citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) by T.D. ATF-306. T.D. ATF-311 was issued in response to a petition from Heublein, Inc., for the reconsideration of T.D. ATF-306. Heublein's petition was based on a representation that new scientific information and data not previously available had come to their attention concerning maximum levels for the use of citric acid in vodka.

Notice No. 716

On April 29, 1991, ATF issued Notice No. 716, 56 FR 19623, to gather additional information by inviting comments from the public and industry as to whether the 150 ppm citric acid limitation set forth in T.D. ATF-306 should be retained or revised. During the comment period, ATF secured an outside testing firm to conduct independent testing on sensory threshold levels for citric acid addition to vodka. In response to Notice No. 716, ATF received ten comments. All of the comments were opposed to setting a maximum limitation as low as 150 ppm for the addition of citric acid to vodka. The only commenter submitting sensory test data from independent contractors was Heublein, Inc. An evaluation of the test data by ATF revealed a disparity between the Heublein independent contractors' test results and the sensory test results from the outside firm secured by ATF. Therefore, the compliance data of December 4, 1991, set forth in T.D. ATF-311, was deferred until September 3, 1992, by T.D. ATF-317 in order to allow time to resolve the disparity in test results.

On January 28, 1992, the President asked U.S. government agencies to set aside a 90-day period to evaluate existing regulations and programs and to identify and accelerate action on initiatives that would eliminate any unnecessary regulatory burden or otherwise promote economic growth. Subsequently, the president's 90-day moratorium on new regulations was extended until August 28, 1992.

During that time, ATF reexamined its system of regulatory controls over the labeling of distilled spirits to ensure that existing regulations do not impose any unnecessary regulatory burdens. At the same time, ATF published T.D. ATF-333 deferring the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) until September 3, 1993.

Currently, a notice of proposed rulemaking (NPRM) is being prepared announcing the results of the independent tests conducted by the outside testing firm discussed in Notice No. 716. Therefore, ATF is deferring the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) in order to allow time to publish a notice in the **Federal Register** announcing the results of the independent lab tests on sensory threshold levels for citric acid addition to vodka and to make the material available for public comment.

Notice and Public Procedure

Because this final rule merely postpones the compliance date with respect to the citric acid requirement in T.D. ATF-306, in order to give public notice concerning the independent lab results, and in view of the immediate need for guidance to the industry with respect to compliance with this provision in T.D. ATF-306, it is found to be impractical and contrary to the public interest to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it does not result in:

(a) An annual effect on the economy of $100 million or more;

(b) Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of Heublein's petition, the notices, the Treasury decisions, and all comments are available for public inspection during normal business hours at: ATF Reading Room, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

Therefore, pursuant to the authority set forth in 27 U.S.C. 205(e), ATF is further postponing the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) by T.D. ATF-306. The compliance date is August 28, 1995.

Signed: July 8, 1993.

Stephen E. Higgins,

Director.

Approved: August 19, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93-20836 Filed 8-26-93; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 216

RIN 1010-AB84

Amendment of Production Accounting Regulations

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its Royalty Management Program regulations at 30 CFR part 216 to reflect administrative changes due to the transfer of responsibility for production accounting related to onshore Federal and Indian oil and gas leases from the Bureau of Land Management (BLM) to MMS. The amendments clarify operator responsibilities for reporting information to MMS.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, Mail Stop 3901, P.O. Box 25165, Denver, Colorado 80225-0165, telephone (303) 231-3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is Marvin D. Shaver of the Rules and Procedures Staff, MMS, Royalty Management Program.

I. Background

The MMS maintains a computerized Production Accounting and Auditing System (PAAS) which is an integrated system of manual and automated processes for minerals production reporting, accounting, and auditing. Based upon production reports submitted by reporters, the PAAS will track oil, gas, and solid minerals produced from or allocated to Federal and Indian leases, including the OCS, from the source of production to the point of disposition with emphasis on the point of royalty determination, or point of sale, whichever is applicable. Initially, only production information on offshore leases and certain onshore leases was submitted to PAAS.

At the Secretary of the Interior's request, a study was performed within the Department of the Interior (DOI) to determine the feasibility of extending the reporting requirements of the PAAS to all onshore oil and gas leases. The Secretary also directed that the Royalty Management Advisory Committee (RMAC) propose recommendations on the issue. The DOI study, called the "Mineral Lease Information Study" (MLIS), concluded in a September 1986 report that onshore implementation of PAAS would be fiscally attractive to the Government and would offer several advantages to lease and royalty management programs. However, there would be a substantial increase in industry's costs of reporting. The RMAC panel recommended that DOI computerize the existing production report (Form BLM 3160–6) submitted to the BLM and use data from this form to effect systematic production/sales comparisons.

Because of the RMAC panel's recommendations, the Secretary directed, in March 1987, that an addendum to the MLIS report be completed to analyze various options of implementing the panel's recommendations. This addendum concluded that automation of a slightly modified version of the existing form should occur and that MMS should become responsible for the receipt, edit/error correction, and distribution of the data to BLM, the Bureau of Indian Affairs, States, and Indian Tribes. Based on these studies, the Secretary decided in June 1987 that:

- Responsibility for receipt and processing of production data should be transferred from BLM to MMS.
- Operators of the Federal and Indian onshore oil and gas leases should continue to report production data on the existing production report which will be slightly modified and automated, and
- the MMS should distribute production data to all users.

On May 9, 1988, MMS published a Notice of Final Rulemaking in the **Federal Register** (53 FR 16408) to amend its regulations at 30 CFR part 216 to provide instructions to lease operators during the transfer of accounting responsibility from BLM. A phased conversion schedule was followed to accomplish the transfer of production reporting from BLM to MMS. The transfer (conversion) of responsibility from BLM to the MMS automated system has been completed. Therefore, MMS is amending its regulations to remove the instructions applicable during the conversion period. We are also amending our regulations to clarify operator responsibilities for reporting operations information to MMS.

II. Summary of Final Rule

The amendments included in this rulemaking are discussed below by section. Many sections in part 216 are not being amended by this rulemaking.

Section 216.2 Scope

This section is amended to remove instructions to reporters for submitting production reports during the conversion period.

