audit universe;
- (f) Terms requiring the State to maintain and make available to the MMS all audit workpapers, documents, and information gained or developed as a consequence of activities conducted under the delegation;
- (g) Terms obligating the State to adhere to all Federal laws, rules and regulations, and Secretarial determinations and orders relating to the calculation, reporting, and payment of oil and gas royalties, in all activities performed under the delegation.

[49 FR 40026, Oct. 12, 1984]

§ 229.105 Evidence of Indian agreement to delegation.



In the case of a State seeking a delegation of authority for Indian lands as well as Federal lands, the State petition to the Secretary must be supported by an appropriate resolution or resolutions of tribal councils joining the State in petitioning for delegation and evidence of the agreement of individual Indian allottees whose lands would be involved in a delegation. Such evidence shall specifically speak to having the State assume delegated responsibility for specific functions related to royalty management activities.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

§ 229.106 Withdrawal of Indian lands from delegated authority.



If at any time an Indian tribe or an individual Indian allottee determines that it wishes to withdraw from the State delegation of authority in relation to its lands, it may do so by sending a petition of withdrawal to the State. Once the petition has been received, the State shall within 30 days cease all activities being carried out under the delegation of authority on the lands covered by the petition for the tribe or allottee.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

§ 229.107 Disbursement of revenues.



(a) The additional royalties and late payment charges resulting from State audit work done under a delegation of authority shall be collected by MMS. The State's share of any amounts so collected shall be paid to the State in accordance with the provisions of 30 U.S.C. 191 and part 219 of this chapter.

(b) Amounts collected for Indian leases shall be transferred to the appropriate Indian accounts (designated Treasury accounts) managed by the Bureau of Indian Affairs at the earliest practicable date after such funds are received, but in no case later than the last business day of the month in which such funds are received.

(c) MMS shall provide to the State on a monthly basis, an accounting of collections resulting from audit work and enforcement actions resulting from a delegation of authority. Such accounting will identify collections broken down by royalties, penalties and interest paid.

[49 FR 40026, Oct. 12, 1984]

§ 229.108 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.



Fifty percent of any civil penalty resulting from activities under a delegation of authority shall be shared with the delegated State. However, the amount of the civil penalty shared will be deducted from any Federal funding owed under a delegation of authority under the provisions of 30 U.S.C. 1735. MMS shall maintain records of civil penalties collected and distributed to the States involved in 30 U.S.C. 1735 delegations. Each quarterly payment will be reduced by the amount of the civil penalties paid to the delegated State or tribe during the prior quarter.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

§ 229.109 Reimbursement for costs incurred by a State under the delegation of authority.



(a) The Department of the Interior (DOI) shall reimburse the State for 100 percent of the direct cost associated with the activities undertaken under the delegation of authority. The State shall maintain books and records in accordance with the standards established by the DOI and will provide the DOI, on a quarterly basis, a summary of costs incurred for which the State is seeking reimbursement. Only costs as defined under the provisions of 30 U.S.C. 1735 are eligible for reimbursement.

(b) The State shall submit a voucher for reimbursement of costs incurred within 30 days of the end of each calendar quarter.

[49 FR 37351, Sept. 21, 1984]

§ 229.110 Examination of the State activities under delegation.



(a) The Department will carry out an annual examination of the State's delegated activities undertaken under the delegation of authority.

(b) The examination required by this section will consist of a management review and a fiscal examination and evaluation to determine—

(1) That activities being carried out by the State under the delegation of authority meet the standards established by the Department and in particular the provisions of 30 U.S.C. 1735; and

(2) That costs incurred by the State under the delegation of authority are eligible for reimbursement by the Department.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

§ 229.111 Materials furnished to States necessary to perform delegation.



The MMS shall provide to the State all reports, files, and supporting materials within its possession necessary to allow the State to effectively carry out the terms of the delegation specified in §229.104.

[49 FR 40026, Oct. 12, 1984]

Delegation Requirements



Source: Sections 229.120 through 229.126 appear at 49 FR 40026, Oct. 12, 1984, unless otherwise noted.

§ 229.120 Obtaining regulatory and policy guidance.



All activities performed by a State under a delegation must be in full accord with all Federal laws, rules and regulations, and Secretarial and agency determinations and orders relating to the calculation, reporting, and payment of oil and gas royalties. In those cases when guidance or interpretations are necessary, the State will direct written requests for such guidance or interpretation to the appropriate MMS officials. All policy and procedural guidance or interpretation provided by the MMS shall be in writing and shall be binding on the State.

