

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

III. ReinstatementsKeywordsA. Introduction (Class I and II)

Section 31 of the MLA of February 25, 1920 (30 U.S.C. 188) was amended by PL 83-555 on July 29, 1954, to provide for automatic termination of an oil and gas lease on which there is no well capable of producing oil and gas in paying quantities upon failure of the lessee to pay the rental due on or before the anniversary date of the lease. The Secretary, however, still had no authority to reinstate a lease that had terminated by operation of the law.

LEASE
REINSTATEMENT

On May 12, 1970, the MLA was further amended by PL 91-245 giving the Secretary authority, for the first time, to prevent termination of oil and gas leases in cases where there is a nominal deficiency in the annual rental payment, and to authorize the Secretary to reinstate, under certain conditions, oil and gas leases terminated by operation of law for failure to pay rental timely. Nominal deficiency at that time was considered as being not more than \$10 or 5 percent of the total payment due, whichever was more.

The nominal deficiency provision was increased by regulation on August 22, 1983. A rental deficiency is now considered nominal if the annual rental paid is not more than \$100 or not more than 5 percent of the total payment due, whichever is less.

Prior to January 12, 1983, the Secretary's authority to reinstate an oil and gas lease that had terminated for failure to timely pay the annual rental was limited. Prior to that date, a lease could only be reinstated when the rental was paid within 20 days of the termination date, and upon proof that such failure was either (1) justifiable, or (2) not due to a lack of reasonable diligence, and a petition for reinstatement was timely filed (now identified as a Class I reinstatement).

The Secretary's authority to reinstate a lease was further broadened by Title IV of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), PL 97-451. Effective January 12, 1983, the FOGRMA amended Section 31 of the MLA giving a lessee a third reason for late rental payment, based on "inadvertence," thereby allowing an oil and gas lease to be reinstated under what is identified as a Class II reinstatement.

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Keywords

A lease also may be reinstated under the Class II provisions if the annual rental is received after 20 days from the anniversary date. The lessee must timely file a petition, furnish rental and/or royalty from the date of the termination at an increased rate, and agree to new lease terms increasing the rental and royalty rates. (See Appendix 2 for the Committee Resolution of the House of Representatives Committee on Interior and Insular Affairs that provides the Congressional background for lease reinstatements under PL-451.)

The provisions allowed by Title IV of FOGSMA were further amended by PL 101-567 enacted November 15, 1990, to allow Section 14 renewal leases to be reinstated under the Class II procedures. Previously, this type of lease could be reinstated under the Class I procedures but not under the Class II procedures. The reinstatement procedures are the same for Section 14 renewal leases as all other leases, except that under the Class II reinstatement procedures a Section 14 renewal lease is granted a term of 20 years and so long thereafter as oil or gas is produced in paying quantities, beginning with the effective date of the reinstatement.

CLASS II
REINSTATEMENT
OF SECTION 14
LEASES

Leases issued under Section 17 of the MLA were not affected by the PL 101-567 amendment to the MLA. These leases have always been subject to the Class I and Class II reinstatement procedures. However, Congress has not addressed Section 18, 18a, 19 and 20 renewal leases as to their eligibility for a Class II reinstatement. Although Congress made these leases subject to reinstatement under the Class I procedures like all other leases, it has not specifically addressed the issue of Class II reinstatement for these types of leases. Very few of these leases continue to exist. However, in the event a petition for a Class II reinstatement is received for any such lease, a Solicitor's Opinion would need to be obtained to help determine whether such a lease is subject to reinstatement under the Class II procedures.

Appendix 3 provides a reference list of IBLA decisions addressing terminations, reasonable diligence, lack of reasonable diligence, acceptable and unacceptable justification for failure to pay rental timely, and other requirements for Class I and Class II reinstatements. (See also Appendix 1 for a BLM Montana State Office decision that discusses in depth the reinstatement criteria in relation to a nonroutine case (untimely filed partial relinquishment resulting in a lease termination.)

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KeywordsB. Petition for Reinstatement

The lessee (record title holder) must timely file a petition for reinstatement to the proper BLM office, within 60 days of receipt of a termination notice. A petition for reinstatement from an assignee is not acceptable. (See Howard H. Vinson, 90 IBLA 280 (1986) and Stanley I. Okun, Alan L. Schwartzberg, 94 IBLA 197 (1986).)

REINSTATEMENT
PETITION RECEIPT
WITHIN 60 DAYS

The petition for reinstatement must apply to all of the lands embraced in the lease at the time it terminated (see Appendix 1). That is, the lessee cannot petition for reinstatement of only a portion of the lands that were in the lease.

Note that when Form 3108-2 is used, the filing of a Class I petition does not stop the running of the 60 days from receipt of the termination notice to file a Class II petition. Likewise, when Form 3108-2 is used, lessees may file a petition under both the Class I and Class II provisions. If a lessee petitions under both provisions, first determine if the lessee qualifies for reinstatement of the lease under the Class I provisions (see 43 CFR 3108.2-2 and Section III.D, below). If the lease cannot be reinstated under the Class I provisions, the petition can next be considered under the Class II provisions (see 43 CFR 3108.2-3 and Section III.F, below).