Section 216.6 Definitions

This section is amended to remove the definition of "Conversion period" at paragraph (e). We are also amending this section to remove the alphabetical designation (i.e., (a), (b), (c), etc.) assigned to each definition for organizational consistency with other MMS regulations.

Section 216.20 Applicability

This section is amended to remove the applicability of 30 CFR part 216 to operators during the conversion period.

Section 216.50 Monthly Report of Operations

This section is amended to remove paragraph (a) which made the reporting requirements of § 216.50 applicable to operators during the conversion period. Paragraphs (b) through (e) are redesignated as paragraphs (a) through (d), respectively. We are also amending the new paragraph (a), formerly paragraph (b), to clarify operator responsibilities for reporting operations information on this report (Form MMS–3160). The cross reference in the new paragraph (d)(3), formerly paragraph (e)(3), is changed from (e)(2) to (d)(2).

Section 216.51 Facility and Measurement Information Form and Supplement

This section is amended to remove language relating to the conversion period. This section is also amended to remove the reporting requirements relative to the "supplement form" (Form MMS–4051 Supplement), which is no longer required. The title of § 216.51 is also amended to remove reference to the supplement.

Section 216.54 Oil and Gas Operations Report

This section is amended to clarify the responsibilities of operators who elect to report production on the Oil and Gas Operation Report (Form MMS–4054) instead of the Monthly Report of Operations (Form MMS–3160).

Section 216.55 Gas Analysis Report

Under the existing regulations, this report (Form MMS–4055) is required to be submitted by onshore and offshore operators by the 15th day of the second month following the production month. Because MMS no longer requires the information from onshore operators on a monthly basis, we are amending § 216.55. The amended § 216.55 requires that Form MMS–4055 be submitted by offshore operators on a semi-annual basis and by onshore operators upon request.

Section 216.56 Gas Plant Operations Report

Under the existing regulations, this report (Form MMS–4056) is required to be submitted by onshore and offshore operators by the 15th day of the second month following the production month. Because MMS no longer requires the information from onshore operators on a monthly basis, we are amending § 216.56. The amended § 216.56 requires that Form MMS–4056 be submitted by the 15th day of the second month following the production month by offshore operators unless the plant no longer processes gas and has not processed said gas for 6 months or more. The amended section requires onshore operators to submit Form MMS–4056 only upon request by MMS in order to verify the composition of a gas stream which is transferred to a gas plant.

Section 216.58 Production Allocation Schedule Report

Under the existing regulations, this report (Form MMS–4058) is required to be submitted by onshore and off-shore operators of any facility or measurement device. Because MMS no longer requires the information from onshore operators, we are amending § 216.58. The

amended § 216.58 requires that Form MMS–4058 be submitted only by offshore operators by the 15th day of the second month following the production month.

Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are administrative only and are not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final rule. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon the date of publication in the **Federal Register**.

Executive Order 12291 and the Regulatory Flexibility Act

Because the changes are administrative only with no additional requirements or burden placed on small business entities, the Department of the Interior (Department) has determined that this document is not a major rule under Executive Order 12291 and certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned Clearance Number 1010–0040.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 216

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: July 23, 1993.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 216 is amended as follows:

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Section 216.2 under Subpart A—General Provisions, is revised to read as follows:

§ 216.2 Scope.

This part governs the reporting of oil, gas, and solid minerals operations information on Federal and Indian leases or federally-approved agreements including leases or agreements on the OCS. This part also governs the reporting of other operational information associated with production from Federal and Indian leases or federally-approved agreements when such operations occur prior to the point of sale or royalty determination, whichever is applicable. Reporters are required to submit certain production reports to MMS as set forth in this part.

§ 216.6 [Amended]

3. Section 216.6, "Definitions" under Subpart A—General Provisions is amended to remove the alphabetic paragraph designation of each definition and to remove the definition of "Conversion period".

4. Section 216.20 under Subpart A—General Provisions, is revised to read as follows:

§ 216.20 Applicability.

The requirements of this part shall apply to all oil, gas, and solid mineral operators reporting information on Federal and Indian leases or federally-approved agreements, including leases or agreements on the OCS.

5. Section 216.50, under Subpart B—Oil and Gas, General, is amended by removing paragraph (a) and redesignating paragraphs (b), (c), (d), and (e) as new paragraphs (a) through (d), respectively. The new paragraph (a) (formerly paragraph (b)) is revised to read as follows:

§ 216.50 Monthly report of operations.

(a) Each operator of each onshore Federal or Indian lease or agreement containing at least one well not permanently plugged and abandoned shall file a Monthly Report of Operations (Form MMS–3160) unless production data is authorized to be reported on Form MMS–4054. This requirement does not apply to reporting of operations of gas storage agreements, which must continue to be reported to the appropriate BLM office. A completed Form MMS–3160 shall be filed for each calendar month, beginning with the month in which drilling operations are initiated, on or before the 15th day of the second month following the month being reported until the lease or agreement is terminated, or the last well is approved as permanently plugged or abandoned by BLM and all inventory is disposed of, or until monthly omission of the report is authorized by MMS. The MMS may grant time extensions for filing Form MMS–3160 on a case-by-case basis upon written request to MMS.

* * * * *

6. The new paragraph (d)(3) of § 216.50 (formerly paragraph (e)(3)) is amended to change the cross reference in that paragraph from "paragraph (e)(2)" to "paragraph (d)(2)".

7. Section 216.51, under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.51 Facility and Measurement Information Form.

A Facility and Measurement Information Form (Form MMS–4051) must be filed for each facility or measurement device which handles production from any Federal or Indian lease, or federally-approved agreement, through the point of first sale or the point of royalty computation, whichever is later. The completed form must be filed by any operator (reporting production on a Form MMS–4054) of an onshore Facility Measurement Point (FMP) that handles production from any Federal or Indian lease or federally-approved agreement prior to, or at the point of royalty determination, or any operator who acquires an onshore FMP that is currently reporting to the PAAS. The report must be filed no later than 30 days after the establishment of a new facility or measurement device, or 30 days after a change is made to an existing facility or measurement device.

