

H-3103-1 - FEES, RENTALS, AND ROYALTY

KeywordsVIII. Suspension of Operations and/or ProductionA. General

Under 43 CFR 3103.4-2, a suspension of all operations and production on a lease may be granted only when the authorized officer consents to the suspension in the interest of conservation of natural resources. The authorized officer is responsible for promptly notifying the SO Lease Adjudication for appropriate lease case file processing. Circumstances that normally warrant lease suspensions are addressed in Manual Section 3160-10, Suspension of Operations and/or Production.

SUSPENSION
OF OPERATIONS
AND/OR
PRODUCTION

The Department of the Interior Solicitor's Opinion M-36953, dated May 31, 1985 (92 I.D. 293), clarifies the policy and procedure for the suspension of oil and gas leases, and provides the following interpretation of the lease suspension provisions contained in Sections 39 and 17(i) (Section 17(f) prior to the amendments of the Reform Act) of the Mineral Leasing Act, as amended (30 U.S.C. 209 and 226(i), respectively).

SOLICITOR'S
OPINION ON
LEASE SUSPENSIONS

A suspension of operations and production under Section 39 of the MLA must suspend both operations and production to the extent that the lessee is denied all beneficial use of the lease. Such a suspension stops the running of the lease term and suspends the payment of rental, royalty, or minimum royalty.

SUSPENSION OF
OPERATIONS AND
PRODUCTION -
SECTION 39

A suspension of operations and production under Section 39 is allowed for leases soon to expire that are in areas where the adjacent Federal tracts needed to conduct logical exploration and development are not yet available for lease due to delays in completing the land use planning and associated comprehensive environmental analysis. This BLM policy allows such a lease suspension when the efficient exploration and development of the lease or leases cannot occur due to their proximity, or commingling, with the Federal lands needed to complete lease blocks on a geologic play. The lessee requesting a lease suspension must submit a proposal for the designation of a logical area subject to exploration and development that includes all acreage (leased or otherwise) needed to properly drill and explore the target play. The lessee has the burden of proving that, in order to obtain the greatest ultimate recovery of the oil or gas, it is not logical to proceed with exploration activities on the existing leases without the neighboring unleased Federal tracts. The proposal must contain supporting geologic information, including the results of any geophysical surveys, and other pertinent information.

SUSPENSION OF
OPERATIONS AND
PRODUCTION FOR
LEASES AFFECTED
BY LEASING DELAYS

H-3103-1 - FEES, RENTALS, AND ROYALTY

Keywords

A suspension of operations or a suspension of production under Section 17(i) of the MLA may be approved or directed by the authorized officer where the lessee, despite the exercise of due care and diligence, is prevented from producing or operating by reason of force majeure, i.e., by matters beyond the reasonable control of the lessee. This includes events such as acts of God and an unforeseeable administrative delay that would not qualify the lease for a Section 39 suspension of operations and production in the "interest of conservation." A suspension of operations or a suspension of production also stops the running of the lease term. However, an important distinction between a Section 39 suspension and a Section 17(i) suspension is that a Section 17(i) suspension of operations or suspension of production does not suspend the payment of rental, royalty, or minimum royalty.

SUSPENSION OF
OPERATIONS OR
SUSPENSION OF
PRODUCTION -
SECTION 17(i)

The Reform Act requires that an Application for Permit to Drill (APD) cannot be approved until after a 30-day posting period. The policy in Manual Section 3160-10 provides that lease suspensions shall be given only in the interest of conservation of natural resources or in a force majeure situation, and when the lessee has diligently pursued lease development and has timely filed an application for suspension. Therefore, a lease is not eligible for a suspension of operations and/or production until the end of the 30-day posting period of the APD as required by the Reform Act.

SUSPENSION OF
LEASE NOT
ALLOWED UNTIL
END OF 30-DAY
APD POSTING
PERIOD UNDER
REFORM ACT

The authorized officer may deny a request for a suspension of operations and production where an APD was filed less than 30 days prior to the lease expiration date, but the APD was processed expeditiously and approved prior to the lease expiration date, and thus, there is no basis to conclude that a suspension was necessary in the interest of conservation (NevDak Oil and Exploration, Inc., 104 IBLA 133 (1988)).