PETITION FILED
FOR BOTH CLASS
I AND II LEASE
REINSTATEMENT

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KeywordsC. Approving Reinstatements

There is no requirement that a lease be reinstated, except under the postmark rule provision as discussed in Section III.D, below. The authorized officer shall use discretion in making the required findings based on all available facts. Note that a proper exercise of discretion is to deny lease reinstatement to any lessee who has failed or refused to comply with the reclamation requirements of Section 17(g) of the MLA (Section 5102(g) of the Federal Onshore Oil and Gas Leasing Reform Act of 1987) when the lessee is currently indicated as a violator on the list that is maintained and issued by a BLM directive. Also, the discretion of the authorized officer shall be exercised to not reinstate any lease that is located on lands within BLM wilderness study areas or other categories of lands recommended for wilderness allocation, as identified in 43 CFR 3100.0-3(a)(2) and (b)(2), that are now prohibited from being leased.

REINSTATEMENT
APPROVAL
DISCRETIONARY

REINSTATEMENT
DENIAL FOR LEASES
IN WILDERNESS
STUDY AREAS

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KeywordsD. Qualifications for Class I Reinstatement

1. A lease may be reinstated under the Class I procedures when the following criteria are met. First, the annual rental due must have been paid to the correct office (MMS, Royalty Management Program, Box 5640, Denver, Colorado 80217) within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay timely was either justifiable or not due to lack of reasonable diligence.

CLASS I
REINSTATEMENT
REQUIREMENTS

Justifiable means that the delay in submission of the rental was caused by sufficiently extenuating circumstances or factors beyond the control of the lessee that occurred at or near the lease anniversary date that prevented the lessee from paying the rental on time (see Appendix 3 for examples). Late payment is not justified by illness or other reasons, unless a lessee can demonstrate that the reasons were causative factors for delay in immediate proximity to the lease anniversary date.

JUSTIFIABLE
CAUSE

Reasonable diligence normally requires sending the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment to the proper office. Delays due to errors in handling and processing the rental payment by the U.S. Postal Service is not evidence of extenuating circumstances that will justify the untimely rental payment except in unusual circumstances where the U.S. Postal Service provides an explanation and admits fault causing the delay (see Appendix 3). In unusual circumstances, private courier services also may admit fault in the processing and delivery of rental payments. Reasonable diligence, however, includes the postmark rule provision in the regulations at 43 CFR 3108.2-2(a)(2):

REASONABLE
DILIGENCE

Reasonable diligence shall include a rental payment that is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public.

POSTMARK RULE
PROVISION

When the lessee has qualified under this postmark rule, the procedures for handling a Class I reinstatement are incorporated into Form 3108-2b (see Illustration 21). (For examples of postmarks by the U.S. Postal Service, see Appendix 4.)

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Keywords

2. The petition for reinstatement must be filed within 60 days after receipt of the termination notice, along with a nonrefundable filing fee of \$25 for each lease and any required rental, including any rental at the rate specified in the lease terms that has accrued from the date of termination of the lease.

CLASS I
PETITION AND
FILING FEE

3. The oil and gas interests of the United States in the lands have not been disposed of or otherwise become unavailable for leasing.

4. A new oil and gas lease has not been issued for any of the lands affected by the terminated lease. However, the lands from a terminated lease can be processed in preparation for lease issuance, but a new lease cannot actually be issued until expiration of 90 days from the termination date of the old lease (see 43 CFR 3108.2-2(d) and 43 CFR 3110.7(b)).

NEW LEASE CANNOT
BE ISSUED WITHIN
90 DAYS FROM DATE
OF TERMINATION
OF PRIOR LEASE

NOTE: If the lands have been posted for re-leasing when a petition for reinstatement is filed, the lands must be withdrawn from competitive leasing until final disposition of the petition for reinstatement.

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E. Class I Reinstatement Procedures

Responsible Official	Step	Action	Keywords
ALMRS Entry	1.	Enter Action Date (MANDATORY ACTION CODE): Date reinstatement petition is filed; DE 1775 Action Code 772/DE 2910 Action Code 284; Action Remarks: Class I.	AUTOMATED NOTATION
	1a.	Remove DE 1775 Action Code 790/DE 2910 Action Code 244 (and DE 1775/2910 Action Code 970, if entered) to prevent an invalid action sequence.	
		<u>NOTE:</u> See Appendix 5 for a list of the applicable action codes that are to be used in ALMRS Case Recordation and Record System Release 1.0.)	
Adjudication	2.	If the Class I conditions for reinstatement are met (i.e., other than postmark rule for which Form 3108-2b is used), send a decision by certified mail, return receipt requested, reinstating the lease with the original lease terms and conditions, effective on the date of lease termination (see Illustration 26).	CLASS I REINSTATEMENT PROCESSING
	2a.	If the lessee is claiming that an illness or injury caused the failure to pay the rental timely, do not reinstate the lease until this claim is substantiated. If the substantiation does not accompany the petition, require it separately by decision.	
	2b.	The substantiation must be a statement by the lessee's physician that answers the following questions:	
		(1) What is the nature of the lessee's illness or injury?	

