

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

II. TerminationsKeywordsA. General

Annual rental is due on or before the anniversary date of a lease on which there is no well capable of producing oil or gas in paying quantities. If the annual rental is not paid for a lease on or before the first day of the lease year (the lease anniversary date), automatic termination of the lease is mandated by the MLA (30 U.S.C. 188(b)). A lessee has until the close of business on the lease anniversary date to pay the rental to the MMS. If the MMS office is closed on the anniversary date, payment received on the next day the MMS office is open to the public shall be deemed timely filed. A rental payment sent to any other office is to be returned to the sender and is not to be forwarded to the MMS. Expeditious return of such a misdirected rental payment is to be made whenever possible to allow the sender time to meet the deadline when the payment must be received by the MMS. When the MMS automated system shows a lease as terminated and, subsequently, a lessee provides proof of a timely rental payment, but with an incorrect or no lease serial number identified on the check, the lease does not terminate. An incorrect serial number or no serial number displayed on the check is not grounds for termination of a lease unless the rental payment was not timely received by the MMS.

LEASE  
TERMINATIONMISDIRECTED  
RENTAL PAYMENT  
TO BE RETURNED  
TO SENDER

The MMS can use the Automated Clearing House (ACH) system to accept rental payments. The ACH is an electronic payment system that is the functional equivalent of a check clearing facility. The system works as follows:

AUTOMATED  
CLEARING HOUSE  
SYSTEM USED  
BY MMS FOR  
RENTAL PAYMENTS

The payor provides instructions and all the pertinent information to its bank. The payor's bank transmits the rental payment money and the information to the local ACH. The local ACH forwards the money and information overnight to the U.S. Treasury's/MMS's agent bank, the Mellon Bank. The Mellon Bank also transmits the money and summary information through the New York Federal Reserve Bank to the U.S. Treasury on the same day. The MMS retrieves the ACH payment information from the Mellon Bank and verifies the deposit amounts through the U.S. Treasury's CASHLINK system.

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Keywords

Under the ACH system, a lease will terminate for failure to pay rental timely if the payment is made by the ACH but is not actually received on or before the lease anniversary date by the Mellon Bank or the Treasury Department, and the payment has been designated for posting to the MMS account. If the payment is received timely by the Mellon Bank, and through error the funds are not posted on time to the MMS account, the rental payment will be considered as received by the MMS when first received by the Mellon Bank. However, if a posting error is due to an improper entry made by the payor, the payor's agent, or the ACH, the payment will be deemed received by the MMS when either the payor's agent bank for the ACH or the ACH corrects the error and properly completes the transfer with the Mellon Bank.

TERMINATION  
PROVISIONS  
WHEN ACH PAYMENT  
SYSTEM USED

A lease issued prior to the enactment of Public Law (PL) 83-555 that amended the MLA, effective July 29, 1954, is not subject to the automatic termination provision unless the lessee elected, by written notice, to subject the lease to such provision. (See Allied Chemical Corp. et al., 40 IBLA 272 (1979).) Most of these leases were created as a result of segregation of nonunitized lands out of a unitized lease that was in its extended term by reason of production at the time of segregation, that resulted in a new lease held by production indefinitely based upon production from the unitized base lease. The new lease is held by production, but is on a rental basis.

LEASES NOT  
SUBJECT TO  
AUTOMATIC  
TERMINATION

Similarly, if a lease that is subject to PL 83-555 has a rental that comes due on a date other than the anniversary date, the lease does not automatically termination because PL 83-555 only applies to the annual rental that is due and payable on or before the lease anniversary date. Likewise, for a lease that is subject to PL 83-555, if the BLM did not give the lessee notice that the term of the lease had been extended (when the lease is extended because the conditions for extension have been met, but the BLM has not officially notified the lessee of the extension) and if the annual rental that is due and payable on the lease anniversary date is not timely paid, the automatic termination provision of PL 83-555 does not apply. (See Handbook 3105-1, Appendix 4.)