If a suspension of operations and/or production is granted for a lease in a unit and the unit is subsequently declared invalid, the suspension of the lease is valid only for the period prior to the unit being declared invalid even if the application for suspension is executed only by the unit operator and not by the lessee. When the unit is declared invalid, the lessee must be notified that the suspension will be ended as of the date the unit is declared invalid, unless the lessee provides justification for continuation of the suspension. The lessee is to be given a reasonable period of time to submit such a justification.

LEASE SUSPENSION
WHEN UNIT
DECLARED INVALID

H-3103-1 - FEES, RENTALS, AND ROYALTY

Keywords

When an oil and gas lease located within a wilderness study area (WSA) was issued after enactment of the Federal Land Policy and Management Act of 1976 (but prior to the statutory prohibition for leasing such WSA lands), and is subject to the wilderness protection stipulation that prohibits impairment of wilderness suitability, when the lessee is denied approval of an APD for failure to meet the nonimpairment standard, the denial is not a restriction tantamount to a suspension of operations and production under 30 U.S.C. 209 (Beartooth Oil and Gas Co., 94 IBLA 115 (1986)).

SUSPENSION
PROVISION
NOT APPLICABLE
WHEN APD NOT
APPROVED DUE
TO WILDERNESS
IMPAIRMENT
RESTRICTION

The existence of litigation involving whether a lease was issued in violation of the National Environmental Policy Act (NEPA) and Section 7 of the Threatened and Endangered Species Act does not amount to the denial of beneficial use of the lease, absent an injunction against activity under the lease. In such a case, the authorized officer properly may deny a request for a lease suspension (Paul C. Kohlman, 111 IBLA 107 (1989)). However, a suspension of operations and production may be granted by the authorized officer for the time needed to comply with NEPA (Stephen G. Moore, 111 IBLA 326 (1989)).

When an appeal is filed on a decision denying a request for a suspension of operations and production, only the effect of the BLM's decision is suspended under 43 CFR 4.21(a), but the lease is not suspended. Although the regulation 43 CFR 4.21(a) provides that the timely filing of a notice of appeal will suspend the effect of the decision under appeal (if a stay is timely requested and granted), this provision does not require the agency to take positive action for the benefit of an appellant. Thus, the pendency of such an appeal does not preclude the BLM from issuing a notice that the lease will expire if the lessee fails to place a well in producing status within 60 days, because the notice will be mooted if the appeal is successful (Prima Exploration, Inc., 96 IBLA 80 (1987)).

APPEAL MADE ON
DENIAL OF REQUEST
FOR LEASE
SUSPENSION DOES
NOT PREVENT LEASE
EXPIRATION

A suspension of operations and/or production may be granted by the authorized officer after the lease expiration date, however, the application for such a suspension must be filed prior to the lease expiration date. Failure to timely file the request for lease suspension results in there being no lease in existence that may be suspended (Mobil Producing Texas and New Mexico, Inc., 99 IBLA 5 (1987)).

H-3103-1 - FEES, RENTALS, AND ROYALTY

B. Suspension of Operations and Production (Section 39) -
Suspension of Lease Term and Rental

Responsible Official	Step	Action	Keywords
SO Fluid Minerals or Field Office Operations	1.	Provide the SO Lease Adjudication a copy of the letter sent to the lessee that a suspension of all operations and production has been granted (see Illustration 14).	NOTIFICATION OF SUSPENSION GRANTED
Adjudication	2.	Prepare a decision to officially inform all record titleholder(s) that the lease term is suspended on the BLM records and no rental will be due until the lease suspension has been lifted (see Illustration 15).	NOTIFY LESSEE OF SUSPENSION
		<u>NOTE:</u> This official decision to the lessee is required even though the Field Office fluid mineral operations staff may already have sent a letter of notification granting the suspension.	
ALMRS Entry	3.	Update ALMRS Entry using the current data standards.	AUTOMATED NOTATION
	3a.	Enter Action Date (MANDATORY ACTION CODE): Effective date of suspension of operations and production with no payment required; DE 1775 Action Code 315/DE 2910 Action Code 676; Action Remarks: Reason for suspension.	
	3b.	Remove DE 1775/2910 Action Code 763. When a lease goes into suspension, the lease expiration date is to be removed.	
Adjudication	4.	Prepare accounting advice to notify the MMS-DMD of the lease suspension and clearly indicate that no rental is due during the period of the suspension (see Illustration 16). Transmit the accounting advice to the MMS-DMD within 5 working days of completing the action.	MMS NOTIFIED OF LEASE SUSPENSION

