

3107 - Continuation, Extension, of Renewal of Leases

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Glossary of Terms. (See Handbook 3107-1; see also Handbook 3100-1)

Handbooks

H-3105-1 - Cooperative Conservation Provisions

H-3107-1 - Continuation, Extension, or Renewal of Leases

.01 Purpose. This Manual Section describes the provisions for the continuation, extension, renewal, and exchange of leases issued under the Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands of 1947. More detailed standards, guidelines, and procedures involving the Field Office operational aspects of drilling and production, and State Office (SO) lease adjudication of such actions, are found in Handbook 3107-1, which also deals with the operational aspects of drilling and production on Indian oil and gas leases under the operational supervision of the Bureau of Land Management (BLM).

.02 Objectives. The objective is to ensure that standards and procedures for lease actions of the type mentioned above are uniformly applied and are consistent with the statutory provisions, and regulatory and policy requirements.

.03 Authority. See Manual Section 3100.03.

.04 Responsibility.

_____.A. State Director. The State Director is responsible for determining whether a given well is or remains capable of production in paying quantities; taking actions upon cessation of paying production; reviewing shut-in leases held by production and contacting operators requesting proof that shut-in wells are capable of producing in paying quantities; ordering the operator to place the lease in production; and determining whether or not actual drilling operations were diligently conducted at the end of the primary term of the lease. The State Director also is responsible for ensuring that the lessees and other affected management agencies are promptly informed of determinations that affect the terms of leases and that producing leases are brought under appropriate account control by the Minerals Management Service. The State Director also ensures that appropriate records, especially automated systems, such as the Automated Land and Mineral Record System (ALMRS) and the Automated Inspection Record System (AIRS), are promptly annotated. Where these responsibilities have been delegated to the District or Area Managers, the State Director is responsible for providing guidance.

_____.B. District Manager. If delegated, the District Manager is responsible for the operations specified by the delegation.

_____.C. Area Manager. If delegated, the Area Manager is responsible for operations specified by the delegation.

.05 References. See Manual Section 3100.05, Handbook 3100-1, Handbook 3105-1, and Handbook 3107-1.

.06 Policy. It is the BLM policy to require that standards and procedures concerning the continuation, extension, or renewal of leases be timely and uniformly applied in order to ensure prompt collection of royalties and notification to lessees/operators and other agencies of determinations affecting lease terms.

.07 File and Records Maintenance. The records and case files for all oil and gas lease and operations activities pertaining to continuation, extension, or renewal of leases shall be accurately and timely maintained to ensure that the BLM can properly supervise leases.

.1 Extension by Drilling.

.11 Period of Extension. A lease on which actual drilling operations are being diligently pursued at the end of the primary lease term, or any lease that is committed to an approved communitization agreement (CA) or cooperative or unit plan of development for which actual drilling operations are being diligently pursued over the end of the primary term of such lease, shall be extended for a period of 2 years. When the determination is made that a lease is entitled to such an extension, a decision is issued extending the term of the lease for 2 years from the end of the primary term, and all the appropriate management agencies are informed of such extension.

.12 Requirements.

A. Determination of Diligent Drilling. The authorized officer (AO) monitors lease operations to ensure that leases which may be entitled to such extensions are identified when operations extend over the primary term expiration date. When such leases are identified, the AO determines whether actual drilling operations are conducted in a manner that anyone seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other pertinent facts. (See Handbook 3107-1, Section I.B.)

B. Reports to State Office. When diligence is determined, the AO reports the determination to the SO Lease Adjudication Section. When a prompt determination cannot be made as to whether the operations are continued in a diligent fashion, the AO advises the SO Lease Adjudication Section of the possibility of lease extension and sends a follow-up report promptly after a diligence determination is made.

C. Communitization and Unit Agreements. More specific diligence standards apply to operations under a CA and a unit agreement. Operations under a CA shall be diligently pursued to the formation covered by the agreement. If a well penetrates a potential oil or gas formation but fails to reach the communitized formation, a lease extension applies only to the lease on which the well is located but does not apply to the other communitized leases. Under a unit agreement with a single well obligation, if the operator chooses to validate the unit by completing the obligation well as a well capable of producing unitized substances in paying quantities at a depth shallower than the specified obligation formation or depth, a prompt paying well determination must be made in order to determine whether or not the committed leases are eligible for a drilling extension. If the unit is subsequently validated, all committed leases are eligible for a drilling extension if drilling operations were occurring over the primary term expiration date. However, if the unit is subsequently declared invalid, only the lease on which the well was drilled is eligible for a drilling extension over the primary term expiration date. Under a unit having a multiple well obligation, if the unit is validated, the leases committed to the unit are eligible for a drilling extension any time a unit well is being drilled over the expiration date of the involved leases. On the other hand, if the unit is not validated, only the leases on which the wells were being drilled over the primary term expiration date are eligible for a drilling extension.