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Keywords

Rights-of-way oil and gas leases issued under the Act of May 21, 1930 (30 U.S.C. 301-306), and leases in rental status that are committed to a unit agreement for which there is a unit well capable of production also are not subject to the automatic termination provision of PL 83-555.

1930 ACT LEASES  
NOT SUBJECT TO  
AUTOMATIC  
TERMINATION

For more information about the processing of leases where automatic termination does not occur for failure to pay rental timely, see Steps II.D.1b, 1c, and 1d, below.

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KeywordsB. Rental Deficiency1. Nominal Deficiency

A lease does not automatically terminate if the annual rental payment is received timely but is deficient by not more than \$100 or not more than 5 percent of the total payment due, whichever is less (nominal deficiency). And, if the amount of a rental payment was made in accordance with a rental or acreage figure as stated in a courtesy billing notice or a decision that was in error, and the payment made resulted in a deficiency, the lease shall not automatically terminate (see McClellan Oil Corp., 76 IBLA 322 (1983)). For nominal deficiencies only, an oil and gas deficiency notice (see Illustration 10) is sent by the MMS to the responsible payee of record by certified mail, return receipt requested, allowing 15 days from the date of receipt or until the rental due date, whichever is later, to submit the balance due to the MMS. After the BLM State Office (SO) Adjudication is notified by the MMS that the nominal deficiency was not paid, i.e., the lease is indicated as terminated in the automated system, a lease termination notice using the standard BLM form shall be issued to the lessee by the SO Adjudication outlining, as appropriate, either the Class I or II provisions, or both, for reinstatement (see Section III, below). If a petition for reinstatement is not filed, the SO Adjudication must prepare an accounting advice to the MMS-DMD authorizing a refund of the deficient rental payment (see Illustration 11).

RENTAL  
DEFICIENCY  
NOMINAL

ERRONEOUS  
BILLING  
AMOUNT

2. More than Nominal Deficiency

If the SO Adjudication becomes aware of a partial rental payment that is more than nominally deficient, send a notice to the lessee advising of the deficiency only if sufficient time exists for the lessee to remit the deficient amount to the MMS (see Illustration 12). (See also Appendix 1 for a discussion about partial payments that are more than nominally deficient.) In most cases, however, the BLM will not be aware of payments that are more than nominally deficient, since the MMS normally does not provide this information to the SO Adjudication.

RENTAL  
DEFICIENCY  
MORE THAN  
NOMINAL

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C. Terminated ListingKeywords

Reports are to be called from the ALMRS Case Recordation to identify the leases that have terminated, based on the BLM/MMS Automated Data Transfer System input from the MMS-DMD into the ALMRS Case Recordation automated system.

TERMINATED  
AND EXPIRED  
LEASE REPORTS

When a late rental payment is received by the MMS-DMD, the envelope in which a late rental payment check was submitted to the MMS and a copy of the check will be furnished to the BLM SO Adjudication. These documents will indicate the date that they were received by the MMS.

LATE PAYMENT -  
ENVELOPE  
PROVIDED BY  
MMS-DMD

When the annual rental payment was transmitted using the ACH, for reinstatement purposes, reasonable diligence under the MLA (30 U.S.C. 188(c)) shall be defined as receipt of the proper payment message by the ACH on or before the lease anniversary date. When the MMS-DMD receives a late payment via the ACH, a printout will be furnished by the MMS to the SO Adjudication instead of an envelope. The printout will serve as the documentation required in the lease case file to make appropriate decisions regarding oil and gas lease reinstatements (see Illustration 13).

REASONABLE  
DILIGENCE  
FOR TIMELY  
RENTAL PAYMENT  
WHEN USING ACH

## Responsible

<u>Official</u>	<u>Step</u>	<u>Action</u>	<u>Keywords</u>
Adjudication	1.	Request from Docket the case files for those leases reported as terminated.	TERMINATED LISTING VERIFICATION
Docket	2.	Pull the case files and send them to Adjudication.	

