

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

IV. CancellationsKeywordsA. Lessee Defaults or Violations

If the lessee fails to comply with any provisions of the law, regulations, or the terms and conditions of the lease, the lease may be cancelled by the authorized officer if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities. (See 43 CFR 3108.3(a) and 30 U.S.C. 188(b).) The lease cannot be cancelled by the authorized officer if the rights of a bona fide purchaser have intervened (see Section V, below).

CANCELLATION
OF LEASE

The lessee must be allowed 30 days to cure a default before administrative action to cancel the lease is taken by the authorized officer. After 30 days have elapsed from the date of receipt of the decision, if the lessee has failed to take action to correct the default, lease cancellation action is to be taken. No rental refund is due the lessee. After the end of the appeal period, if no appeal has been filed, the lands are available again for lease only through the competitive leasing process in accordance with 43 CFR Part 3120.

CANCELLATION BY
ADMINISTRATIVE
ACTION

If an appeal is timely filed and the IBLA or a Federal Court determines that a lease cancellation is in error, a decision is to be prepared rescinding the decision cancelling the lease (see Illustration 47). The IBLA held in Howard S. Bugbee, 29 IBLA 30 (1977), that cancellation of an oil and gas lease is discretionary and not mandatory, and the lease need not be cancelled because of the failure of the lessee to meet a regulatory requirement that is amended, where there are extenuating circumstances and there is no impairment of third party rights and no adverse impact on the interests of the United States. (See also Merle C. Chambers, 40 IBLA 144 (1979).)

If the lease contains a well capable of production of oil or gas in paying quantities, or if the lease is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities, it may be cancelled only by judicial proceedings in accordance with the provisions of Section 31(a) of the MLA (30 U.S.C. 188(a)). The judicial action must be taken in a Federal district court for the district in which the lands are located.

CANCELLATION
BY JUDICIAL
PROCEEDINGS

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Keywords

If a lease interest is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of the MLA, judicial proceedings in Federal district court are required to cancel such an interest. The judicial action must be taken in a Federal district court for the district in which the lands are located.

CANCELLATION
OF PARTIAL OR
OTHER LEASE
INTERESTS

If less than the whole interest in a lease, interest, or option is cancelled or forfeited and there are valid interests in the lease not subject to cancellation, those cancelled or forfeited interests shall be offered by competitive bidding to the highest responsible qualified bidder. The competitive offering of such interests does not have to be by oral auction, but may be by sealed bid or other appropriate means (see 30 U.S.C. 184(h)(2)). (See Handbook 3120-1, Section III.B.)

A lease or interests therein held by an entity in violation of section 2(a)(2)(A) of the MLA (30 U.S.C. 201(a)(2)(A)) shall be subject to lease cancellation. Section 2(a)(2)(A) of the MLA requires that any entity that holds and has held a Federal coal lease for 10 years beginning on or after August 4, 1976, and who is not producing coal in commercial quantities from each such coal lease, cannot qualify for the issuance of any oil and gas lease (or any other mineral lease). However, acquisition by such entity of an oil and gas lease interest through an assignment or transfer is permissible. If an oil and gas lease is issued to an entity and, subsequently, the entity was determined to be in violation of section 2(a)(2)(A) at the time of such lease issuance, the oil and gas lease shall be cancelled. In the event the oil and gas lease interests have been assigned or transferred by that entity to another party, and it is later determined that the assignor was not in compliance with section 2(a)(2)(A), the Notice to Lessee that is required to be attached to every lease issued on or after December 31, 1986, (see Handbook 3120-1 and Handbook 3110-1) will prevent the transferee from qualifying as a bona fide purchaser, and the lease is subject to cancellation.

CANCELLATION DUE
TO VIOLATION
OF SECTION
2(a)(2)(A) OF
MINERAL LEASING
ACT

See also Section V, below, pertaining to bona fide purchasers, that often may be related to lease interests held in violation of the law or lease cancellation actions, and Section VI pertaining to waivers of lease rights that may apply during a lease cancellation proceeding.