8. Section 216.54 under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.54 Oil and Gas Operations Report.

Every operator of an OCS lease or federally-approved offshore agreement and any operator of an onshore Federal or Indian lease or federally-approved agreement that has elected to report production on an Oil and Gas Operations Report (Form MMS–4054) instead of the Form MMS–3160 (see § 216.50(c)(2)) must file a Form MMS–4054 each month as long as there exists at least one well that is not permanently plugged and abandoned. A completed Form MMS–4054 must be filed for each calendar month, beginning with the month in which drilling operations are initiated, on or before the 15th day of the second month following the month being reported, until the lease or agreement is terminated, or the last well is permanently plugged or abandoned and all inventory is disposed of, or until omission of the report is authorized by MMS.

9. Section § 216.55, under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.55 Gas Analysis Report.

Any operator of an OCS lease or federally-approved agreement and, upon request by MMS, any operator of an onshore Federal or Indian lease or federally-approved agreement, from which gas is sold or is transferred for processing prior to the point of royalty computation, must file a Gas Analysis Report (Form MMS–4055) for each sales or transfer meter. The form is due at least twice a year; once in the first 6 months of the calendar year, and once in the last 6 months of the calendar year, but may be submitted monthly, or as specified by the gas sales contract terms, and must be submitted on or before the 15th day of the second month following the end of the reporting period to which the information applies. All reports must be submitted by August 15th for any sales/transfers occurring in the first 6 months of the calendar year and February 15th of the following year for any sales/transfers occurring in the second 6 months of the calendar year.

10. Section 216.56, under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.56 Gas Plant Operations Report.

The operator of each gas plant that processes gas that originates from an OCS lease or federally-approved agreement and, upon request by MMS, the operator of a gas plant that processes gas from an onshore Federal or Indian lease or federally-approved agreement, prior to the point of royalty computation, must file a Gas Plant Operations Report (Form MMS–4056) for each calendar month, beginning with the month in which processing of gas is initiated, on or before the 15th day of the second month following the month being reported. The report must show 100 percent of the gas. If a plant no longer processes gas that originated from a Federal or Indian lease, or federally-approved agreement, prior to the point of royalty computation and has not processed such gas for 6 months or more, the operator of the gas plant is not required to file a Gas Plant Operations Report until the plant again produces such gas. The operator of the gas plant must notify MMS, in writing, when such gas has not been processed for 6 months or longer.

11. Section 216.58 under Subpart B—Oil and Gas, General, is revised to read as follows:

§ 216.58 Production Allocation Schedule Report.

(a) Any operator of an offshore Facility Measurement Point (FMP) handling production from a Federal lease or federally-approved agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination must file a Production Allocation Schedule Report (Form MMS–4058). This report is not required whenever all of the following conditions are met:

(1) All leases involved are Federal leases;

(2) All leases have the same fixed royalty rate;

(3) All leases are operated by the same operator;

(4) The facility measurement device is operated by the same person as the leases/agreements;

(5) Production has not been previously measured for royalty determination; and

(6) The production is not subsequently commingled and measured for royalty determination at an FMP for which Form MMS–4058 is required under this part.

(b) A completed Form MMS–4058 must be filed for each calendar month, beginning with the month in which handling of production covered by this section is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

[FR Doc. 93–20759 Filed 8–26–93; 8:45 am]
BILLING CODE 4310–MR–M

30 CFR Part 256

RIN 1010–AB38

Surety Bond Coverage for Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the surety bond provisions. Although this final rule applies to all OCS leases, the new levels of required minimum bond coverage are designed primarily to address lease abandonment and cleanup on producing leases in shallow water from 0 to 200 feet. The level of bond coverage required on the remaining leases will be addressed on a case-by-case basis pursuant to § 256.61, Additional bonds. This rule is being promulgated to assure that lessees have the financial capacity to carry out their obligations, e.g., to properly plug and abandon wells, remove platforms, and clear the well or platform site of obstructions.

EFFECTIVE DATE: November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: This final rule establishes a three-tier approach to bond coverage requirements for OCS oil and gas leases and postlease operations similar to the one proposed in the notice of proposed rulemaking (NPR) that was published on January 24, 1990 (55 FR 2388). This approach provides a transition period for implementation of the new bond requirements by retaining the current level of bond coverage for leases until such time as there is a change in lease activity or ownership. The increased bond coverage will be required when an Exploration Plan (EP) or a significant revision to an approved EP, a Development and Production Plan (DPP) or a significant revision to an approved DPP, a Development Operations Coordination Document (DOCD), or a significant revision to an approved DOCD, or a request for assignment of a lease is submitted to the Minerals Management Service (MMS) for approval. The final rule also allows a lessee or operator to submit a bond in an amount less than the amount prescribed by the rule for individual leases when the authorized officer agrees with the lessee's (operator's) showing that well abandonment, platform removal, and site clearance costs for the lease will be less than the amount of the lease bond coverage

($200,000 to $500,000) specified in this final rule.

The title of part 256 has been changed to Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf to reflect the subject matter contained therein. Part 256 no longer addresses rights-of-way, and the leasing of OCS minerals other than oil, gas, and the sulphur is governed by the provision of 30 CFR part 281. Changes have also been made in the text of the rule, as issued, to clarify the intent of the new rule and to retain certain aspects of the current rule that were omitted from the proposed rule (e.g., the final rule retains the provision that permits a lessee to maintain a $300,000 areawide bond if it only holds leases that have had no exploration or development and production activity proposed).

Provisons of the Final Rule

The objective of this rulemaking is to identify the appropriate level(s) of bond coverage required of OCS lessees. The level of coverage should reflect an appropriate balance between encouraging the maximum economic recovery of natural gas and oil from Federal offshore leases while providing the Federal Government with an adequate level of protection in the event lessees default in their obligations to properly abandon lease wells, remove platforms and other structures, and clear the seafloor around the well and platform site of debris and other obstructions to alternate uses.

The 1985 Marine Board of the National Research Council study entitled "Disposal of Offshore Platforms," estimated the removal costs for structures in 20 feet or less of water (includes some older structures in up to 50 feet of water) to range from $50,000 to $400,000 while the costs of removing structures in water depths between 20 feet (in some instances 50 feet) and 100 feet were estimated to range between $600,000 and $1.3 million. The removal costs of structures in water depths of 100 to 200 feet were estimated to range between $1 million and $2.5 million.