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D. Processing

Responsible Official	Step	Action	Keywords
Adjudication	1.	When a lease is reported as being terminated, review the lease case to check whether the lease actually did terminate using the steps below.	
	2.	Check the MMS automated Business Information System (BIS) to ensure that a lease has not been erroneously reported as terminated because the lease is recorded in the MMS's BIS system with an incorrect anniversary date or acreage amount at the time the MMS reported the termination. Sometimes an unidentified payment takes additional time to be properly recorded in the BIS, or the rental may be applied to the wrong lease year. Also, sometimes the ALMRS Case Recordation lease records may show evidence of rental payments that have not been correctly recorded by the MMS.	TERMINATION RECORDED BY MMS BUT LEASE DID NOT TERMINATE
	3.	Review all evidence that suggests that the lease was erroneously terminated. If the lease did not actually terminate, correct the lease records, ALMRS Case Recordation, and the MMS records, and take all other corrective actions that are required to restore the lease to the authorized status.	
	4.	If the MMS automated system reports a right-of-way lease issued pursuant to the Act of May 21, 1930 (30 U.S.C. 301-306), as terminated, such a lease does not automatically terminate. Issue a decision indicating that the lease is in default of the lease terms for failure to pay all or part of the annual rental and, unless the payment is received within 30 days of receipt of the decision, the lease will be cancelled (see Illustration 14). Send a copy of the decision to the MMS-DMD.	RIGHT-OF-WAY LEASE NOT SUBJECT TO AUTOMATIC TERMINATION

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Responsible Official	Step	Action	Keywords
	5.	If a lease with an effective date prior to the enactment of PL 83-555 (July 29, 1954) is reported by the MMS as terminated but the lease has not been made subject to the automatic termination provision, the lease has not automatically terminated. Issue a decision indicating that the lease is in default of the lease terms for failure to pay all or part of the annual rental and will be cancelled unless the rental is paid within 30 days of receipt of the decision (see Illustration 15). Send a copy of the decision to the MMS-DMD.	LEASES ISSUED PRIOR TO PL 83-555 NOT SUBJECT TO AUTOMATIC TERMINATION
	5a.	<u>OPTIONAL</u> : Prepare a notice and affix it to the case file for each 1930 Act right-of-way lease (see Illustration 16) and for each pre-July 29, 1954, lease (see Illustration 17) specifying that they are not subject to automatic termination.	
	6.	If a lease has a rental due on a date other than the anniversary date, the lease does not automatically terminate for failure to pay the rental timely. (See <u>Andrew HeLal</u> , 122 IBLA 325 (1992), and Handbook 3103-1 for rentals due upon the lifting of a lease suspension.)	
	7	For leases committed to a unit agreement for which there is a unit well capable of production, all the leases committed to the unit receive the benefits of the unit well, including leases in the unit that do not have a well, and the leases are extended beyond their primary term for as long as they are committed to the unit plan. Such leases do not automatically terminate for failure to pay rental timely, if they are subject to the payment of rental. (See Handbook 3105-1, Appendix 4.)	UNITIZED LEASES NOT SUBJECT TO AUTOMATIC TERMINATION