D. Rental Requirements. Annual rental payments must be made timely for any period of lease extension by diligent drilling. Otherwise, the lease automatically terminates by operation of law unless prior to the end of the primary term the lease contains a well capable of production or is committed to a productive unit or CA.

.13 Successive Extensions.

A. Leases Issued Before September 2, 1960. If the lease was issued prior to September 2, 1960, successive extensions may be granted if diligent drilling operations are being conducted over any expiration date of the lease, provided the lease has not previously been extended by production. (See Handbook 3107-1, Section I.A.)

B. Leases Issued After September 2, 1960. If the lease was issued after September 2, 1960, only one

drilling extension can be granted and only at the end of its primary term. A post-September 2, 1960, lease, which has been extended past its primary term due to actions such as unit segregation or unit termination, is not entitled to a diligent drilling extension over the extended expiration date. However, if such a lease does have diligent drilling operations across the expiration date of the original primary term, it is entitled to a 2-year drilling extension effective from the end of the primary term. For example, if a lease had a primary term ending May 31, 1995, and a unit termination effective May 17, 1994, resulting in an extension of the lease term to May 17, 1996, diligent drilling over May 31, 1995, will extend the lease to May 31, 1997. Diligent drilling on the same lease over May 17, 1996, however, will **not** extend the lease.

.14 Operations Not Diligently Pursued. Where it is determined that operations were not being pursued at the end of the primary term of the lease, the lease expires unless it has been otherwise extended. Whenever a lease is subject to possible extension by drilling operations, but the AO determines that such operations were not pursued in a diligent manner, a decision, with the right of appeal, is issued by the SO Lease Adjudication Section informing the lessee that the lease was not extended and expired under its own terms. (See Handbook 3107-1, Section I.F.) If the lease expired, any advance rental payments remitted for lease years beginning after the expiration date are refunded.

.2 Production.

.21 Continuation by Production. A lease that is in production in paying quantities, either actual or allocated, will continue in effect. This applies to all oil and gas leases except renewal leases eligible for renewal that have not yet been renewed under Public Law 101-567 enacted November 15, 1990 (see Handbook 3107-1, Section VIII); leases issued under the Act of May 21, 1930 (30 U.S.C. 301-306); and some private leases.

A. Determination of Production in Paying Quantities. The term "production in paying quantities," as applied to individual leases, refers to actual production or the capability of production of oil or gas of sufficient value to exceed operating costs. (See .21C, below, for the definition of this term as it applies to unit wells.) Appropriate costs are to be deducted from the gross production income to determine profitability. Factors to be considered in making the determination as to whether a lease is capable of producing oil or gas in paying quantities are set forth in Handbook 3107-1, Section II.A.1.

B. Action to be Taken. For purposes of extension, the AO is responsible for determining whether a discovery of oil or gas in paying quantities has been made and whether a given lease is or remains capable of production in paying quantities. Such determinations shall be made when production is first initiated on the leasehold, CA, or unit and shall be monitored on a continuing basis.

C. Communitization and Unit Agreements. The capability to produce communitized or unitized substances in paying quantities will act to continue the leases committed to the agreement so long as the capability to produce in paying quantities and the commitment of the lease to the agreement continues. The capability to produce in paying quantities from another formation not covered by the agreement will only serve to continue the lease upon which such production in paying quantities is located, but will not serve to continue other Federal leases committed to the agreement. It is important to note that the completion of a unit well that is capable of production in paying quantities on a lease basis is sufficient to extend the term of all Federal leases committed to the unit agreement (see Yates Petroleum Corp. et al., 67 IBLA 246 (1982)).

.22 Cessation of Production on a Productive Lease. Cessation of production means that the last productive well on a lease (or in a CA or participating area of a unit) is no longer capable of producing in paying quantities. The AO is responsible for monitoring all wells, especially on leases that are extended by production or are about to reach the end of the primary or any extended term, to ensure that proper action is taken when production ceases. (See Handbook 3107-1, Section II.C.)