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An oil and gas lease issued, or an assignment or transfer approved, to an entity or any subsidiary, affiliate, person, association, or corporation controlled by or under common control of an entity which is found to be in violation of section 17(g) of the MLA shall be subject to cancellation. Noncompliance with Section 17(g) of the MLA begins on the effective date of the imposition of a civil penalty when the entity has failed or refused to comply with reclamation requirements on any lease and operations thereon in which such entity or person has an interest. The lease cannot be cancelled, however, during the pendency of any administrative or judicial appeals that have been filed concerning the violations or penalties assessed for failure to comply with the prescribed reclamation standards on the lease.

CANCELLATION DUE
TO VIOLATION
OF SECTION 17(g)
OF MINERAL
LEASING ACT

See Appendix 3 for a compendium of IBLA decisions concerning lease cancellation issues.

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KeywordsB. Lease Erroneously Issued

When a lease has been erroneously issued, the lease is subject to cancellation, with the exception that a lease issued for lands eligible and available for leasing, but that has been issued in violation of an administrative or regulatory requirement, need not be cancelled in the absence of an intervening qualified applicant or some overriding policy consideration. (See Merle C. Chambers, 40 IBLA 144 (1979) and Appendix 3.)

CANCELLATION
OF LEASE
ERRONEOUSLY
ISSUED

If the lands were eligible and available for leasing, and a lease is cancelled in whole or part because it was erroneously issued to a junior offeror, the law requires that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease that is issued. The junior offeror is entitled to a refund of the advance or earned rental. The lessee whose lease is improperly cancelled and who fails to appeal loses the right to the lease. If the lease is known to contain valuable deposits of oil or gas, it can be cancelled only by Federal district court action. (See Section IV.A, above.)

LEASE
ERRONEOUSLY
ISSUED TO
JUNIOR OFFEROR

Possible mistakes that occur resulting in issuing leases erroneously include the following (see also Appendix 3):

LEASE ISSUANCE
ERRORS

1. Erroneous interpretation or notation of the status of the land, i.e., a lease is issued for lands that are already in an existing lease, for patented lands, for withdrawn lands, for lands within a city limits, or for lands on which there is a prior offer, etc.

2. Erroneous interpretation of law or regulations resulted in issuance of a lease contrary to the law or regulations.

3. Lease issued without proper surface owner consent having been obtained, i.e., for Department of Defense (military) lands, acquired lands minerals, U.S. Forest Service lands (acquired and public domain mineral lands), etc. (See Joe E. Shelton, 73 IBLA 250 (1983).)

4. Known Geological Structure or Favorable Petroleum Geological Province lands that were inadvertently leased noncompetitively in response to pre-December 22, 1987, offers.

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KeywordsC. Lessee Objection to Stipulations

A lessee may lodge a protest and request revocation of a lease because of refusal to accept additional or changed stipulations that were placed on the lease prior to its issuance, but without adequate notice to the lessee and without signature of agreement to the changed stipulations (see Handbook 3120-1, Section II.E). The Onshore Oil and Gas Leasing Reform Act requires a minimum of 45 days notice of the offering of the lands for lease, and the exact language of all stipulations applicable to the lands are to be included in the sale notice. However, when additional or changed stipulations that would not increase the value of the lands are placed on the parcel after the posting of the sale notice, but prior to issuance of the lease, after a 45-day period required to give notice of the changed or added stipulation has elapsed, if the bidder/applicant was not been given a 30-day period by notice in which to accept the stipulation change, the lessee may refuse the lease within 30 days after the effective date of the lease.

LESSEE OBJECTS
TO ADDITIONAL
OR CHANGED
STIPULATIONS
PLACED ON LEASE

If a lessee requests revocation of a lease within 30 days after the lease effective date because a stipulation was changed after the competitive sale without notification allowing the lessee the opportunity to accept or appeal the stipulation, prepare a decision rescinding the lease. The first year's rental and any bonus bid shall be refunded, as well as the filing or administrative fee in such cases. These lands will not revert to noncompetitive leasing during the 2-year period following the sale, and must be offered for sale again. The lands in a rescinded lease that were based on a pre-December 22, 1987, offer must be offered competitively unless there is another pre-December 22, 1987, offer pending for the same lands.