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Responsible

Official	Step	Action	Keywords
		(2) Was the lessee incapacitated by this illness or injury to the extent that he/she could not reasonably be expected to attend to normal business matters?	
		(3) What was the beginning date of the lessee's incapacitation?	
		(4) What date did the lessee's incapacitation end, if it has ended?	
	3.	Determine if the Class I reinstated lease may warrant an extension (see Section III.J, below).	
	4.	Prepare accounting advice to the MMS-DMD to apply the rental (see Illustration 27).	ACCOUNTING ADVICE - REINSTATEMENT
	5.	If the lease was on a termination list, indicate on the next such list sent to Field Office fluid mineral operations staff and to the SMA that the lease has been reinstated (see Illustrations 24 and 25).	ADVISE SMA AND FIELD OFFICE OPERATIONS OF REINSTATEMENT
	5a.	<u>OPTIONAL</u> : In lieu of identifying the Field Office fluid mineral operations staff and the SMA using Illustrations 24 and 25, notify them by sending a copy of the reinstatement decision.	
ALMRS Entry	6.	Enter Action Date (MANDATORY ACTION CODE): Effective date of reinstatement; DE 1775 Action Code 773/DE 2910 Action Code 282; Action Remarks: Class I.	AUTOMATED NOTATION
	6a.	Restore DE 1775/2910 Action Code 763 to indicate lease expiration date.	
	7.	Send case file to Title Records through Docket.	

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Responsible Official	Step	Action	Keywords
Title Records	8.	Update all appropriate records to indicate that lease is reinstated.	RECORDS NOTATION
Docket	9.	File case file with active cases.	
Adjudication	10.	If the Class I reinstatement conditions are not met, deny the petition by decision with the right of appeal (see Illustration 28 and Appendix 3).	CLASS I PETITION DENIED
	10a.	If an appeal is not filed, or an appeal is filed and IBLA upholds the decision denying the reinstatement, or a Class II petition is not received, resume processing the lands for competitive leasing.	
		If the rental was paid to the MMS, prepare an accounting advise authorizing the MMS-DMD to refund the rental (see Illustration 29). If the rental was submitted to the BLM with the petition for reinstatement, complete the accounting advice authorizing the BLM to refund the rental (see Illustration 30).	ACCOUNTING ADVICE - RENTAL REFUND
ALMRS Entry	12.	Update case to indicate Class I reinstatement was denied using current data standards.	AUTOMATED NOTATION
	12a.	Enter Action Date (MANDATORY ACTION CODE): Date reinstatement petition denied; DE 1775 Action Code 774/DE 2910 Action Code 283; Action Remarks: Enter reason (optional).	
	12b.	<u>OPTIONAL</u> : Enter Action Date: Date pending competitive leasing; DE 1775/2910 Action Code 202; Action Remarks: Optional.	
	12c.	If not done previously, route to Title Records through Docket for appropriate records notation changes.	

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Responsible Official	Step	Action	Keywords
Title Records	13.	Update oil and gas plat and other appropriate records that lease terminated and that lands are available for re-leasing.	RECORDS NOTATION
Docket	14.	File case file with closed files pending competitive leasing.	
Adjudication	15.	Continue to process the lands for re-leasing through the competitive process.	

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KeywordsF. Qualifications for Class II Reinstatement

1. A lease may be reinstated under the Class II procedures when the following criteria are met. First, the annual rental is paid to the MMS either before or after 20 days from the anniversary date (or to the BLM with a petition for reinstatement) and the reason for the late payment is inadvertence (see Appendix 3), or the rental is not paid within 20 days after the lease anniversary date, and it is shown to the satisfaction of the authorized officer that such failure was justified or not due to a lack of reasonable diligence.

CLASS II
REINSTATEMENT
REQUIREMENTS

NOTE: "Inadvertence" is viewed by the BLM to include failure to pay due to carelessness, negligence, an unintentional or accidental oversight, inattention, a mistake, a financial inability to pay timely, or any other reason. Although the IBLA ruled that being financially unable to pay the rental due is not considered inadvertent and is, therefore, not grounds for Class II reinstatement (see Dena F. Collins, 86 IBLA 32 (1985)), the BLM policy is that if a lessee does later secure the financial ability and timely files a petition for reinstatement, the petition is to be processed.

INADVERTENCE AS
REASON FOR LEASE
TERMINATION

2. A new oil and gas lease has not been issued for any of the lands affected by the terminated lease, and the oil and gas interests of the United States in the lands have not been disposed of or otherwise become unavailable for leasing. The lands from a terminated lease can be processed in preparation for lease issuance, however, a new lease cannot actually be issued until expiration of 90 days from the termination date of the old lease (see 43 CFR 3108.2-2(d) and 43 CFR 3110.7(b)).

NEW LEASE CANNOT
BE ISSUED WITHIN
90 DAYS FROM DATE
OF TERMINATION
OF PRIOR LEASE

NOTE: If the lands have been posted for re-leasing when a petition for reinstatement is filed, the lands must be withdrawn from competitive leasing until final disposition of the petition for reinstatement.

3. The petition for reinstatement is filed within 60 days after receipt of the termination notice. If a termination notice was not served by the BLM on the lessee, the petition must be filed within 15 months from the date of lease termination.

CLASS II
PETITION FOR
REINSTATEMENT

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Keywords

4. All required rental, including all back rental and/or royalty that has accrued from the date of lease termination, at the following increased rates:

INCREASED
RENTAL AND
ROYALTY RATES

4a. Noncompetitive Leases: Back rental accruing from date of termination and annual rental thereafter payable at the rate of \$5 per acre or fraction thereof per year and/or royalty payable at the rate of 16% percent. For each succeeding time that a lease originally issued noncompetitively is reinstated, the annual rental shall increase an additional \$5 per acre or fraction thereof (see 43 CFR 3103.2-2(f)), and the royalty shall increase an additional 2 percentage points (see 43 CFR 3103.3-1(a)(2)).