A. A Lease in its Primary Term. When a lease still in its primary or fixed extended term ceases to be capable of production in paying quantities (whether production is actual or allocated), the lease will continue in effect to the end of such term, at which time it expires in the absence of any other extension to which it may be

entitled.

_____ B. A Lease Past its Primary Term. When a lease whose term is extended solely by production ceases to be capable of production in paying quantities, and reworking or drilling operations are not commenced within the 60-day period allowed by the regulations at 43 CFR 3107.2-2, the lease terminates by operation of law, unless the situations described below exist.

_____ 1. Lease Committed to a CA or Unit Agreement. If the lease is committed to a CA or unit agreement and if the cessation of production causes the CA to terminate, or the unit agreement to contract or terminate, the lease will remain in force for the original term of the lease or for 2 years, whichever is the longer, after the elimination of the lease from the unit by contraction, or after termination of the CA or unit agreement. Except in unusual cases, the contraction or termination will be determined to be simultaneous with the cessation of production, or with the end of reworking or drilling operations that failed to restore production.

_____ 2. Commencement of Reworking or Drilling Operations. A lessee or operator may avoid lease termination by commencing reworking or drilling operations with diligence within 60 days after receipt of notification from the AO that the lease is not in production. In the absence of such reworking or drilling operations or if such operations fail to restore production in paying quantities, the AO shall inform the SO Lease Adjudication Section of the lease termination. The SO Lease Adjudication Section is to issue a decision, with the right of appeal, informing the lessee that the lease has terminated by cessation of production.

_____ .23 Leases Capable of Production. A shut-in well is any well in a nonproducing status that is capable of production in paying quantities. For the purposes of this Manual Section, a nonproducing well that is purporting to hold a lease in its extended term must be shown, and accepted by the AO, to be a well capable of production in paying quantities. In the absence of such showing, no lease shall be extended beyond its fixed term by a nonproducing well. The AO shall require well tests and/or submission of economic data to confirm that the lease remains capable of production in paying quantities. Whenever the AO determines that further shut-in status is not justified, the operator shall be notified by certified mail to place the lease in production in not less than 60 days from receipt of notice from the AO. If so ordered, production shall be continued within the specified time unless a suspension of production is granted by the AO. Otherwise, lease termination results effective as of the date of receipt of the notification. The AO shall inform the SO Lease Adjudication Section if the operator does not comply within the specified time and request the SO Lease Adjudication Section to issue a decision of lease termination. (See Handbook 3107-1, Section II.D.)

.3 Extension for Terms of Cooperative or Unit Plan.

_____ .31 Leases Committed to Agreements. The term of any lease committed to a producing communitization or unit agreement continues for so long as the lease remains committed to the agreement, provided that there is production in paying quantities occurring in the lands committed to the agreement prior to the expiration date of such lease.

_____ .32 Segregation of Leases Committed in Part. Leases fully or effectively committed to a unit agreement, which cover lands within and lands outside the area covered by the plan, shall be segregated into separate leases as of the effective date of the unit agreement. Customary practice is for the portion of the original lease within the unit to retain the original serial number, with a new serial number assigned to that portion of the lease not committed to the unit. However, if a well exists on that portion of the lease outside the unit, the original lease serial number may be retained for that portion of the lease containing the well. There is no change in the lease term or the conditions of either lease, except as provided in this Manual Section. Leases subject to CA's or development contracts are not segregated. Leases "committed in part" are not to be confused with "partially committed" leases. (See Handbook 3105-1.)

_____ A. Leases Committed in Part. The segregated lease of the nonunitized lands continues in force and effect for its original term but for not less than 2 years from the effective date of segregation, which is the effective date of commitment to the unit. Note that whereas the segregation of a lease committed in part to a unit plan is

effective as of the date of unitization, any extension to which the segregated nonunitized lands is entitled is computed from that date. For example, an extension on nonunitized lands segregated June 8, 1993, is effective through midnight June 8, 1995. A lease expires upon the running of its term, either primary or extended. This event occurs at midnight on the last day of the lease, assuming no other extension of the lease for any other reason, e.g., extension due to a suspension of operations and production. (See Handbook 3105-1.)