H-3103-1 - FEES, RENTALS, AND ROYALTY

C. Suspension of Operations and Production (Section 39) -
Lifting of Lease Suspension and Adjustment of Lease Term
and Rental

Responsible Official	Step	Action	Keywords
SO Fluid Minerals or Field Office Operations	1.	Notify the SO Lease Adjudication that the suspension of operations and production on the lease has been ended or lifted (see Illustration 17).	NOTIFICATION OF LIFTING OF SUSPENSION
Adjudication	2.	Prepare a decision officially notifying all lessees of record that the lease suspension has been lifted (see Illustration 18). Indicate the revised lease expiration date and, as appropriate, reconciliation of the rental amount due, prorating as necessary (see Illustration 19) to take the rental due up to the next regular lease anniversary date, since the lease anniversary date never changes (see <u>C.W. Trainer</u> , 69 I.D. 81 (1962)).	LESSEE NOTIFICATION OF LIFTING OF SUSPENSION OF OPERATIONS AND PRODUCTION
	3.	For the lease year in which the suspension was granted, credit the rental paid to the balance of the months that remain in that same lease year, after the suspension is lifted, since the rental has already been paid for that full lease year period.	SUSPENSION LIFTED - CREDIT RENTAL FOR REMAINDER OF LEASE YEAR
	4.	For those leases requiring an escalating rental beginning with the 6th lease year, when a lease is suspended any time during its first 5 years, this 5-year time period does not include those calendar months that elapsed during the period of the lease suspension, i.e., the rental rate remains at \$1.50 per acre for the first full 60 months of the lease term, even though this may occur over more than 5 years of actual elapsed calendar time.	RENTAL CREDIT DURING FIRST 5 YEARS FOR LEASES WITH ESCALATING RENTAL TERMS

H-3103-1 - FEES, RENTALS, AND ROYALTY

Responsible Official	Step	Action	Keywords
	5.	Rental amounts for the suspended portion of any lease year are NOT to be refunded, but are to be retained by the MMS to be applied for the months that remain in that lease year during which the suspension was granted.	RENTAL CREDIT NOT TO BE REFUNDED
	<u>EXAMPLE:</u>	Lease issued 3-1-89, for a 10-year primary term, to expire 2-28-99. Rental was timely paid for the 5th lease year of 3-1-93 to 2-28-94. A suspension of operations and production was granted effective 6-1-93. The suspension was lifted effective 10-1-94. The revised expiration date of the lease is now 6-30-2000, i.e., the expiration date of the lease is extended an additional 16 months to make up for the time the lease was in suspension. The rental paid for the 1993-94 (5th lease year) covers the remaining period of 10-1-94 to 6-30-95 at the \$1.50 per acre rental rate, and the escalating rental for the 8-month period of 7-1-85 through 2-28-96 (to bring the regular rental due date back to the lease anniversary date) is prorated at the \$2 per acre rental rate.	

H-3103-1 - FEES, RENTALS, AND ROYALTY

Responsible

Official

Step

Action

Keywords

EXAMPLE: Lease issued 7-1-90, for a 5-year primary term, to expire 6-30-95. Rental was timely paid for the 4th lease year of 7-1-93 to 6-30-94. A suspension of operations and production was granted effective 4-1-94. The suspension was ended effective 9-1-94. The revised expiration date of the lease is 11-30-95, i.e., the expiration date of the lease is extended an additional 5 months to make up that portion of the primary term while the lease was in suspension. The rental paid for the 1993-94 lease year covers the remaining 3-month period of the 4th lease year from 9-1-94 to 11-30-94. The prorated rental for the 7 months from 12-1-94 through 6-30-95 (to bring the regular rental due date back to the lease anniversary date) is to be requested from the lessee. A full year's rental is due on or before 7-1-95 even though the lease expiration date is 5 months later on 11-30-95.