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D. Processing Cancellations

Responsible Official	Step	Action	Keywords
Adjudication	1.	When a determination of default has been made, prepare an interlocutory decision allowing 30 days from date of receipt to cure the default.	DEFAULT/LEASE CANCELLATION
	2.	If the lessee fails or refuses to comply and the lease contains no well capable production of oil or gas in paying quantities, or is not committed to a unit or communitization agreement that contains a well capable of production of unitized substances in paying quantities, prepare a final decision cancelling the lease giving the right of appeal.	
	3.	The effective date of the cancellation is the date of the final decision, except that the cancellation may be stayed by any appeal of the decision that is filed by the lessee.	CANCELLATION EFFECTIVE DATE
	4.	Send copies of the final decision to the SMA and Field Office fluid minerals operations staff.	
	5.	Post a copy of the cancellation decision in the Public Room of the State Office, and ensure that the BLM Field Offices and the SMA office with jurisdiction over the lease lands involved also post a copy of the cancellation decision.	CANCELLATION DECISION POSTED

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Responsible Official	Step	Action	Keywords
		<p><u>NOTE:</u> The law requires an elaborate method for sending the decision giving the lessee notice of default. The law at 30 U.S.C. 188(b) specifies, "Such notice in advance of cancellation shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States land office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such district, then in the post office nearest such land."</p>	
	6.	Complete the accounting advice cancelling the lease and send to the MMS-DMD through Accounts.	ACCOUNTING ADVICE - CANCELLATION
ALMRS Entry	7.	Update the case in the ALMRS automated system to cancel the entire lease using the current data standards:	AUTOMATED NOTATION
	7a.	Enter Action Date (MANDATORY ACTION CODE): Date of decision cancelling lease; DE 1775 Action Code 756/DE 2910 Action Code 199; Action Remarks: Reason for cancellation.	
		<p><u>NOTE:</u> Remove DE 1775/2910 Action Code 763. Also, if lands are available for leasing, enter DE 1775/2910 Action Code 202.</p>	
	7b.	Enter Action Date (MANDATORY ACTION CODE): Date case file of cancelled lease closed; DE 1775/2910 Action Code 970.	

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Responsible Official	Step	Action	Keywords
	8.	Update the case in the ALMRS automated system to cancel the lease in part using the current data standards:	AUTOMATED NOTATION
	8a.	Enter Action Date (MANDATORY ACTION CODE): Date of decision cancelling lease in part; DE 1775 Action Code 757/DE 2910 Action Code 200; Action Remarks: Reason for cancellation.	
		<u>NOTE:</u> Change lease's legal land description and acreage. Also, if cancelled lands are available for leasing, enter DE 1775/2910 Action Code 202.	
Title Records	9.	If entire lease cancelled, remove oil and gas lease number and make appropriate notation to the records.	RECORDS NOTATION
Docket	10.	If entire lease cancelled, file case file with closed files.	
Adjudication	11.	If lands are available for leasing, continue to process the lands for re-leasing.	

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E. Processing Leases Improperly Issued

Responsible Official	Step	Action	Keywords
Adjudication	1.	If a lease was improperly issued to a party, cancel the lease by decision (see Illustration 48), except where the rights of a bona fide purchaser have intervened (see Section V, below).	CANCEL LEASE IMPROPERLY ISSUED
		<u>NOTE:</u> Cancel leases issued for patented lands and withdrawn lands, or for other lands that are not authorized under law to be leased. A bona fide purchaser cannot prevail in these cases.	
	2.	If applicable, issue a lease to the first qualified (senior) applicant.	
	3.	Inform the appropriate SMA of the lease cancellation by a copy of the decision, or use a list to report the leases that are cancelled (see Illustrations 24 and 25).	ADVISE SMA
	4.	If no appeal is filed, prepare an accounting advice to cancel the lease in whole or in part, and authorize a refund, if applicable. Route to Accounts and MMS-DMD.	ACCOUNTING ADVICE - RENTAL REFUND
ALMRS Entry	5.	Enter action Date (MANDATORY ACTION CODE): Date of decision cancelling the lease: DE 1775 Action Code 756/DE 2910 Action Code 199; Action Remarks: Reason for cancellation.	AUTOMATED NOTATION
Title Records	6.	If lease cancelled in its entirety, remove oil and gas lease number and make the appropriate notations to the records. Otherwise, adjust lease boundary when lease is cancelled in part.	RECORDS NOTATION
Docket	7.	File case file with closed files if lease is cancelled in its entirety.	