_____ B. Producing Leases in an Extended Term Committed in Part. A lease segregated, because of commitment in part to an approved unit, from a lease which is continued solely by production, will continue not only for the 2 years from the effective date of segregation, but also for the life of the lease containing the well, and so long thereafter as oil or gas is produced in paying quantities from the segregated lease. Where such a lease has production attributable to the segregated lease, the base lease will continue for the life of the segregated lease, and so long thereafter as oil or gas is produced in paying quantities from the base lease. See Celsius Energy Co., Southland Royalty Co., 94 I.D. 394 (1987). When a lease is segregated upon partial commitment to a unit agreement, production on one segregated lease can extend the term of the other segregated lease only if the segregation occurs when the base lease is in an extended term because of production and not in a fixed term of years.

_____ C. Effect of Unit Approval Invalidation on Lease Segregations and Extensions. If the public interest requirement of an approved unit agreement for an unproven area (exploratory unit) is not satisfied, the unit approval is invalidated. Such action also invalidates any segregation and resulting extension. Standards for determining if the public interest requirement has been met are included in Manual Section 3180. The AO shall advise the SO Lease Adjudication Section when approval is invalidated. The segregation notice for those leases committed in part to a unit shall inform the lessee that such segregation and extension will be invalid if the unit agreement approval is invalidated. When approval is invalidated, the lessee is then informed by decision that the segregation and extension are invalid and the segregated lease (nonunitized lands) is consolidated with the base lease (unitized lands) as though no segregation occurred. (See Handbook 3105-1.)

_____ .33 Twenty-year Lease or Any Renewal Thereof. The lease term continues in force and effect for so long as such a lease is committed to a unit agreement beyond the expiration date of its primary term. Such a lease, if it is past its primary term, cannot be renewed once it is committed to a unit. Commitment of any such lease to a unit on the date the lease would ordinarily be renewed will thereafter deprive the lease of any right to renewal; its continuance depends solely upon production or other applicable extensions related to its commitment to the unit agreement.

.4 Extension by Elimination. Any lease eliminated from any approved cooperative or unit plan, communitization or drilling agreement, and any lease in effect when such plan or agreement terminates, continues for the original lease term or for 2 years after its elimination from, or after termination of, the plan or agreement, whichever is longer. Once extended, the lease will remain in effect as long as oil or gas is produced in paying quantities. Note, however, that if the public interest requirement is not met (discussed at .32C, above), approval of the agreement is declared invalid ab initio and no lease shall be extended.

.5 Extension of Leases Segregated by Assignment.

_____ .51 Extension After Discovery on Other Segregated Portions. Any lease segregated by assignment, including the retained portion, continues in force and effect for the primary lease term of the original lease, or for 2 years after the well completion date of discovery of oil or gas in paying quantities on any other segregated portion of the original lease, whichever is longer.

_____ .52 Undeveloped Parts of Leases in Their Extended Term. An assignment of an undeveloped portion of any lease (i.e., original lease or any segregated portion thereof) which was issued prior to September 2, 1960, and is in an extended term, will extend from the effective date of assignment either the assigned or retained portions for 2 years and for so long thereafter as oil or gas is produced in paying quantities.

_____ .53 Undeveloped Parts of Producing Leases in their Extended Term. The undeveloped part of a lease

retained or assigned out of a lease that is extended by production, actual or suspended, or by the payment of compensatory royalty, will be extended for 2 years after the effective date of the assignment, and for so long thereafter as oil or gas is produced in paying quantities. This provision is applicable to any lease issued on or after September 2, 1960 (30 U.S.C. 187a).

.6 Extension of Reinstated Leases. Where a reinstatement of a terminated lease will not afford a reasonable period of time to continue lease operations, the term of the lease may be extended by the AO for a period sufficient to afford such an opportunity.

_____.61 Period of Extension.

_____A. Class I Reinstatement. The period of extension for a lease reinstated under the Class I provisions may be granted subject to the following conditions. The extension shall not exceed a period equivalent to the time period beginning when the lessee knew or should have known of the lease termination and ending on the date that the authorized officer grants the Class I lease reinstatement. No such lease extension shall exceed a period equal to the unexpired portion of the lease, or any extended portion thereof, that is remaining at the date of lease termination. When the reinstatement occurs after the expiration of the lease term or extension thereof, the lease may be extended from the date the authorized officer grants the reinstatement petition.