- 6. In the decision notifying the lessee of the lifting of the suspension, if it is appropriate, also request the next full year's rental to be remitted to the MMS within 30 days. Such a request will depend on the timing of the lifting of the suspension in relation to the lease anniversary date. Also, send a copy of the decision to the MMS-DMD. On the accounting advice sent to the MMS-DMD notifying it of the lifting of the suspension, enter a statement in the Remarks Section that the annual rental of \$_____ for the next lease year was requested by a decision dated (Date) to be paid to the MMS.

SUSPENSION
LIFTED -
REQUEST NEXT
FULL YEAR'S
ANNUAL RENTAL

ACCOUNTING
ADVICE -
NOTIFY MMS-DMD
OF LIFTING OF
SUSPENSION AND
ANNUAL RENTAL
PAYMENT REQUEST

H-3103-1 - FEES, RENTALS, AND ROYALTY

Responsible

OfficialStepActionKeywords

7. Provide the lessee notice of the changed status of the lease, giving 30 days to remit the rental obligation that has accrued, following the principles in Husky Oil Company of Delaware, Depco, Inc., 5 IBLA 7 (1972), That is, the automatic termination provisions of 30 U.S.C. 188 does not apply in this case. Further, the automatic termination of a lease does not apply where, due to other contingencies, additional rental may become due on a date other than the lease anniversary date (see Solicitor's Opinion, M-36458, 64 I.D. 333 (1957)).
8. If, in the above case, the suspension had been lifted sufficiently in advance of the July 1 lease anniversary date, i.e., if suspension was lifted on 1-1-95, the accounting advice to the MMS-DMD is to request the MMS to issue the billing notice for the next annual rental due for the full lease year. This procedure is to be used when sufficient time exists, i.e., at least 120 days, between the MMS receipt of the accounting advice and the next lease anniversary date to ensure adequate time for the MMS lease status to be updated for issuance of the rental billing notice on the normal schedule for the lease.
- SUSPENSION
LIFTED -
REQUEST MMS
TO ISSUE RENTAL
BILLING NOTICE

NOTE: The MMS normally issues rental courtesy notices 75 days prior to the lease anniversary date. To expedite processing by the MMS, the party making rental payments needs to be advised to indicate the lease serial number on the rental remittance.

H-3103-1 - FEES, RENTALS, AND ROYALTY

Responsible Official	Step	Action	Keywords
	9.	If the suspended lease is eliminated or contracted from a unit, or receives an extension due to drilling over the expiration date, the rental may have to be prorated for those months remaining prior to the next regular anniversary date that are during the remainder of the 2-year extension period.	SUSPENSION LIFTED - LEASE ALSO SUBJECT TO 2-YEAR LEASE EXTENSION
		<p><u>EXAMPLE:</u> Lease issued 1-1-83, for 10 years, to expire 12-31-92. The lease is in a unit agreement. The lease was granted a suspension of operations and production effective 12-1-92, that was lifted on 6-1-94. The unit also was terminated on 6-1-94. The revised lease expiration date is now 6-30-94, i.e., 1 month after lifting of the suspension. But, due to the unit termination, the lease is granted a 2-year extension to 6-1-96. Rental paid for the 1992 lease year covers the remaining month in the 10th lease year, through 6-30-94. Rent for the period from 7-1-94 to 12-31-94 is to be requested in the decision notifying the lessee of the lifting of the suspension. The next rental period is to be billed by the MMS that begins 1-1-95 through 12-31-95.</p>	
		<p><u>NOTE:</u> If the lease remains in a rental status for the remainder of its extended term, a full year's rental for the 1-1-96 to 6-1-96 period would be due and payable to the MMS, even though this last year is less than a full year.</p>	