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Responsible	Step	Action	Keywords
Official	8.	<p>If a lease is entitled to an extension but the lessee has not been notified of the extension, the lease does not automatically terminate for failure to pay the rental if the rental became due during the time that the BLM failed to give notice of the lease extension (or the rental became due so near the time that the extension notice was issued that there was inadequate time to pay timely). (See <u>American Resources Management Corp.</u>, 36 IBLA 157 (1978).) Failure to timely notify the lessee of the extension in relation to rental due date is most likely to occur when leases either are segregated due to unit approval or are eliminated from unit agreements, and the BLM is slow to recognize the lease extension or this action occurs just when rental is due.</p>	<p>LEASES EXTENDED DUE TO UNIT APPROVAL OR ELIMINATION FROM UNIT - LEASES REVERTING TO RENTAL STATUS NOT SUBJECT TO TERMINATION WITHOUT NOTICE</p>
	8a.	<p>Notify the lessee in the decision issued concerning the lease extension that the rental is past due or is due in the near future. Specify in the decision that if the lessee does not pay the rental within 30 days of receipt of the decision, the lease will terminate effective the lease anniversary date. (See Handbook 3105-1, Sections IV.C and V.C, and Appendix 4; Solicitor's Opinion M-36629, "Automatic Termination of Unitized Leases for Failure to Pay Rentals," 69 I.D. 110 (1962); and <u>Husky Oil Co.</u>, 79 I.D. 17 (1972).)</p>	
	8b.	<p>Indicate in the decision that the rental due is to be paid to the MMS, Royalty Management Program, P.O. Box 5640, Denver, CO 80217. Send a copy of the decision to the MMS-DMD.</p>	

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Responsible

Official	Step	Action	Keywords
	9.	Leases subject to the Yates decision do not automatically terminate. Even if the first production in the unit does not qualify as a well capable of producing unitized substances in paying quantities, a well capable of production in paying quantities on a lease basis that is completed on a committed lease within the unit agreement will extend the term of all Federal leases committed to the unit agreement for the term of the agreement and/or for so long as the well is capable of production in paying quantities. (See <u>Yates Petroleum Corp. et al.</u> , 67 IBLA 246 (1982).)	LEASES SUBJECT TO YATES DECISION NOT SUBJECT TO AUTOMATIC TERMINATION

For leases that fail to pay rental that are included in the categories addressed in Steps II.D.6 to II.D.9, above, issue a decision indicating that the lease is in default of the lease terms and will be cancelled unless the rental is paid within 30 days of receipt of the decision (see Illustration 18 and the appropriate illustrations in Handbook 3105-1). Send a copy of the decision to the MMS-DMD.

When the MMS reports the termination of a lease of the type identified in Steps II.D.4 through II.D.9, above, even if the rental was paid late, the lease does not terminate. If the lessee has been notified that the lease terminated because of the late payment, issue a decision vacating the termination notice (see Illustration 19 for a lease issued prior to PL 83-555 and Illustration 20 for other types of leases).

- 11a. Notify the MMS that the lease did not terminate, and if the lease is in a nonterminable status, notify the MMS-DMD to change its records to show that the lease is in a nonterminable status rather than a terminable status.

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Responsible

Official	Step Action	Keywords
	<p>Check the lease case file and/or ALMRS Case Recordation/Records System Release 1.0 for evidence that the lease is in production or has a well capable of production, or that a suspension of operations and production has been granted. If the case file contains no evidence, check with the Field Office fluid mineral operations personnel for any recent actions not yet reported to the SO Adjudication.</p>	<p>CHECK LEASE FOR PRODUCTION OR WELL CAPABLE OF PRODUCTION, OR SUSPENSION OF OPERATIONS AND PRODUCTION</p>
	<p>12a. If the Field Office fluid mineral operations personnel cannot respond quickly, do not delay sending the termination notice to the lessee. If the lease has a well capable of production or actual production, or a suspension of operations and production has been granted, the receipt of the termination notice will cause the lessee to respond with actual lease status information. And, if the lease is not in a producible or suspended status, there is no need to delay the process if the lessee wants to reinstate the lease.</p>	
	<p>If the 6th or 11th year rental, for a competitive or a noncompetitive lease, respectively, is not paid, the lease automatically terminates, even though diligent drilling operations occurred over the lease expiration date to qualify for a 2-year lease extension.</p>	<p>CHECK FOR FAILURE TO PAY 6TH OR 11TH YEAR RENTAL</p>