§ 229.121 Recordkeeping requirements.



(a) The State shall maintain in a safe and secure manner all records, workpapers, reports, and correspondence gained or developed as a consequence of audit or investigative activities conducted under the delegation. All such records shall be made available for review and inspection upon request by representatives of the Secretary and the Department's Office of Inspector General (OIG).

(b) The State must maintain in a confidential manner all data obtained from DOI sources or from payor or company sources under the delegation which have been deemed "confidential or proprietary" by DOI or a company or payor. In this regard, the State regulatory authority shall be bound by provisions of 30 U.S.C. 1733. MMS shall provide to the State guidelines for determining confidential and proprietary material.

(c) All records subject to the requirements of paragraph (a) must be maintained for a 6-year period measured from the end of the calendar year in which the records were created. All dispositions or records must be with the written approval of the MMS. Upon termination of a delegation, the State shall, within 90 days from the date of termination, assemble all records specified in subsection (a), complete all working paper files in accordance with §229.124, and transfer such records to the MMS.

(d) The State shall maintain complete cost records for the delegation in accordance with generally accepted accounting principles. Such records shall be in sufficient detail to demonstrate the total actual costs associated with the project and to permit a determination by MMS whether delegation funds were used for their intended purpose. All such records shall be made available for review and inspection upon request by representatives of the Secretary and the Department's Office of Inspector General (OIG).

§ 229.122 Coordination of audit activities.



(a) Each State with a delegation of authority shall submit annually to the MMS an audit workplan specifically identifying leases, resources, companies, and payors scheduled for audit. This workplan must be submitted 120 days prior to the beginning of each fiscal year. A State may request changes to its workplan (including the companies and leases to be audited) at the end of each quarter of each fiscal year. All requested changes are subject to approval by the MMS and must be submitted in writing.

(b) When a State plans to audit leases of a lessee or royalty payor for which there is an MMS or OIG resident audit team, all audit activities must be coordinated through the MMS or OIG resident supervisor. Such activities include, but are not limited to, issuance of engagement letters, arranging for entrance conferences, submission of data requests, scheduling of audit activities including site visits, submission of issue letters, and closeout conferences.

(c) The State shall consult with the MMS and/or OIG regarding resolution of any coordination problems encountered during the conduct of delegation activities.

§ 229.123 Standards for audit activities.



(a) All audit activities performed under a delegation of authority must be in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" as issued by the Comptroller General of the United States.

(b) The following audit standards also shall apply to all audit work performed under a delegation of authority.

(1) *General standards* —(i) *Qualifications*. The auditors assigned to perform the audit must collectively possess adequate professional proficiency for the tasks required, including a knowledge of accounting, auditing, agency regulations, and industry operations.

(ii) *Independence*. In all matters relating to the audit work, the audit organization and the individual auditors must be free from personal or external impairments to independence and shall maintain an independent attitude and appearance.

(iii) *Due professional care*. Due professional care is to be used in conducting the audit and in preparing related reports.

(iv) *Quality control*. The State governments must institute quality control review procedures to ensure that all audits are performed in conformity with the standards established herein.

(2) *Examination and evaluation standards—Standards and requirements for examination and evaluation*. Auditors should be alert to situations or transactions that could be indicative of fraud, abuse, or illegal acts with respect to the program. If such evidence exists, auditors should forward this evidence to MMS. The MMS will contact the appropriate Federal law enforcement agencies. The scope of examinations are to be governed by the principle of a justifiable relationship between cost and benefit as determined by the auditor or audit supervisor. Audit procedures should reflect the most efficient method of obtaining the requisite degree of satisfaction. The auditor should determine, to the extent possible, the effect on royalty reporting of the non-arms'-length nature of related party transactions, such as transfers of oil to refinery units affiliated with the producer. A review should be made of compliance with the appropriate laws and regulations applicable to program operations. MMS shall issue guidelines as to the definition and nature of arms'-length and non-arms'-length transactions for use in carrying out delegated audit activities.

(3) *Standards of reporting*. (i) Written audit reports are to be submitted to the appropriate MMS officials at the end of each field examination.

(ii) A statement in the auditors' report that the examination was made in accordance with the generally accepted program audit standards (including the applicable General Accounting Office (GAO) standards) for royalty compliance audits should be in the appropriate language to indicate that the audit was made in accordance with this statement of standards.