The total costs for platform removal, well abandonment, and site clearance can vary significantly among individual leases because of differences in the number of structures, number and depth of wells, water depth, and other factors. The MMS estimates the average cost for removing all structures and clearing entire lease sites in shallow water (0 to 200 feet) in the Gulf of Mexico (GOM) to be: (0 to 50 feet)—$3.2 million, (51 to 100 feet)—$2.6 million, (101 to 200 feet)—$3.9 million. The MMS estimates the same work in deep water (more than 201 feet) to be (201 to 400 feet)—$8.8 million, (more than 401 feet)—$21 to over $90 million.

The surety bond requirements of this rule balance the Government's need for a greater degree of protection against the costs and disincentives to additional production that higher surety bonds would impose. The requirements do not seek to require surety bond levels that would cover each individual lease's full liabilities in all cases, since it is expected that in many cases the wells and associated structures on a lease would not all stop being economically producible at the same time. Thus, it is expected that the lessee typically will have some funds available to cover part or all of its potential liability. The MMS regulations at 30 CFR part 250, subparts G and I, and other MMS requirements make it clear that lessees are responsible for all removal, plugging and abandonment, and site clearance costs—the level of bond coverage does not provide a ceiling for lessee obligations and responsibilities.

The findings of the National Research Council study combined with more recent lessee provided information concerning actual well-abandonment costs and site cleanup costs provided general guidelines for revising the levels of bond coverage required without causing an unnecessary burden on offshore lessees and operators.

The new, basic surety bond amounts established by this final rule will provide an effective mechanism to give greater assurance of the financial capability of OCS lessees and operators, without hindering the capability of those lessees and operators to undertake OCS exploration and development operations.

Under the approach retained by this final rule, prior to the issuance of a lease, a successful bidder must submit and maintain a $50,000 surety bond conditioned upon compliance with all the terms and conditions of the lease. The successful bidder is not required to submit an individual $50,000 surety bond if the bidder already maintains or furnishes an areawide surety bond in any of the amounts specified in the rule ($300,000, $1 million, or $3 million) that is conditioned upon compliance with all the terms and conditions of OCS oil and gas and sulphur leases held by the bidder in the OCS area in which the lease that is to be issued is located.

When a lessee proposes to initiate exploratory activities on a lease, or proposes to assign the record title in a lease that has an approved EP, a surety bond in the amount of $200,000 must be submitted with the EP unless the authorized officer, for good cause, permits the lessee to submit the $200,000 bond after the submission of the EP but prior to the approval of drilling activities under the EP. A lessee need not submit a $200,000 lease exploration bond with its EP if the lessee already maintains or furnishes a $500,000 lease development bond or an areawide surety bond in the sum of $1 million or $3 million that is conditioned upon compliance with all the terms and conditions of the OCS oil and gas and sulphur leases held by the lessee in the OCS area in which the lease is located.

At the development and production stage, or where a lessee proposes to assign the record title in a developed lease, this final rule requires the submission of a $500,000 lease bond unless the lessee already maintains or furnishes an areawide bond in the amount of $3 million that is conditioned upon compliance with all the terms and conditions of OCS oil and gas and sulphur leases in the OCS area in which the lease is located.

As noted in the preamble to the proposed rule and proposed § 250.62, these higher bond amounts are also required when there is an assignment by lessees of record title interests in a lease with an approved EP, DPP, or DOCD consistent with the requirements of 30 CFR 256.64(c).

This final rule retains the provision under which an operator's bond in an equal amount may be substituted for a lessee's bond. It should be noted that the substitution of an operator's bond for a lessee's bond does not relieve the lessee(s) of the obligation to comply with all the terms and conditions of the lease.

This final rule also retains the provision under which the authorized officer may require additional security in the form of a supplemental bond or bonds or require an increase in the coverage of an existing bond when additional security is deemed necessary (30 CFR 256.61, Additional bonds). Thus, the authorized officer may, on a case-by-case basis, require a lessee to increase its level of bond coverage to the level necessary to ensure present and future compliance with all lease obligations. Section 256.61(d) expands upon current § 256.61 to include examples of factors similar to those currently being examined by authorized officers to help determine the need for additional or supplemental security. Those factors include, but are not limited to, financial ability, record of meeting obligations, and projected financial strength. Inclusion of such examples informs the public of the kinds of considerations that have been and will be evaluated in determining

the need for an increase in the bond coverage required on a lease.

This is not a substantive change from the kinds of factors MMS currently examines.

This rule also requires that bonds be issued by a surety certified by the U.S. Department of the Treasury (U.S. Treasury). U.S. Treasury securities (U.S. Bonds or Notes) may be submitted in lieu of a bond should the lessee or operator so choose. In addition, the rule allows the substitution of alternate forms of financial assurance in lieu of surety bonds if certain criteria are met and the authorized officer approves the substitution. For example, letters of credit might be provided in lieu of the required surety bond if the authorized officer determines that the interests of the Government are sufficiently protected, and the letter of credit is not revocable.

The MMS is not adopting that provision of proposed § 256.62(e) which would have excused an assignee from furnishing bond if the assignor furnished bond and agreed to liability for the assignee's performance, because it is unnecessary. An existing regulation at § 256.64(c) permits an assignor and assignee agreement as joint principals on a bond. Further, current rules at § 256.62(d) provide that assignors remain "liable for all obligations under the lease accruing prior to the approval of the assignment." These obligations, accrued but not yet due for performance, include those of sealing wells, removing platforms, and clearing the ocean of obstructions. These obligations accrue when a well is drilled or used, a platform is installed or used, or an obstruction is created and remain until the procedures specified in subpart G of part 250 are followed. The assignor continues to be jointly liable for the performance of these obligations with respect to wells or structures in existence and not plugged or removed at the time of the assignment.[1]

Typically an assignment agreement between an assignor and assignee will require the assignee to meet these obligations, and to provide a performance bond or indemnity agreement to protect the assignor from potential liability to the lessor or the regulatory body for their performance. However, as one means of minimizing the assignor's perceived need for demanding bond for the same liability as bonded for MMS, MMS will accept, under § 256.64(c), a joint bond from an assignor and assignee in the amount specified in this rule. The Regional Director may also employ the authority under new § 256.58(g) to accept alternative security instruments, or the implicit authority to phase in the increase in supplemental bond required under new § 256.61(d). This should facilities assignee bonding at a sufficient level to eliminate the assignor's perceived need for a second bond not payable to the United States.