NONCOMPETITIVE
INCREASED RENTAL
AND ROYALTY RATES

4b. Competitive Leases: Back rental at the rate of \$10 per acre or fraction thereof per year, and royalty payable at a rate of not less than 16% percent (computed on a sliding scale when applicable), but not less than 4 percentage points greater than the competitive royalty rate schedule attached to the lease for leases issued prior to December 22, 1987, and 16% percent for leases issued on or after December 22, 1987. For each succeeding time that a lease originally issued competitively is reinstated the rental shall increase an additional \$10 per acre or fraction thereof (see 43 CFR 3103.2-2(f)), and the royalty shall increase an additional 2 percentage points (see 3103.3-1(a)(3)).

COMPETITIVE
INCREASED RENTAL
AND ROYALTY RATES

5. The back rental and/or royalty at the increased rates must be paid within 60 days of receipt of the termination notice, but the regulation 43 CFR 3108.2-3(b)(1) does not require that the payment accompany the reinstatement petition (see R. Gerald Jones, 101 IBLA 57 (1988)). In addition, if there is a delay of one year or more in reinstating the lease, the lease shall be reinstated only on the condition that the lessee also must pay the rental and/or royalty at the increased rates for the period of time that has elapsed since the payment of back rental and/or royalty that was made within the initial 60-day period.

5a. If a decision denying a petition for reinstatement is appealed, rental does not have to be paid during the pendency of the appeal before the IBLA. If the decision is overturned by the IBLA and the reinstatement may proceed, the lessee has to pay all rental at the increased rate that accrued while the appeal was pending before the IBLA prior to the reinstatement of the lease.

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Keywords

6. An administrative reinstatement fee of \$500 per lease is received.

ADMINISTRATIVE
REINSTATEMENT FEE

NOTE: The fee may be submitted separately and later than the Class II petition.

7. A \$125 deposit (amount subject to change) is received for the cost of publication in the Federal Register.

FEDERAL REGISTER
PUBLICATION COST

NOTE: This deposit may be submitted separate and later than the Class II petition. The regulations at 43 CFR 3108.2-3(b)(2)(v) and (vi) require only that the administrative fee and Federal Register publication cost be paid after the lessee has submitted the petition and the back rental and/or royalty at the higher rates, and the authorized officer has determined that the requirements for filing the petition have been timely met (see R. Gerald Jones, 101 IBLA 57 (1988)).

8. No additional filing fee is required.

9. If the above conditions are met, follow the Class II procedures in Step III.G, below.

10. If the Class II petition is filed, or the rental and/or royalty at the higher rate is submitted, after 60 days of the lessee's receipt of the termination notice (either Form 3108-2 or Form 3108-2a), deny the petition in a decision with the right of appeal since the petition and back rental and/or royalty must be received within the 60-day period as prescribed by the law (see Illustration 31).

CLASS II
PETITION
DENIED

11. When the decision denying the reinstatement is final, prepare an accounting advice to refund the following, if they were paid to the BLM: Rental paid after the termination of the lease, \$500 administrative fee, and \$125 fee for the Federal Register publication cost (see Illustration 32). If the late rental was paid to the MMS, prepare an accounting advice authorizing the MMS-DMD to make the refund (see Illustration 29).

ACCOUNTING
ADVICE -
RENTAL REFUND

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G. Class II Reinstatement Procedures

Responsible Official	Step	Action	Keywords
ALMRS Entry	1.	Enter Action Date (MANDATORY ACTION CODE): Date reinstatement petition is filed; DE 1775 Action Code 772/DE 2910 Action Code 284; Action Remarks: Class II.	AUTOMATED NOTATION
	1a.	Remove DE 1775 Action Code 790/DE 2910 Action Code 244 (and DE 1775/2910 Action Code 970, if entered) to prevent an invalid action sequence.	
		<u>NOTE:</u> See Appendix 5 for a list of the applicable action codes.	
Adjudication	2.	Prepare an appropriate notice if all of the required items were not furnished with the petition for reinstatement. Attach the appropriate lease amendment to the notice if the lease amendment had not been sent previously with the termination notice.	CLASS II REINSTATEMENT PROCESSING
	2a.	If a lease amendment had been sent out with the termination notice but was not returned with the reinstatement petition, prepare a notice requiring that it be furnished now (see Illustration 33). Attach another copy of the appropriate lease amendment to the notice (see Illustration 34 for a Section 17 noncompetitive lease and post-12/22/87 competitive lease amendment, and Illustration 35 for a pre-12/22/87 Section 17 competitive lease amendment).	AMENDMENT TO LEASE TERMS

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Responsible	Official	Step	Action	Keywords
		2b.	If the lease is a Section 14 renewal lease with a 12½ percent royalty rate, use Illustration 36 for the lease amendment to be attached to the notice. Most Section 14 renewal leases now have a royalty rate of 12½ percent, and those that do not have this rate now will have this rate the next time they are renewed.	SECTION 14 LEASE REINSTATEMENT
		2c.	However, if a Section 14 renewal lease with a royalty rate higher than 12½ percent is reinstated under the Class II procedures, change the royalty rate in the lease amendment in Illustration 36 to, "Royalty rate of 16% percent, or such royalty rate greater than 16% percent as originally specified in the royalty schedule included in the terms of the lease." But, if a previously reinstated Section 14 lease is renewed (for a final time under PL 101-567), the royalty rate for the "new lease" would revert to the 12½ percent rate when the renewal lease is issued for its last time.	
		2d.	If the \$500 administrative fee and the \$125 <u>Federal Register</u> publication cost have not yet been paid, in addition to the lease amendment not having been furnished with the reinstatement petition, require these charges to be paid in the notice issued that requires the lessee to furnish the lease amendment (see Illustration 37).	
		3.	When the reinstatement petition is perfected, prepare the proposed reinstatement notice for the <u>Federal Register</u> (see Illustration 38). Ensure first that the payments made are collectible.	FEDERAL REGISTER PUBLICATION NOTICE PREPARED