(iii) The auditor's report should contain a statement of positive assurance on those items tested and negative assurance on those items not tested. It should also include all instances of noncompliance and instances or indications of fraud, abuse, or illegal acts found during or in connection with the audit.

(iv) The auditor's report should contain any other material deficiency identified during the audit not covered in paragraph (b)(3)(iii) of this section.

(v) When factors external to the program and to the auditor restrict the audit or interfere with the auditor's ability to form objective opinions and conclusions (such as denial of access to information by a company), the auditor is to notify the MMS. If the limitation is not removed, a description of the matter must be included in the auditor's report. MMS will take all legally enforceable steps necessary to seek information necessary to complete the audit.

(vi) If certain information is prohibited from general disclosure, the auditor's report should state the nature of the information omitted and the requirement that makes the omission necessary.

(vii) Written audit reports are to be prepared in the format prescribed by the MMS.

(viii) In instances where the extent of the audit findings or the amounts involved do not warrant it, a formal audit report need not be issued. In lieu of an audit report, a memorandum of audit findings will be prepared and placed on the case file.

[49 FR 40026, Oct. 12, 1984, as amended at 58 FR 64903, Dec. 10, 1993]

§ 229.124 Documentation standards.



Every audit performed by a State under a delegation of authority must meet certain documentation standards. In particular, detailed workpapers must be developed and maintained.

(a) *Workpapers* are defined to include all records obtained or created in performing an audit.

(b) Each audit performed varies in scope and detail. As a result, the audit team must determine the best presentation of the workpapers for a particular audit. The following general standards of workpaper preparation are consistent with the goal of achieving proper documentation while maintaining sufficient flexibility.

(1) All relevant information obtained orally must be promptly recorded in writing and incorporated in the workpapers.

(2) Workpapers must be complete and accurate in order to provide support for findings and conclusions.

(3) Workpapers should be clear and understandable without the need for supplementary oral explanations. The information they contain must be clear, complete, and concise, so that anyone using the workpapers will be able to readily determine their purpose, the nature and scope of the work done, and the conclusions drawn.

(4) Workpapers must be legible and as neat as practicable. They must meet standards which allow their use as evidence in judicial and administrative proceedings.

(5) The information contained in workpapers should be restricted to matters which are materially important and relevant to the objectives established for the assignment.

(6) Workpapers must be in sufficient detail to permit a subsequent independent execution of each audit procedure, assuming the target company retains its accounting documentation.

§ 229.125 Preparation and issuance of enforcement documents.



(a) Determinations of additional royalties due resulting from audit activities conducted under a delegation of authority must be formally communicated by the State, to the companies or other payors by an issue letter prior to any enforcement action. The issue letter will serve to ensure that all audit findings are accurate and complete by obtaining advance comments from officials of the companies or payors audited. Issue letters must be prepared in a format specified by the MMS, and transmitted to the company or payor. The company or payor shall be given 30 days from receipt of the letter to respond to the State on the findings contained in the letter.

(b) After evaluating the company or payor's response to the issue letter, the State shall draft a demand letter which will be submitted with supporting workpaper files to the MMS for appropriate enforcement action. Any substantive revisions to the demand letter will be discussed with the State prior to issuance of the letter. Copies of all enforcement action documents shall be provided to the State by MMS upon their issuance to the company or payor.

§ 229.126 Appeals.



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(a) Appeals made pursuant to the rules and procedures at 30 CFR parts 243 and 290 related to demand letters issued by officers of the MMS for additional royalties identified under a delegation of authority shall be filed with the MMS for processing. The State regulatory authority shall, upon the request of the MMS, provide competent and knowledgeable staff for testimony, as well as any required documentation and analyses, in support of the lessor's position during the appeal process.

(b) An affected State, upon the request of the MMS, shall provide expert witnesses from their audit staff for testimony as well as required documentation and analyses to support the Department's position during the litigation of court cases arising from denied appeals. The cost of providing expert witnesses including travel and per diem is reimbursable under the provisions of a delegation of authority, at the Federal Government's existing per diem rates.

§ 229.127 Reports from States.



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The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation. The report shall include:

(a) A statistical summary of the activities carried out, e.g., number of audits performed, accounts reconciled, and other actions taken;

(b) A summary of costs incurred during the previous quarter for which the State is seeking reimbursement; and

(c) A schedule of changes which the State proposes to make from its approved plan.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

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