Additional revisions for technical accuracy not affecting the substance of the rule were also made.

Comments and Recommendations of Respondents

In order to alert the potentially impacted parties, MMS mailed copies of the **Federal Register** NPR directly to some 272 lessees and operators who are currently active in the OCS. This final rule incorporates, to the degree practicable, the comments and recommendations received in response to the NPR, while providing a more acceptable level of increased protection for the environment.

A total of 60 timely comments were received. Fifty-three of these were from companies and individuals in the offshore oil and gas industry. Of the 53, 30 were from lessees and operators and 15 from companies and individuals in the oil and gas support services industry. The opposition to the proposed increases in bond coverage expressed in these comments was based upon the view that the United States should accept responsibility for lease abandonment and clearance liabilities resulting from a default by a lessee or operator either directly or through a fund established for that purpose. Federal and State agencies either supported the proposed rule or objected to the proposal on the basis that it did not provide the level of bond coverage necessary to ensure lessee/operator compliance with lease abandonment and cleanup requirements.

Comments from five companies in the insurance and surety business were mixed with one generally supporting the proposed rule, two favoring alternate approaches, and two providing only general comments.

Comment: A frequently stated comment was that the proposed $3 million areawide bond is much greater than the costs of site clearance in shallow water depths and exceeds the costs actually experienced by the smaller companies which do not operate in deeper water. Several respondents suggested that the proposed higher bond requirements apply only to facilities in water depths greater than 300 feet. These respondents supported their argument that the proposed bond coverage was too high by citing the Category I cost estimate of $400,000 for platform removal presented in the 1985 Marine Board study.

Response: The estimated costs of $400,000 for removing Category I lease structures was for small structures in water depths of less than 20 feet (and some older structures in less than 50 feet of water) and did not include costs associated with well abandonment and seafloor clearance. It should be noted that leases in shallow water support more structures on average than do leases in deeper water.

Comment: Many of the respondents opposed the proposed rule on the grounds that the record does not show a significant level of default by OCS lessees.

Response: The record shows that defaults by OCS lessees in meeting their well (lease) abandonment and cleanup obligations are a relatively new but growing phenomenon. The development of this new phenomenon has focused attention on the hazards to safety of operations and potential environmental damage faced in this situation. The MMS does not have the appropriation authority required to assume the financial liabilities of even one lessee or operator who defaults on its obligations to abandon lease wells, remove structures and clear the worksite. Thus, MMS would be remiss in its responsibility for protection of the environment and safety of operations in the OCS if it waits the development of a record of a more significant level of defaults by offshore lessees before taking action.

Prior to 1985, the number of platforms being decommissioned was relatively small. In 1989, 100 platforms were removed from the Gulf of Mexico OCS. This is up from the 32 that were removed in 1985. The number of

[1] A letter dated June 6, 1988, to a single producer from the Director of MMS stated that Interior would not proceed against the original lessee-assignor to perform plugging and abandonment, apparently on the erroneous premise that the regulations did not contemplate assignors remaining responsible for any obligations for which the assignee was obligated under 30 CFR 256.62(e). The letter was mistaken in apparently assuming only one party could be liable for any given obligation. The MMS is not alone in holding an assignor jointly liable with an assignee for performing an obligation accruing before the assignment and which continues to be due after the assignment. In the common law, an original lessee remains liable for performance of express covenants of the lease, together with the assignee, absent an express release by the lessor in the lease or elsewhere. See, generally, Clark, Continued Liability of a Seller After a Sale of Producing Properties, 41 Inst. on Oil and Gas L. and Tax'n 5-6 (1990). Similarly, under the Louisiana Mineral Code, an assignee becomes responsible directly to the lessor for the performance of the lease obligations, but the assignor is not relieved of its obligations unless the lessor discharges the assignor expressly and in writing. La. Rev. Stat. 31:128 and 129.

platforms expected to be removed in 1995 is 148. As these greater numbers of platforms must be abandoned and removed, the potential for damage due to lessees' failure to perform required lease abandonment and clearance operations becomes significantly greater.

In a recent instance, in which a lessee failed to carry out OCS well abandonments or to timely meet requirements for restoring production through OCS well repairs, after numerous demands by MMS, the lease expired. The lessee lacked the financial capability to carry out its lease abandonment responsibilities and other obligations. The wells were subject to numerous liens. The MMS offered the tract for lease, subject to the successful bidder accepting responsibility for eventually plugging and abandoning those wells even if it never used them. The MMS was fortunate to be able to lease the tract subject to these conditions and the outstanding liens. The MMS would not have been so fortunate had the resources of the tract been depleted.

Comment: Another reason cited for opposition to the proposed increase in the required level of bond coverage was the view that coverage at the higher amounts would be extremely difficult if not impossible for some to obtain. Many operators reported that they are required to fully collateralize the surety bonds that they obtain. This requirement of bonding companies ties up assets which lessees and operators feel could be better used for their leasehold operations. Some respondents estimate that the cost for the higher areawide bond coverage and its capitalization would be $150,000 a year or more. Opponents of the higher bonding requirement claimed that the added cost of the higher bond would eliminate many smaller operators who want to participate in oil and gas operations in the OCS.

Response: Entities that engage in offshore activities (i.e., activities in the OCS) must have access to high levels of technical and financial resources in order to properly and safely conduct offshore activities. In general, such entities are not considered to be small. The MMS recognizes that the increased levels of bond coverage represent higher costs for OCS lessees and operators. It does not necessarily follow that competent smaller operators or producers will be eliminated from conducting operations in the OCS or that competition will be affected. The MMS is aware of a number of smaller operators who are providing much higher levels of surety protection to the current lessees of OCS leases which they (the smaller operators) hope to obtain through farm-in or other means. It should be noted that the regulations require only one bond for each lease. Where there are two or more lessees, only one needs to maintain the bond for that lease in as much as each lessee is responsible for the full performance of lease obligations. Lessees may continue to hold leasehold interests in OCS leases covered by bonds provided by other lessees without providing bond coverage. (It should be noted that the current level of bond coverage is provided by 25 percent of the owners of lease and pipeline right-of-way interests.) However, when operators become sole lessees, they must provide an appropriate level of bond coverage prior to the approval of the lease assignment.