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Responsible	Step	Action	Keywords
Official	8.	File case file for lease cancelled in part or newly issued lease with active cases.	
Adjudication	9.	Following cancellation of a lease, if there is no first qualified offeror and the cancelled lands are available for leasing, the lands must be reoffered under the competitive leasing system (see 43 CFR 3120 and Handbook 3120-1).	

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F. Processing Cancellation of Retained Lease Interests

Responsible Official	Step	Action	Keywords
Adjudication	1.	If a lease is issued to a lessee that has failed or refused to comply with any provisions of the law, the regulations, or the lease terms, and the lease has been assigned to a bona fide purchaser, the interest, e.g., the overriding royalty interest, retained by the lessee in noncompliance must be cancelled.	DEFAULT - CANCEL LEASE
	2.	Prepare a decision cancelling the interest retained by the lessee/assignor (see Illustration 49). Send a copy of the decision to the appropriate SMA.	CANCELLATION DECISION
ALMRS Entry	3.	Enter Action Date (MANDATORY ACTION CODE): Date of decision cancelling the lease interest; DE 1775 Action Code 757/DE 2910 Action Code 200; Action Remarks: Type of interest cancelled.	AUTOMATED NOTATION
Adjudication	4.	Following appeal period, if no appeal is filed, process cancelled interests for competitive leasing in accordance with 43 CFR 3120.1-1(c). (See Handbook 3102-1, Section II.E.)	OFFER FOR COMPETITIVE LEASING
Docket	5.	File case file with closed cases.	

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KeywordsV. Bona Fide PurchaserA. Introduction

The bona fide purchaser amendment was added to the MLA, 30 U.S.C. 184(h)(2) to 184(i), to protect bona fide purchasers of Federal oil and gas leases who acquired holdings in good faith from the possible consequences of violations of the law by their predecessors in title, e.g., predecessors that obtained leases in violation of the acreage limitation provisions. The bona fide purchaser amendment helped to promote development of oil and gas resources on public lands, and to protect innocent investors and purchasers.

BONA FIDE
PURCHASER

The Secretary has broad authority to cancel oil and gas leases for violations of the MLA and regulations thereunder, and for administrative errors committed before a lease was issued. However, the Secretary's authority is limited by the bona fide purchaser amendment. The bona fide purchaser protection does not extend to leases that are legal nullities (void), e.g., lands not subject to leasing by statute at the time of lease issuance. Also, the bona fide purchaser protection does not extend to post-lease infractions or violations because they are handled under the regulatory cancellation procedures of 43 CFR 3108.3. The bona fide purchaser protection does extend to voidable leases, e.g., the lease is issued for the lands available for leasing but is not issued to the first-qualified applicant, or the lease is issued in violation of established procedures (e.g., National Environmental Policy Act procedures, etc.). (See Clayton W. Williams, Jr., Exxon Corp., 103 IBLA 192 (1988).)

The bona fide purchaser protection applies only to a purchaser of a lease, interest in a lease, or an option to acquire an existing lease, but does not apply to an assignee of a lease offer since a lease does not yet exist. Also, if a lease has expired or terminated for failure to timely pay annual rental, the absence of a lease at the time of an assignment or transfer of operating rights deprives the transferee from any benefit of bona fide purchaser protection. Similarly, if lease rights were assigned or transferred prior to the lease anniversary date and the lease subsequently terminated by operation of law for nonpayment of the annual rental, bona fide purchaser protection does not exist. Actions by the assignor, such as lease relinquishment, do not afford the assignee bona fide purchaser protection.