H-3103-1 - FEES, RENTALS, AND ROYALTY

Responsible Official	Step	Action	Keywords
	10.	If a lease is suspended shortly before its expiration date and, after the suspension was lifted, no drilling occurred over the expiration date, if the 6th or 11th year rental has been paid (either before the suspension had been granted or after the suspension had been lifted), such rental is to be authorized for refund. However, if drilling was occurring over the lease expiration date, the 6th or 11th year's rental payment is retained and fully applied.	SUSPENSION LIFTED - REFUND 6TH/11TH YEAR RENTAL IF LEASE NOT EXTENDED DUE TO DRILLING
	11.	Prepare accounting advice to notify the MMS-DMD of the lifting of the suspension and provide appropriate billing notice instructions (see Illustration 20). Transmit accounting advice to the MMS-DMD within 5 working days of completing the action.	NOTIFY MMS-DMD OF LIFTING OF SUSPENSION
ALMRS Entry	12.	Update ALMRS Entry using current data standards.	AUTOMATED NOTATION
		Enter Action Date (MANDATORY ACTION CODE): Date suspension of operations and production lifted (using first day of the month in which the suspension was lifted); DE 1775 Action Code 316/DE 2910 Action Code 678.	
		Enter Action Date (MANDATORY ACTION CODE): Revised date of lease expiration; DE 1775/2910 Action Code 763.	

H-3103-1 - FEES, RENTALS, AND ROYALTY

D. Suspension of Operations Only (Section 17(i)) -
Action on Leases

<u>Responsible Official</u>	<u>Step</u>	<u>Action</u>	<u>Keywords</u>
SO Fluid Minerals or Field Office Operations	1.	Notify the SO Lease Adjudication of the approval of a suspension of operations based on a formal application made under Section 17(i) of the MLA. If the lease is producing, send a copy of the letter to the MMS (see Illustration 21).	NOTIFICATION OF SUSPENSION OF OPERATIONS UNDER SECTION 17(i) OF MLA
ALMRS Entry	2.	Enter Action Date (MANDATORY ACTION CODE): Effective date of suspension of operations only, with payment required; DE 1775 Action Code 314/DE 2910 Action Code 677; Action Remarks: Reason for suspension; General Remarks Indicate suspension of operations only	AUTOMATED NOTATION
Adjudication	3.	File a copy of the notification of lease suspension approval in the case file.	
	4.	Prepare a decision notifying all lessees of record that the suspension of lease operations has been granted.	
	5.	For leases in their extended term by production, the suspension stops the running of the lease term and adds the period of suspension to the term of the lease. No adjustment of the lease term is necessary. The lease simply does not expire or terminate during the period of the suspension of operations. However, any royalty or minimum royalty must continue to be paid.	SUSPENSION OF OPERATIONS - LEASES EXTENDED BY PRODUCTION
	6.	For leases not extended by production, the suspension stops the running of the lease term, and the lease term is adjusted upon the lifting of the suspension. Any payment of rental or minimum royalty must continue to be made.	SUSPENSION OF OPERATIONS - LEASES NOT EXTENDED BY PRODUCTION

H-3103-1 - FEES, RENTALS, AND ROYALTY

Responsible Official	Step	Action	Keywords
	7	No accounting advice is necessary if the lease is producing. However, if the lease is not producing, prepare an accounting advice to the MMS-DMD to place the lease in suspended status (see Illustration 22). Transmit the accounting advice to the MMS-DMD within 5 working days of completing the action.	SUSPENSION OF OPERATIONS - NOTIFY MMS-DMD

H-3103-1 - FEES, RENTALS, AND ROYALTY

E. Suspension of Operations - Adjustment of Lease Term
When Suspension Lifted

Responsible Official	Step	Action	Keywords
SO Fluid Minerals or Field Office Operations	1.	Notify the SO Lease Adjudication when the suspension of operations is lifted. If the lease is producing, also send a copy of the approval notification to the MMS-DMD (see Illustration 23).	NOTIFICATION OF LIFTING OF SUSPENSION OF OPERATIONS
ALMRS Entry	2.	Enter Action Date (MANDATORY ACTION CODE): Date suspension of operations was lifted (using first day of the month in which the suspension was lifted); DE 1775 Action Code 316/DE 2910 Action Code 678.	AUTOMATED NOTATION
Adjudication	3.	File a copy of the notification of lifting of the suspension in the case file.	
	4.	Prepare a notice to all lessees of record to provide the official notification that the lease suspension has been lifted.	
	5.	If the lease is in its extended term by production, no further action is necessary. If the lease is not in its extended term by production, include a paragraph in the notice to the lessee indicating the adjusted lease term (see Illustration 24).	SUSPENSION OF OPERATIONS LIFTED - NOTIFY LESSEE
	6.	If the lease is not producing, prepare an accounting advice to the MMS-DMD indicating the new expiration date (see Illustration 25). Transmit the accounting advice to the MMS-DMD within 5 working days of completing the action.	SUSPENSION OF OPERATIONS LIFTED - NOTIFY MMS-DMD