Comment: A number of commenters claimed that the proposed rule would eliminate many small operators from the OCS and reduce competition.

Response: As noted in the preceding response, MMS does not believe that this rule will adversely affect a substantial number of small entities. Safe conduct of activities, such as exploration in the OCS and the development and production of OCS oil and gas properties, requires access to high levels of experience together with high levels of technical and financial resources. The inherent costs and nature of these activities, rather than any discretionary rulemaking action on the part of MMS, establish effective barriers to the participation of substantial numbers of small entities in OCS activities.

Comment: One commenter recommended a "phase-in" of the proposed increased bonding requirements rather than a single compliance date in order to allow operators, who currently have bonds, to continue operations without having to increase their bond coverage until a new activity is commenced. The "phase-in" approach will allow sureties to underwrite the additional bonds over a period of time rather than be faced with a mass effort just before a prescribed date for all lessees to bring their bond coverage into compliance with the increased levels. Another commenter recommended that MMS include a specific provision for review and adjustment of the bond coverage for existing offshore leases and structures. That commenter felt that current lessees should be required to post supplemental bonds or increase their coverage to the level mandated under the new regulations, when finalized.

Response: The MMS recognizes the need to "phase-in" the increase in bonding requirements contained in this final rule and, therefore, is not requiring additional bonds from all lessees simultaneously but is requiring additional security in most cases only at such times as new MMS approvals are needed. A separate rulemaking is being initiated which would establish a deadline for the posting of supplemental bonds for leases which have experienced exploration or development and production activities under EP's, DOCD's, or DPP's approved prior to the effective date of this rule. These leases, of course, remain subject to the supplemental bonding rule at 30 CFR 256.61.

Alternate Approaches

One alternate approach suggested to MMS by an insurance/bonding consultant includes an arrangement under which the lease bond would be collateralized by payments from leasehold production into an escrow account (trust fund) established by lessees with a financial institution serving as trustee. Initially, the necessary surety bond coverage would be provided by the financial institution. As payments are made into a trust fund (e.g., quarterly payments derived from "overrides" on production), the trust fund would replace collateralization for the bond. Once the amount deposited in the trust fund reaches the level of the required bond coverage, the parties in interest could retire the bond and deposit a U.S. Treasury security purchased with the proceeds from the escrow account with MMS, or the parties could continue to maintain the surety bond on a fully collateralized basis.

In two recent bankruptcies, MMS has agreed to accept the establishment of abandonment accounts or trust funds with significant initial deposits to be followed by payments at a specified rate from future production, assured by the grant of an overriding royalty or the pledge or mortgage of proved producing reserves. The use of trust funds is cited here only as an example of the kinds of innovative arrangements that have been developed between offshore lease assignors and assignees. The final rule permits lessees to create a wide variety of new arrangements and mechanisms for compliance with the new minimum bonding requirements, as long as the requirements of new § 256.58 (f) or (g) are met.

The January 1990 NPR described two alternative approaches for ensuring adequate levels in the safety of OCS operations and the protection of the

environment from lessee defaults in obligations for well abandonment, platform removal, site clearance, or other lessee requirements. The NPR asked for comments on these alternative approaches as well as suggestions and comments on any other approaches which respondents wished to submit for consideration as alternatives to the current bonding requirements and MMS proposed changes.

Respondents suggested a variety of alternate approaches. We have evaluated these proposals in terms of the degree to which each meets the objectives to:

(1) Assure lessees' financial capacity to perform lease obligations;

(2) Protect the environment from threat of harm which might result from a lessee's failure to timely carry out proper well abandonment and site clearance operations on a lease;

(3) Achieve a reasonable degree of protection at a minimum increase in costs to lessees and operators; and

(4) Select a method of attaining these goals which impacts equitably on all parties who would be affected.

The following alternative approaches have been considered:

Variable bonds—This approach was one of the alternatives put forward by MMS in the NPR. Specifically, comments were requested on the concept of a level of bond coverage that would increase as a percent of the total investment in exploration or development and production structures on the lease.

Several variations of this concept were supported by 17 respondents. Specific suggestions were:

(1) To set the level of bond coverage on the basis of water depth (greater or less than 300 feet);

(2) To establish the level of bond coverage on a case-by-case basis according to the site;

(3) To establish sliding scale levels of bond coverage for operators based on their activities; and

(4) To establish the level of bond coverage by scaling it to each individual property.

Although these suggested alternatives differ in detail from each other, they are all variations on the alternative of establishing the level of bond coverage on a nonstandard basis. That is, in contrast to MMS's proposal, each of these approaches would require the establishment of the level of bond coverage for each lease individually on the basis of the determining factor(s) such as water depth, level of leasehold activity, or percent of total investment.

These approaches would establish the level of bond coverage required on a case-by-case basis according to estimates of anticipated well abandonment, platform removal, and site clearance costs. The establishment of the amount of bond coverage required based on a case-by-case evaluation of the actual expected costs of site clearance and abandonment would result in much higher costs to lessees and operators than the proposed or final rule.

The tiered approach established by this final rule is, to some degree, a variable level of bond coverage in that the minimum level of bond coverage required is tied to the activity level on the lease. Increased levels of bond coverage are required as leasehold activity increases (1) upon the approval of an EP authorizing the conduct of exploration activities and (2) upon the approval of a DPP or DOCD authorizing development and production activities.

Alternative approaches calling for variable levels of bond coverage based on other determining factors (i.e., investment level, sliding scale based on the level of leasehold operations, etc.) would require a much higher degree of analysis and evaluation of the amount of bond coverage to be required for each lease. It would also be necessary to recalculate and update the level of bond coverage for each lease as investment levels increase or the type and level of operations change. These individual lease activity analyses would require MMS and OCS lessees and operators to dedicate many more administrative and management resources to the establishment and maintenance of the appropriate levels of lease surety bond coverage.

Alternate Forms of Securities—The second alternative for which MMS requested comments and recommendations was that of providing alternate forms of security against a lessee's default in its obligations in lieu of providing a surety bond.