_____B. Class II Reinstatement. When a Class II reinstatement is granted by the AO, if less than 2 years remains in the primary term or extended term of the lease from the date of approval of the reinstatement, the lease may be granted an extension sufficient to provide a full 2-year period to continue lease operations. For example, a lease with 6 months remaining in its primary or extended term from the date the AO approves the reinstatement shall be granted an extension for an additional 18 months. If the primary term or extension thereof has elapsed, e.g., the lease terminated for failure to pay the 11th-year rental, the lease is to be granted a full 2-year extension from the date of approval of the reinstatement. The extension period is not calculated from the date of lease termination.

.7 Exchange Leases (20-Year Term) and Renewal Leases.

_____.71 Exchange Leases (20-Year Term). Any lease which was issued for a term of 20 years (or a renewal thereof) or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease with a primary term of 5 years. An application to exchange for a new lease must be filed by the record title holder in triplicate in the proper BLM Office, show compliance with the terms of the lease and applicable regulations, and be accompanied by a \$75 nonrefundable filing fee. (See Handbook 3107-1, Section VII.)

_____.72 Renewal Leases. Twenty-year leases or renewals thereof may be renewed for a term of 20 years in accordance with Public Law

101-567 enacted November 15, 1990. (See Handbook 3107-1, Section VIII.)

_____A. Requirements. A renewal application shall be made by the lessee and may be joined in, or consented to, by the operator. The application shall show that all monies due to the United States have been paid and that operations under the lease have been conducted in compliance with the applicable regulations.

_____B. Application. An application must be filed, in triplicate, in the proper BLM Office at least 90 days, but not more than 6 months, prior to the expiration of its term accompanied by a nonrefundable \$75 filing fee. Late applications may be accepted. The Interior Board of Land Appeals (IBLA) decisions state that this requirement is permissive, and a delay in filing may be excused in the presence of any special circumstances. (See T & M Corp., Larry G. McLatchy, 70 IBLA 366, February 3, 1983.)

_____C. Approval.

_____1. Review of Application. Each application for renewal is reviewed by the AO to ensure that

operations conducted during the previous term of the lease complied with the lease terms and conditions, including the reclamation provisions of 43 CFR 3102.5-1(f), and that the lease account is in good standing. Additionally, the application and the file record is examined to determine if any overriding royalties in excess of 5 percent would constitute a burden on any lease operations that might lead to premature abandonment (see 43 CFR 3107.8-3(b)). If the review reveals the overriding royalty to be excessive, the parties involved may be required to adjust the overriding royalties and any payments out of production to an acceptable level as a condition of lease renewal.

_____ 2. Lease Execution. Copies of the renewal lease in triplicate are forwarded to the lessee for execution. After determining that there is appropriate bond coverage, if required, the lease is executed by the SO Lease Adjudication Section.

_____ 3. Bond. Until the last well on the lease has received final abandonment approval, the bond covering the lease operations shall remain in full force and effect.

.8 Other Types. Two other types of extensions of oil and gas leases are specifically addressed in 43 CFR 3107.9. These are described below at .81 and .82. Additionally, as provided by 43 CFR 3103.4-2, and in accordance with the Solicitor's Opinion, M-36953, 92 I.D. 293 (1985), no lease expires during a suspension of operations and/or production, and the term of any lease is "extended" by adding thereto any period of suspension pursuant to any direction or assent of the AO. Suspensions under these conditions are not true "extensions" of the lease term in the sense that the duration of the lease is extended; instead, such suspensions act to freeze or toll the running of the lease term, pushing the expiration date into the future. (See Manual Section 3103.4.)

_____ .81 Payment of Compensatory Royalty. Payment of compensatory royalty extends the term of the lease for so long as payments are made and for a period of 1 year from the discontinuance of such payments. (See Bruce Anderson, 80 IBLA 286, May 4, 1984.) However, if a lease is in its extended term by payment of compensatory royalty and is segregated by assignment, refer to .53, above. A nonproducing lease for which compensatory royalty has been assessed and for which no royalty is received from any portion of the lease lands shall continue to pay annual rental in addition to the compensatory royalty.

_____ .82 Subsurface Storage of Oil and Gas. Any lease used for the storage of oil or gas is extended for the period of storage under an approved subsurface storage agreement. (See Manual Section 3105.5.)

.9 Extension and Termination of Indian Leases. Generally, Indian leases may be extended beyond their fixed term only by actual production in paying quantities, unless otherwise specified in the lease terms or the Indian operating regulations, or if lease terms are amended by the lessor (25 CFR, Subchapter I). While the Bureau of Indian Affairs makes the final determination for extensions and terminations of allotted Indian leases, concurrence from the tribe shall be obtained for tribal leases.