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Responsible Official	Step	Action	Keywords
	4.	<p>Mail the <u>Federal Register</u> notice (three originally signed copies) without a cover letter, to the Office of the Federal Register, National Archives and Records Administration (NARA), Washington, D.C. 20408.</p> <p>Also prepare Form 1310-5 (Document Face Sheet) to allow the BLM State Office to pay the Office of the Federal Register for the publication cost of the notice.</p>	<p>TRANSMIT <u>FEDERAL REGISTER</u> NOTICE FOR PUBLICATION</p>
ALMRS Entry	5.	<p>Enter action date: Notice published in the <u>Federal Register</u>; DE 1775 Action Code 240/DE 2910 Action Code 610; Action Remarks: <u>Federal Register</u> citation.</p>	<p>AUTOMATED NOTATION</p>
Adjudication	6.	<p>Send copies of the <u>Federal Register</u> notice, lessee's petition for reinstatement, additional requirements notice, lessee's response to the notice, and any other pertinent information concerning rental, royalty, and volume of production (if any is available in the case file) to:</p> <p>The Chairman of the Senate Committee on Energy and Natural Resources (see Illustration 39); <u>AND</u></p> <p>6b. The Chairman of the House of Representatives Committee on Resources (see Illustration 40).</p>	<p>NOTICE TO SENATE AND HOUSE OF REPRESENTATIVES COMMITTEES</p>
	7.	<p>Determine if the Class II reinstated lease warrants a lease extension (see Section III.J, below).</p>	

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Responsible Official	Step	Action	Keywords
	8.	If no objections are received and the 30-day period after publication in the <u>Federal Register</u> and notification to the House and Senate Committees has expired, issue a decision to the lessee reinstating the lease (see Illustration 41). A copy of the decision is not required to be sent to the MMS.	REINSTATEMENT OF LEASE
	9.	If the lease was on a termination list, indicate on the next such list sent to Field Office fluid mineral operations staff and to the SMA that the lease has been reinstated (see Illustrations 24 and 25).	ADVISE SMA AND FIELD OFFICE OPERATIONS OF REINSTATEMENT
	9a.	<u>OPTIONAL</u> : In lieu of identifying the Field Office fluid mineral operations staff and the SMA using Illustrations 24 and 25, notify them by sending a copy of the reinstatement decision.	
	10.	Prepare the accounting advices to earn the rental (see Illustration 42) and charges. Forward to Accounts/MMS-DMD.	ACCOUNTING ADVICE - CLASS II REINSTATEMENT
Cashier	11.	Process the accounting advices as follows: The \$500 administrative reinstatement fee and \$125 <u>Federal Register</u> publication cost are to be deposited directly into the MLR Appropriation 14X5017 Account, subactivity 5700, immediately after the check for the payment has cleared the bank (see Illustration 43). Forward accounting advice for rental to the MMS-DMD for action to reinstate the lease in its automated system.	EARN FEE AND PUBLICATION COST UPON LEASE REINSTATEMENT

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Responsible Official	Step	Action	Keywords
ALMRS Entry	12.	Update the case in the ALMRS automated system using the current data standards:	AUTOMATED NOTATION
		Enter Action Date (MANDATORY ACTION CODE): Date reinstatement approved; DE 1775 Action Code 773/DE 2910 Action Code 282; Action Remarks: Class II; new rental rate.	
	12b.	Enter Action Date (MANDATORY ACTION CODE): Lease expiration date; DE 1775/2910 Action Code 763.	
		Enter Action Date (MANDATORY ACTION CODE): Effective date rental rate adjusted; DE 1775 Action Code 093/DE 2910 Action Code 315; Action Remarks: Indicate new annual rate; effective date.	
		Enter Action Date (MANDATORY ACTION CODE): Effective date of new royalty rate; DE 1775 Action Code 103/DE 2910 Action Code 531 (or other appropriate royalty rate code); Action Remarks: Enter tie to old royalty rate placed in General Remarks; General Remarks: Old royalty rate; its effective date period from MM/DD/YY to MM/DD/YY	
Title Records	13.	Update oil and gas plat and other appropriate records to indicate that the lease has been reinstated.	RECORDS NOTATION
Docket	14.	File case file with active cases.	