The final rule makes it clear that MMS will accept, in lieu of a surety bond, U.S. Treasury instruments with a negotiable value at the time of submittal equal to the amount of the surety bond that would be required for the particular activities and lease in question.

In addition, the final rule provides that application may be made to the authorized officer for approval of other substitute security instruments. Such approval may be given if the applicant can show that the interests of the Government would be sufficiently protected by the submission of another form of collateral or alternative financial instrument.

Comment: Respondents to MMS's request for comments on the submission of alternate forms of securities favored MMS's acceptance of cash deposits, financial statements, bank letters of credit, and "self suretyship." One respondent proposed the use of a company's "net worth" test in which a letter of credit or a surety bond would be posted with MMS only if a company's assets fell below the estimated amount that would be needed to fund lease abandonment and cleanup. Three respondents opposed the concept of substitute security instruments in lieu of the surety bond. They contended that the surety bonding procedures result in surety companies performing a financial screening function. Alternate security instruments may not provide a comparable screening process.

Response: The financial screening process performed by surety companies is recognized as an important service. Under existing regulations, when a substitute surety instrument is provided in the form of U.S. Treasury instruments, there is no financial screening by a third party. The MMS expects only a few lessees to propose alternate forms of security. In those instances, the burden is on the lessee to demonstrate its financial capabilities to MMS's satisfaction. Thus, in those instances, MMS conducts its own screening process.

The support for alternative forms of security was specifically for acceptance of liability insurance and bank letters of credit on the basis that these are more easily obtainable at a lower cost to the lessee or operator than bonds and would tie up less capital and free funds for use in conducting leasehold operations. The MMS recognizes that letters of credit and liability insurance would cost lessees less than surety bonds and has added a provision to the final rule to allow for alternative security instruments to be substituted for the required bond if certain criteria are met.

Unfortunately, these alternative security instruments usually fail to provide an irrevocable and noncancellable assurance by the guarantor that the required actions will be performed in the event a lessee defaults. Letters of credit and insurance policies are operative for specified periods of time and must be renewed periodically (often annually) by the issuing financial institution. If these barriers can be removed or overcome to the satisfaction of the authorized officers, these alternatives may be accepted.

Creation of a Trust Fund—An alternative means of providing funds to assume the responsibility for lease abandonment and clearance in cases of default by lessees or operators in the

OCS could be provided by the enactment of legislation to create a Well Abandonment, Platform Removal, and Site Clearance Trust Fund to be subscribed to by all OCS oil and gas lessees.

Comment: Twenty-eight of the 32 respondents who specifically addressed this issue supported the idea. This concept was referred to also as an "Abandonment Trust" or a "Contingency Fund." Most supporters suggested that it be funded by surcharges on production or assessments against each lease. One respondent suggested that surcharges be assessed differently for properties in waters less than 300 feet than for properties in waters of more than 300 feet. Another suggested that a trust fund be created by a service charge on drilling and development activities. Three respondents recommended a system similar to the U.S. Coast Guard's (USCG) Offshore Oil Pollution Compensation Fund. One respondent opposed the establishment of a fund on the basis that it would not prevent losses because there is no prequalification of participants such as there is in the bonding process. Another response in opposition to the idea of a contingency fund objected to the establishment of a fund on the basis that responsible and financially capable lessees and operators would in effect be required to "underwrite lessees who default in their obligations."

Response: The MMS does not presently have the authority to establish a Well Abandonment, Platform Removal, and Site Clearance Trust Fund. The MMS will continue to look into the advisability of seeking legislation authorizing the use of a trust fund as a supplement to the increased levels of bond coverage provided by this rule.

Comment: One suggestion related to the trust fund concept was that the bond requirement be replaced with a proof of financial responsibility, such as the USCG accepted as evidence that offshore operators can meet the $35 million liability for oil-spill damage and cleanup established in connection with the Offshore Oil Spill Pollution Fund. The provisions in former title III of the OCS Lands Act Amendments of 1978, that require owners or operators of offshore facilities to establish and maintain evidence of financial responsibility in the amount of their liability under the law, could be satisfied by providing evidence of liability insurance in the required amount. The commenters suggested that MMS accept the same evidence in lieu of the bond requirement.

Response: Section 256.58(g) of this final rule authorizes the authorized officer to approve the submission of alternate types of securities or collateral in lieu of the required surety bond. The authorized officer may accept an alternate type of security when (1) the authorized officer determines that the interests of the Government are protected to the same extent that these interests would be protected by a surety bond and (2) the substitute security instrument is not limited in its term and is not revocable.

Summary of Need for Increased Bond Coverage

The MMS is particularly concerned about the demonstrated potential for the failure of lessees of older leasehold operations in shallow waters (0 to 200 feet) to protect the environment by expeditious and proper well abandonment, platform removal, and site clearance operations. These activities are very high cost operations and are obligations that must be carried out at a time when the lessee's interest in a property is low because of the drilling of a "dry hole" or because the property has been depleted of its resources.

Securing timely payment of royalty due the United States is also one of the functions of a lease bond. However, the risk of a lessee's default in making royalty payments is low during the early stages of production. Late payment charges and civil penalties, together with the fact that future revenues from a lease comprise assets which can be attached to cover unpaid royalty obligations plus interest, combine to protect against the nonpayment of royalty. Where there have been no drilling activities on a lease, the only risk is in the form of a relatively minor loss of income due from default in the making of rental payments.

Therefore, the MMS has focused its attention on the safety of operations and protection of the environment from the damage that could result from a lessee's failure to plug and abandon wells, remove platforms and facilities, and clear the seafloor.

Recent failures of lessees and operators to perform well abandonment or well repairs and restoration of production in a timely manner have forced MMS to more fully identify the magnitude of the existing unfunded financial liabilities of lessees and operators.

The current $50,000 lease surety bond or $300,000 areawide bond was established in August 1969. Clearly, this level of bond coverage no longer can provide assurance of safety in OCS operations and effective protection to the environment.

Given the potential environmental and safety hazards posed by a lessee's failure to promptly and properly abandon wells and remove structures at the end of their useful life, it is incumbent upon MMS to ensure that lessees assure performance through the submission of bonds in an amount which more nearly ensures that the necessary work will be performed by the responsible guarantor should an OCS lessee become financially unable to meet its obligations.