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Responsible Official	Step	Action	Keywords
	14.	Check the lease case file and/or ALMRS Case Recordation/Records System Release 1.0 for evidence of production attributable to the lease through a communitization or unit agreement. Check with the Field Office fluid mineral operations personnel, if necessary. If there is production from any communitization agreement to which the lease is committed, or if production has been established in a unit to which a lease is committed, the lease does not terminate for failure to pay rental, and the lease account is to be transferred from terminable (nonproducing) to nonterminable (producing) status. (See Handbook 3107-1, Section II.)	CHECK FOR PRODUCTION THROUGH UNIT/ COMMUNITIZATION AGREEMENT
	15.	Prepare Notice of Oil and Gas Lease Terminated on applicable standard BLM form identified below, and send it to each lease record title holder by certified mail, return receipt requested.	ISSUE TERMINATION NOTICE
	15a.	A termination notice may be prepared identifying several leases, if the anniversary date and the lessees are the same.	
	16.	Use Form 3108-2b (February 1989) if the envelope is postmarked on or before the lease anniversary date and it was not received by the MMS until after the anniversary date, but not later than 20 days after that date, or if the proper payment message is received at the local ACH on or before the anniversary date but was credited to the MMS account at the Mellon Bank after the anniversary date, but not later than 20 days after that date (receipt of the proper payment message at the local ACH is the equivalent of the postmark). (See also Section II.A, above, concerning when the local ACH and Mellon Bank make errors.) (See Illustration 21 for Form 3108-2b.)	FORM 3108-2b

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Responsible

Official	Step Action	Keywords
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Use Form 3108-2b only for Class I reinstatements when the provisions for reasonable diligence, as stated in the regulations at 43 CFR 3108.2-2(a)(2), are met. The date of the postmark is a criterion for meeting the reasonable diligence standard for a Class I lease reinstatement. Late rental payments bearing a postmark on or before the first business day after the anniversary date meet the reasonable diligence standard for a Class I reinstatement.

17. Use Form 3108-2 (November 1990) when the envelope is postmarked on or before the lease anniversary date or the proper payment message is received at the local ACH after the anniversary date, and payment is received at the MMS or is credited to the MMS account at the Mellon Bank within 20 days after the anniversary date (receipt of the proper payment message at the local ACH is the equivalent of the postmark). (See also Section II.A, above, concerning when the local ACH and Mellon Bank make errors.) In these cases, the lease may be eligible for a Class I reinstatement. (See Illustration 22 for Form 3108-2.)

FORM 3108-2

Check the additional stringent requirements that must be met for a lease to be eligible for a Class I reinstatement in Section III, below.

18. Use Form 3108-2a (November 1990) when no payment is made, or the payment is received at the MMS or the Mellon Bank more than 20 days after the anniversary date. (See Illustration 23 for Form 3108-2a.)

FORM 3108-2a

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Responsible

Official	Step	Action	Keywords
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NOTE: Although the BLM Forms 3108-2 and 3108-2a do not include the Class II amendment format required to increase the lease rental and royalty rate (see Section III.G, below), the amendment format may be sent at the same time as the lease termination notice is sent if this method is considered a more efficient procedure. This procedure is at the discretion of each office.

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|--|-----|--|---|
|  | 19. | <u>OPTIONAL:</u> As the termination notice is prepared, mark the outside of the lease case file that the lease is terminated and the termination effective date. If the lease is later determined not to have terminated, or the lease is reinstated, this termination notation must be changed accordingly. | MARK LEASE CASE<br>FILE TERMINATED<br>WHEN TERMINATION<br>NOTICE IS<br>PREPARED |
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|-------------|-----|--|-----------------------|
| ALMRS Entry | 20. | Enter Action Date (MANDATORY ACTION CODE): Date lease terminated; DE 1775 Action Code 790/DE 2910 Action Code 244; Action Remarks: Optional. | AUTOMATED<br>NOTATION |
|-------------|-----|--|-----------------------|

NOTE: Remove DE 1775/2910 Action Code 763.

		Enter Action Date (MANDATORY ACTION CODE): Date termination notice issued; DE 1775/2910 Action Code 791; Action Remarks: Optional.	AUTOMATED NOTATION
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NOTE: Enter this action code after entry of DE 1775 Action Code 790/DE 2910 Action Code 244.