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H. Class II Reinstatement Petition Withdrawal - Disbursement of Funds

Responsible Official	Step	Action	Keywords
ALMRS Entry	1.	Update the case indicating the withdrawal of a reinstatement petition using the current data standards.	AUTOMATED NOTATION
	1a.	Enter Action Date (MANDATORY ACTION DATE): Date withdrawal of reinstatement petition received; DE 1775 Action Code 775/DE 2910 Action Code 292; Action Remarks: Optional.	
	1b.	<u>OPTIONAL</u> : Enter Action Date: Date pending competitive leasing; DE 1775/2910 Action Code 202; Action Remarks: Optional.	
Adjudication	2.	If a petition is withdrawn after submission for publication of the <u>Federal Register</u> notice of proposed reinstatement, the \$500 administrative fee and <u>Federal Register</u> publication cost are earned.	PETITION WITHDRAWN AFTER PUBLICATION SUBMITTED - MONIES EARNED
	3.	If a petition is withdrawn before submission for publication of the <u>Federal Register</u> notice of proposed reinstatement, refund the \$500 administrative fee and <u>Federal Register</u> publication monies.	PETITION WITHDRAWN BEFORE PUBLICATION SUBMITTED - REFUND FEES
	4.	Send to Title Records, through Docket, for notation if the records were not previously noted as to lease termination.	
Title Records	5.	Update appropriate records to indicate lease termination.	RECORDS NOTATION
Docket	6.	File case file with closed cases, and if applicable, indicate that lands are pending competitive leasing.	
Adjudication	7.	Continue to process the lands for re-leasing.	

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I. Class II Reinstatement Petition Denied - Disbursement of Funds

Responsible Official	Step	Action	Keywords
ALMRS Entry	1.	Update the case indicating that the reinstatement petition was denied using the current data standards.	AUTOMATED NOTATION
	1a.	Enter Action Date (MANDATORY ACTION CODE): Date reinstatement petition denied; DE 1775 Action Code 774/DE 2910 Action Code 283; Action Remarks: Enter reason.	
	1b.	<u>OPTIONAL</u> : Enter Action Date: Date pending competitive leasing; DE 1775/2910 Action Code 202; Action Remarks: Optional.	
	2.	<u>If the petition is denied, refund the \$500 administrative fee and Federal Register publication monies.</u>	PETITION DENIED - FEE REFUND
	3.	Send to Title Records, through Docket, for notation if the records were not previously noted as to lease termination.	
Title Records	4.	Update appropriate records to indicate lease termination and availability of lands for re-leasing.	RECORDS NOTATION
Docket	5.	File case file with closed files pending competitive re-leasing.	
Adjudication	6.	Continue to process the lands for re-leasing.	

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

KeywordsJ. Lease Extension - Class I and Class II Reinstated LeasesEXTENSION OF
TERM OF
REINSTATED LEASE

1. Class I Reinstated Lease. The lease term may be extended at the discretion of the BLM authorized officer if it is determined that, upon reinstatement of the lease, the primary term will not afford the lessee a reasonable opportunity to continue operations under the lease (see Manual Section 3108.22B). The extension is subject to the following criteria:

CLASS I
REINSTATED LEASE
EXTENSION
CRITERIA

1a. The extension shall not exceed a period equivalent to the time beginning when the lessee knew or should have known of the lease termination and ending on the date the reinstatement is granted. The beginning date shall be the date of lease termination since the lessee is responsible for knowing the lease terms and conditions and the laws and regulations governing the lease, that require automatic termination by operation of law for failure to timely pay the annual rental on or before the anniversary date.

1b. The extension shall not exceed a period equivalent to the unexpired portion of the lease or any extension thereof remaining at the date of termination. If an extension is deemed appropriate for a lease at the time it is reinstated, the extension be for no more than 2 years, the same length of time granted for all other types of lease extensions.

1c. When the reinstatement occurs after the expiration of the primary term or any extension thereof, the lease may be extended from the date the reinstatement petition is granted.

Complying with these criteria of the May 12, 1970, amendment to the MLA, a lease reinstated under the Class I provisions normally shall not receive a lease extension. This is because of several factors. The lessee is presumed to be aware of the lease termination immediately. And, as stated in legislative history, no suspension of time occurs when the lease terminates (i.e., the running of the lease term is not stopped for that period between the date of termination and reinstatement). And, the term of the reinstated lease shall depend on the date the lease was issued rather than the date the lease terminated. Further, the reinstatement petition shall be processed without delay and granted shortly after the termination, i.e., in not less than 1 year from the date of termination.

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Keywords

For example, if a noncompetitive lease was issued August 1, 1985, and terminated on August 1, 1994, and is granted a Class I reinstatement in December 1994, over 7 months still remain in the primary term. In this case, the lease should not be granted an extension upon reinstatement since a reasonable time remains to continue operations, i.e., to perform diligent drilling operations to attain production in paying quantities. This 7-month period allows adequate time for an Application for Permit to Drill (APD) to be filed and approved for diligent drilling to commence; indeed, diligent drilling over the lease expiration date would qualify the lease for a 2-year drilling extension (see below, and Handbook 3107-1). If a lease terminates for failure to pay the rental timely but the lessee had filed an APD timely (at least 30 days prior to the lease expiration date) and the BLM had not taken action to approve the APD to allow drilling to commence, and the lease qualifies for a Class I reinstatement, an extension not to exceed 2 years would be appropriate when the lease reinstatement is approved. But, in the event that a lease terminates at the end of its primary term for failure to timely pay the rental while diligent drilling operations occurred over the expiration date, and the lease qualifies for a Class I reinstatement, the lease shall not be granted an additional extension due to the reinstatement because the lease earned a 2-year extension due to the diligent drilling operations over the lease expiration date. See Illustration 26 for a decision including appropriate language granting a Class I lease reinstatement with an extension. See Illustration 44 for an example of an accounting advice notifying the MMS-DMD of a Class I lease reinstatement with an extension.