H-3103-1 - FEES, RENTALS, AND ROYALTY

Responsible

OfficialStep ActionKeywords

- | | | |
|----|--|---|
| 7. | If a lease with the rental escalation to a higher rate after the 5th year is in a rental (terminable) status, and a suspension of only operations is granted during the first 5 years of the primary term, the remainder of the 5-year lease period continues at the lower rental rate when the suspension is lifted. In such cases, the lower rental payment is required to continue during the period of the suspension of operations, and shall continue through the revised date that will end the 5th year of the lease term. | LEASE IN RENTAL STATUS WHEN SUSPENSION GRANTED - REMAINDER OF FIRST 5-YEAR LEASE PERIOD CONTINUES AT LOWER RENTAL RATE WHEN SUSPENSION LIFTED |
|----|--|---|

H-3103-1 - FEES, RENTALS, AND ROYALTY

F. Suspension of Production Only (Section 17(i)) -
Action on Leases

Responsible Official	Step	Action	Keywords
SO Fluid Minerals or Field Office Operations	1.	Notify the SO Lease Adjudication of the approval of a suspension of production based on formal application made under Section 17(i) of the MLA. Also send a copy of the approval notification to the MMS-DMD (see Illustration 26).	NOTIFICATION OF SUSPENSION OF PRODUCTION UNDER SECTION 17(i) OF MLA
ALMRS Entry	2.	Enter Action Date (MANDATORY ACTION CODE): Effective date of suspension of production only, with payment required; DE 1775 Action Code 314/DE 2910 Action Code 677; Action Remarks: Reason for suspension; General Remarks: Indicate suspension of production only.	AUTOMATED NOTATION
Adjudication	3.	File a copy of the notification of lease suspension approval in the case file.	
	4.	Prepare a decision notifying all lessees of record that the suspension of production on the lease has been granted.	
		<u>NOTE:</u> No accounting advice is needed since the lease is in producing (nonterminable) status.	
	5.	If the lease is in its extended term by production, the suspension stops the running of the lease term. No adjustment of the lease term is necessary. The lease simply does not expire or terminate during the period of the suspension of production. However, any royalty or minimum royalty must continue to be paid.	SUSPENSION OF PRODUCTION - LEASES EXTENDED BY PRODUCTION
	6.	If the lease is not in its extended term due to production, the suspension stops the running of the lease term and the lease term is adjusted upon the lifting of the suspension. Any payment of rental or minimum royalty must continue to be made during the suspension period.	SUSPENSION OF PRODUCTION - LEASES NOT IN EXTENDED TERM DUE TO PRODUCTION

H-3103-1 - FEES, RENTALS, AND ROYALTY

G. Suspension of Production - Adjustment of Lease Term
When Suspension Lifted

<u>Responsible Official</u>	<u>Step</u>	<u>Action</u>	<u>Keywords</u>
SO Fluid Minerals or Field Office Operations	1.	Notify the SO Lease Adjudication when the suspension of production is lifted. Send a copy of the notification to the MMS-DMD (see Illustration 27).	NOTIFICATION OF LIFTING OF SUSPENSION OF PRODUCTION
ALMRS Entry	2.	Enter Action Date (MANDATORY ACTION CODE): Date suspension of production was lifted (using the first day of the month in which the suspension was lifted); DE 1775 Action Code 316/DE 2910 Action Code 678.	AUTOMATED NOTATION
Adjudication	3.	File a copy of the notification of lifting of the suspension in the case file.	
	4.	If the lease is in its extended term by production, no further action is necessary.	
	5.	If the lease is not in its extended term by production, prepare a notice to all lessees of record adjusting the lease term (see Illustration 28). Provide a copy of this notification to the MMS-DMD.	SUSPENSION OF PRODUCTION LIFTED - NOTIFY LESSEE