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|--|-----|--|--|
|  | 22. | Enter Action Date: Future action suspense deadline date to track end of 60-day reinstatement petition period; DE 1775/2910 Action Code 247; Action Remarks: Petition due date. | FUTURE ACTION<br>SUSPENSE -<br>PETITION DUE DATE |
|--|-----|--|--|

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Responsible Official	Step	Action	Keywords
		If lease did not terminate - Enter Action Date (MANDATORY ACTION CODE): Date termination notice was vacated; DE 1775/2910 Action Code 792; Action Remarks: Reason lease did not terminate (optional).	AUTOMATED NOTATION
	23a.	Remove DE 1775 Action Code 790/DE 2910 Action Code 244 to return the case to the authorized case status, and restore DE 1775/2910 Action Code 763.	
Adjudication	24.	During the running of the 60-day petition period, contact the Field Office fluid mineral operations staff and/or the appropriate SMA for the stipulations and consent to lease to initiate re-leasing of the lands in the terminated leases. This step, however, may begin after the 60-day petition period ends.	RE-LEASE LANDS IN TERMINATED LEASES
		If a reinstatement petition is received, process the reinstatement using the requirements in Section III, below.	
	26.	Prepare a list of terminated leases for distribution to the Field Office fluid mineral operations staff (see Illustration 24), and a report to each SMA (see Illustration 25).	
	26a.	The MMS is not to be re-notified regarding a lease termination. That is, an accounting advice is not to be prepared.	

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Responsible Official	Step	Action	Keywords
	27.	When the expiration, termination, relinquishment, or cancellation of a lease is final, the lands included in the lease are to be reoffered only by competitive leasing. (See Handbook 3120-1). Reoffering the lands for competitive leasing immediately is not mandatory. A presale offer or an expression of interest filed on such lands, however, is to be acted upon timely.	
ALMRS Entry	28.	<u>OPTIONAL</u> : Enter Action Date: Date pending competitive leasing; DE 1775/2910 Action Code 202; Action Remarks: Optional.	AUTOMATED NOTATION
	29.	Enter Action Date (MANDATORY ACTION CODE): Date terminated lease case file closed; DE 1775/2910 Action Code 970.	AUTOMATED NOTATION
Title Records	30.	Update oil and gas plat and other appropriate records to indicate that the lease terminated. Forward to Docket.	RECORDS NOTATION
Docket	31.	File case file with closed files pending competitive listing.	

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

KeywordsE. Effect of Bankruptcy on Terminations

Under the Federal bankruptcy laws, Federal oil and gas leases are considered executory contracts in which performance has to be undertaken and carried through to completion. The bankruptcy provisions specify that no proceeding, lawsuit, or action may be taken to pursue a claim that accrued before the bankruptcy petition was filed, and no preexisting judgments are enforceable. Furthermore, no actions may be taken against the property of the debtor's bankruptcy estate, i.e., assets in existence at the time of filing of a petition in bankruptcy court. Important exceptions to the automatic stay provisions are: (1) No effect occurs on the commencement or continuation of an action or proceeding by a governmental unit to enforce police or regulatory power; and (2) nor will the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit be stayed.

LEASE  
TERMINATION  
OF BANKRUPT  
DEBTOR

Since leases are considered executory contracts, rentals and other required actions are continuing obligations. If a debtor accepts or continues the contract, the BLM shall require continuation of proper performance of the contract terms. Automatic termination for failure to pay rentals is not stayed (In re: Trigg, 630 F2d 1370 10th Cir., 1980). The bankruptcy court may, however, stay actions that are not automatically stayed, e.g., lease terminations. A court order by the bankruptcy judge would be required to prevent or stay a lease termination.

Upon notification of bankruptcy proceedings, promptly notify the MMS Bankruptcy Coordinator and the Department of the Interior Regional or Field Solicitor's Office.