REINSTATED LEASE
EXTENDED -
ACCOUNTING ADVICE
TO MMS-DMD

2. Class II Reinstated Lease. The lease term may be extended at the discretion of the BLM authorized officer if the approval of the reinstatement either: (1) occurs after the expiration of the primary term or after the expiration of any extension of the primary term; or (2) will not afford the lessee a reasonable opportunity to continue operations under the lease. In accordance with Title IV of FOGPMA, when a Class II lease reinstatement is approved the lease may be extended for a reasonable period but in no event for more than 2 years from the date the reinstatement is granted and so long thereafter as oil or gas is produced in paying quantities.

CLASS II
REINSTATED LEASE
EXTENSION
CRITERIA

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Keywords

The legislative history of Title IV of FOGRMA provides a clarification of the Congressional intent that a lease be reinstated as of the date of termination for the unexpired portion of the lease, specifying that no suspension of time occurs when the lease terminates, i.e., the lease term is not stopped during the time elapsed between the date of termination and approval of the reinstatement. Also, the legislative history of FOGRMA indicates that the term of the reinstated lease shall depend on the date the lease was issued rather than the date the lease terminated, i.e., the reinstatement period runs from the date of issuance of the original term of the lease, in order to significantly reduce any excessively long lease term that could otherwise result. For example, if a noncompetitive lease was issued on July 1, 1986, and was terminated on July 1, 1994, for failure to pay the rental and was not reinstated until December 1994, the unexpired portion of the primary term of the lease is 1½ years, or until June 30, 1996. In this case, a lease extension is not to be granted because the lessee has reasonable time to continue operations on the lease.

If a lease terminates at the end of its primary term for failure to timely pay the annual rental while diligent drilling operations occurred over the expiration date, and the lease qualifies for a Class II reinstatement, the lease shall not be entitled to an additional extension due to the reinstatement since the lease has earned a 2-year extension due to the diligent drilling over the expiration date. However, if the lease terminates for failure to timely pay the rental but the lessee had filed an APD timely, at least 30 days prior to the lease expiration date, and the BLM had not taken action to approve the APD to allow diligent drilling to commence prior to the lease expiration, when the lease is reinstated under the Class II provisions a 2-year extension would be appropriate to allow drilling under the approved APD. See Illustration 41 for a decision granting a Class II Reinstatement with an extension. See Illustration 44 for an example of an accounting advice notifying the MMS of this type of reinstatement and lease extension.

REINSTATED LEASE
EXTENDED -
ACCOUNTING ADVICE
TO MMS-DMD

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Keywords

Change the last sentence in the third paragraph of the Federal Register Notice for the proposed Class II reinstatement in Illustration 38 to read:

CHANGE FEDERAL
REGISTER NOTICE
TO INDICATE
LEASE EXTENSION

The lease is subject to the original terms and conditions and the increased rental and royalty rates cited above, and an extension for [two] years from the date the lease is reinstated in accordance with 43 CFR 3108.2-3(e).

Responsible

<u>Responsible</u> <u>Official</u>	<u>Step</u>	<u>Action</u>	<u>Keywords</u>
ALMRS Entry	1.	Enter Action Date (MANDATORY ACTION CODE): Effective date of lease extension; DE 1775 Action Code 258/DE 2910 Action Code 235; Action Remarks: THRU MM/DD/YY;	AUTOMATED NOTATION
	2.	Enter Action Date (MANDATORY ACTION CODE): New lease expiration date; DE 1775/2910 Action Code 763.	

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Keywords

K. Petition for Reduction of Rental - Class II
Reinstated Lease

A lessee may request a reduction of rental concurrently with the petition for a Class II reinstatement, but such a request must be accompanied by a rental amount that is at least equal to the yearly rental rate of the terminated lease. Section 39 of the MLA provides the authority to reduce the rental rate whenever, in the judgment of the authorized officer, it is necessary to do so in order to promote development, or whenever the lease cannot be successfully operated under the terms provided therein. (See Manual Section 3108.23C.)

REQUEST FOR
RENTAL REDUCTION
FOR CLASS II
REINSTATED LEASE

A request for a rental reduction must be given the utmost review, and the final decision of the authorized officer to grant relief shall be thoroughly justified and documented. In no circumstances can the rental rate be reduced below the standard noncompetitive or competitive rate currently in effect.

Responsible

<u>Official</u>	<u>Step</u>	<u>Action</u>	<u>Keywords</u>
Adjudication	1.	When the appropriate reduced rental rate has been determined by the authorized officer and, if additional rental is required, the lessee shall be notified by a decision sent by certified mail. If the lessee fails to pay the appropriate back rental at the rate established within 60 days of receipt of the petition notice, the lease shall not be reinstated.	ADDITIONAL RENTAL REQUIRED
	2.	Authorize the rental reduction by issuing an oil and gas lease amendment using the format of either Illustration 34 or 35, changing the annual rental rate to the appropriate reduced amount.	AMEND LEASE TERMS
ALMRS Entry	3.	Enter Action Date (MANDATORY ACTION CODE): Date rental reduction authorized; DE 1775 Action Code 093/DE 2910 Action Code 315; Action Remarks: New rental rate; effective date.	AUTOMATED NOTATION

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Responsible Official	Step	Action	Keywords
Adjudication	4.	If the request for a rental reduction is denied, issue a decision for the denial. (See Appendix 1.) Denial of a request for a rental rate reduction at the time the lease is reinstated does not prohibit the lessee from requesting such relief at a later date.	RENTAL REDUCTION DENIED
ALMRS Entry	5.	Enter Action Date: Decision Issued; DE 1775 Action Code 718/DE 2910 Action Code 393; Action Remarks: Rental reduction denied.	AUTOMATED NOTATION

