

## H-3110-1 - NONCOMPETITIVE LEASES

KeywordsV. Rental DeficiencyA. Lease Issuance After Deficiency Paid

If the first year's advance rental for an offer is deficient by not more than 10 percent or \$200, whichever is less, the offer is acceptable and retains its original priority date, all else being regular. The rental deficiency shall be paid before the lease is issued. The full payment of the first year's advance rental is required prior to issuance of the lease by the BLM in order to ensure that a valid lease is entered in the Minerals Management Service (MMS) Data Management Division (DMD) automated system. That is, do not send the lease account information to the MMS-DMD until the full first year's advance rental has been received.

RENTAL  
DEFICIENCY

When the first year's rental is deficient by not more than 10 percent or \$200, whichever is less, prepare a decision advising that the rental deficiency must be paid within 30 days. If the deficient first year's rental is not paid within the time allowed, the offer is to be rejected without further notice with the \$75 filing fee retained (see Illustration 5). Following the 30-day appeal period, if the lands were offered in a competitive lease sale and no bid was received and there are no other remaining offers, the lands remain available for noncompetitive leasing for the remainder of the 2-year period.

RETAIN  
\$75 FILING FEE

There may be some instances where a lease with a rental deficiency has been issued under penalty of cancellation if the rental deficiency is not timely paid in response to a decision. However, in Arden R. Grover, John R. Schumacher, 73 IBLA 308 (1983), the IBLA ruled that the offer should have been rejected and the rental returned in compliance with Section 304(c) of the Federal Land Policy and Management Act because the lessees did not derive any benefit from possession of the lease.

RENTAL PAYMENT  
RETURNED IF  
DEFICIENCY NOT  
TIMELY PAID AFTER  
LEASE ISSUANCE  
AND CANCELLATION

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KeywordsB. Rental Change Due to Acreage Miscalculation

When an increase in the parcel acreage results from a miscalculation by the BLM, causing the parcel acreage to be greater than that indicated in the Notice of Competitive Lease Sale, send a decision to the lessee to request the additional monies to meet the minimum rental amount of \$1.50 per acre or fraction thereof (see Illustration 6). The decision shall include a provision that allows the lessee to request a rejection of the offer if the lessee does not want the lease due to the modified acreage. If the lessee requests rejection of the offer, a full refund of the rental and the \$75 filing fee shall be authorized by the BLM since the error was the fault of the Government. The regulations specify in 43 CFR 3103.2-1(b) that if the acreage in the Notice of Competitive Lease Sale is incorrectly indicated, payment of the additional rental based on the error is curable within 15 calendar days of receipt of the BLM notification.

ACREAGE  
MISCALCULATION  
BY BLM

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KeywordsC. Rental Change Due to Resurvey and Acreage Adjustment

When a corrected acreage is due to a resurvey, any increase or decrease in the acreage shall require a change in the rental amount, beginning with the next lease anniversary date. If the resurvey decreased the acreage, no rental refund shall be made since the acreage in the parcel when the competitive sale was held was based on the "correct" survey/status of the lands at that time and was not a BLM error when the oral auction was held. Similarly, if the resurvey increased the acreage, no additional first year's advance rental shall be requested. In such cases, transmit an accounting advice to the MMS-DMD to reflect the changed lease acreage because of the resurvey, to ensure that the MMS-DMD issues the courtesy billing notice for the changed acreage for the next annual rental cycle. The acreage for the parcel as indicated in the Notice of Competitive stands for the entire 2-year period unless a public notice is issued advising the public of the corrected acreage. Such a notice is to be posted in the BLM State Office Public Room for a period of at least 45 days.

ACREAGE  
ADJUSTMENT  
DUE TO  
RESURVEY

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