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Keywords

L. Petition for Reduction of Royalty - Class II Reinstated Lease

A lessee may request a reduction of royalty concurrently with the petition for a Class II reinstatement. A royalty rate reduction must be justified due to hardship or to prevent premature termination of production of a producing well. Section 31(i) of the MLA (30 U.S.C. 188(i)) provides the Secretary with the discretionary authority to reduce the royalty rates on a reinstated lease. A request for a royalty rate reduction made in conjunction with a petition for a Class II reinstatement must be justified and documented. Although a royalty rate reduction and a Class II reinstatement petition can be filed at the same time, the two actions cannot be acted on concurrently. The lease must first be reinstated, with subsequent consideration given to determine if a royalty rate reduction is justified. The legislative history of Title IV of FOGRMA clearly states, however, that this authority to reduce the royalty rate for reinstated leases is not to be construed as blanket authority for royalty reductions on all reinstated leases.

ROYALTY
REDUCTION
REQUEST

Responsible

<u>Official</u>	<u>Step</u>	<u>Action</u>	<u>Keywords</u>
ALMRS Entry	1.	Enter Action Date (MANDATORY ACTION CODE): Royalty rate reduction filed; DE 1775/2910 Action Code 624; Action Remarks: Optional.	AUTOMATED NOTATION
Adjudication	2.	If any activity is indicated on the leasehold, request all pertinent data from the Field Office fluid mineral operations personnel on drilling, production, etc.	
	3.	After receipt of information from the Field Office fluid mineral operations personnel, obtain economic evaluation and/or geologist recommendations, or concurrence/nonconcurrence with the decision to reduce the royalty rate.	
	4.	If the recommendation concurs to grant a royalty rate reduction, grant the royalty reduction by issuing an oil and gas lease amendment using the format of Illustrations 34 or 35, changing the royalty rate to the appropriate reduced amount.	AMEND LEASE TERMS

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Responsible Official	Step	Action	Keywords
ALMRS Entry	5.	Enter Action Date (MANDATORY ACTION CODE): Date royalty reduction authorized; DE 1775/2910 Action Code 625; Action Remarks: EFF MM/DD/YYYY; General Remarks: Old royalty rate and its effective date from MM/DD/YY to MM/DD/YY.	AUTOMATED NOTATION
Adjudication	6.	If the request for a royalty reduction is denied issue a decision for the denial. (See Appendix 1.) Denial of a request for a royalty rate reduction at the time of lease reinstatement does not prohibit the lessee from requesting such relief at a later date.	ROYALTY REDUCTION DENIED
ALMRS Entry	7.	Enter Action Date (MANDATORY ACTION CODE): Royalty reduction denied; DE 1775/2910 Action Code 626; Action Remarks: Enter reason (optional).	AUTOMATED NOTATION

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No lease is to be issued within 90 days after the date of termination of a lease, nor shall any new lease be issued while a petition for reinstatement is pending, including within the 120-day judicial review waiting period after the IBLA has rendered a decision. (See 43 CFR 3108.2-3(c).)

WITHHOLD ISSUANCE
OF NEW LEASE FOR
90 DAYS FOR LANDS
IN TERMINATED
LEASE OR WHILE
REINSTATEMENT
PETITION PENDING

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

KeywordsN. Introduction (Class III Reinstatements)

Section 401(f) of FOGRMA and 43 CFR 3108.2-4(a) allow for the reinstatement of an unpatented oil placer mining claim by conversion to a noncompetitive oil and gas lease under Section 17 of the MLA. The conversion is contingent upon: (1) the unpatented oil placer mining claim was validly located prior to February 24, 1920; (2) the placer claim either has been producing, is currently producing, or is capable of producing oil or gas; (3) the claim has been deemed conclusively abandoned for failure to timely file the instruments required by Section 314(b) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1744; and (4) the filing of a Class III conversion petition within 120 days after the final notification by the BLM authorized officer or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim.

CLASS III
REINSTATEMENTS

The filing of the Class III conversion petition normally requires the payment of rental or royalty, but not both. The only time both rental and royalty are required when filing a conversion petition is if production commences on the oil placer claim after it has been deemed conclusively abandoned, but before it has been converted to a noncompetitive oil and gas lease. In this instance, the first year's rental and the accrued royalty up to the time of filing of the conversion petition, is to be submitted with the petition. Thereafter, monies due are based on the status of the lands involved in the conversion petition as follows: (1) If the lands are producing, only royalty is due; (2) if the lands are capable of production but are not producing, only minimum royalty is due; and (3) if the lands are nonproducing and are not capable of production, only rental is due. In cases where the oil placer claim is in production or commenced production after it was deemed conclusively abandoned, all accrued royalty monies shall be maintained in an escrow account by the petitioner until the abandoned claim is converted to a noncompetitive lease. After a lease is issued the accrued royalty are to be transferred from the escrow account to the MMS account.

RENTAL/ROYALTY
MONIES DUE
WITH PETITION

ESCROWED
ROYALTY MONIES
TRANSFERRED
TO MMS

If a valid oil and gas lease has been issued for any of the lands covered by the abandoned oil placer mining claim prior to the filing of a Class III conversion petition, the Class III petition shall be denied for that portion of the lands already included in the new lease. Such lands are no longer available for conversion to a noncompetitive lease under the Class III reinstatement provisions (see 43 CFR 3108.2-4(c)).