As previously noted, the level of bond coverage required in this final rule is based generally upon the range in estimated costs for OCS well abandonment, platform (structure) removal, and site clearance in relatively shallow water (0 to 200 feet).

The most comprehensive work regarding platform removal costs is found in the 1985 study by the Marine Board of the National Research Council entitled "Disposal of Offshore Platforms." This study was funded by the Department of the Interior (DOI). It derived cost estimates for platform removal by categorizing structures based on the complexity or type of structure, weight of the structure, and water depth.

The cost estimates contained in the Marine Board study cover only removal costs of individual platforms. They do not include the additional financial obligations of OCS lessees to plug and abandon wells and clear the leasehold of obstructions. Typically, it may cost over $100,000 to abandon a single OCS oil and gas well. The cost per well may be somewhat less where a number of wells are abandoned as one operation. Combined end-of-lease abandonment and clearance costs for a typical developed OCS lease in less than 200 feet of water range from $3.2 million for leases in 0 to 50 feet of water to $3.9 million for leases in 101 to 200 feet of water.

These are average costs, not minimum costs. Actual costs vary significantly between leases because of differences in the number of structures, number and depth of wells, water depth, and other factors unique to individual leases. These cost data illustrate the minimum level of financial responsibility which a lessee will need to carry out the end-of-lease oil and gas well abandonments, structure removal, and seafloor clearance required under OCS lease terms. These requirements include considerations of international law and national security requirements associated with surface or subsurface navigation.

The new levels of bond protection required for exploration, development, and production activities will provide a greater level of protection where that protection is most needed without adding an undue burden to OCS lessees and operators. The MMS will continue to explore alternate means to assure that lessees meet their obligations for well abandonment and cleanup costs when producing OCS oil and gas leases cease to produce, and the seafloor must be cleared of obstructions for other uses.

Author

This document was prepared by Mary B. McDonald, John V. Mirabella, and Gerald D. Rhodes, Engineering and Technology Division, MMS.

Executive Order (E.O.) 12291

The DOI has determined that this rule does not meet any of the criteria for a major rule under E.O. 12291, and therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The DOI has determined that this document will not have a significant effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities.

Paperwork Reduction Act

This final rule does not contain new information collection requirements which require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 501 et seq. The information collection requirements under 30 CFR part 256 are approved by OMB under project No. 1010–0006.

Takings Implication Assessment

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a takings implication assessment has not been prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

E.O. 12778

The DOI has certified to OMB that this final regulation meets the applicable civil justice reform standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The DOI determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Incorporation by reference, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: July 1, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth above, part 256 of title 30 of the Code of Federal Regulations is amended as follows:

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 256 is revised to read as follows:

Authority: 43 U.S.C. 1331 et seq.

2. The heading of part 256 is revised as set forth above.

3. The heading for subpart A is revised to read as follows:

Subpart A—Outer Continental Shelf Oil, Gas, and Sulphur Management, General

4. Section 256.0 is revised to read as follows:

§ 256.0 Authority for information collection.

The collections of information contained in part 256 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned OMB control number 1010–0006. The information will be used to determine if the applicant filing for a lease on the Outer Continental Shelf (OCS) is qualified to hold such a lease. Response is required to obtain a benefit in accordance with 43 U.S.C. 1331 et seq. Public reporting burden for this information is estimated to average 1.8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service, Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070–4817, and the Office of Management and Budget; Paperwork Reduction Project 1010–0006; Washington, DC 20503.

5. In § 256.58, the section heading is revised; paragraphs (a), (c), and (e) are revised; paragraph (f) is redesignated as paragraph (h); and new paragraphs (f) and (g) are added to read as follows:

§ 256.58 Acceptable bonds/alternate security instruments.

(a) The successful bidder, prior to the issuance of an oil and gas or sulphur lease, shall furnish the authorized officer a surety bond in the amount of $50,000 conditioned on compliance with all the terms and conditions of the lease. A $50,000 lease surety bond need not be submitted and maintained if the bidder furnishes and maintains an areawide bond in the sum of $300,000 issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulphur leases held by the bidder on the OCS for the area in which the lease to be issued in situated, furnishes and maintains an areawide bond under § 256.61 (a)(2) or (b)(2) of this part, or submits a substitute security instrument in accordance with paragraphs (f) and (g) of this section.

* * * * *

(c)(1) A lessee shall provide a separate areawide surety bond furnished and maintained pursuant to paragraph (a) of this section, or § 256.61 of this part, or a separate areawide alternate security instrument furnished pursuant to paragraphs (f) or (g) of this section, to secure the performance of lessee's obligation to comply with all the terms and conditions of leases in each of the areas identified in paragraph (b) of this section in which leases are held.

(2) An operator's bond in the same amount as the lease bond required under paragraph (a) of this section, or § 256.61 of this part, or alternate security instruments of the same amount as provided for in paragraphs (f) and (g) of this section, may be substituted at any time for the equivalent lessee's bond. The substitution of an operator's bond or alternate security instrument for a lessee's bond shall not relieve the lessee of its obligation to comply with the terms and conditions of the lease.

* * * * *

(e) If any bond has been reduced by any amount as the result of payment for default, the lessee must post a new bond in at least the amount of the original face value of the reduced bond within 6 months or such shorter period of time as the authorized officer may direct after a default. If the reduced bond is an individual lease bond, the lessee or

operator may replace it with an areawide bond as provided in paragraph (a) of this section or § 256.61 (a)(2) or (b)(2) of this part. Failure to post such a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of the lease(s) covered by the defaulted bond.

(f) U.S. Department of the Treasury (U.S. Treasury) securities (U.S. Bonds or Notes) may be submitted in lieu of a bond, provided the U.S. Treasury instrument or legal tender submitted is negotiable at the time of submission for an amount of cash equal to the value of the required bond.

(g) The authorized officer may approve the submission of alternate types of securities or collateral in lieu of the surety bonds required by this section if:

(1) The authorized officer determines that the interests of the Government are protected to the same extent that these interests would be protected by a surety bond, and

(2) The substitute security instrument is not limited in its term and is not revocable.

* * * * *

6. Section 256.59 is revised to read as follows:

§ 256.59 Bond form.

All bonds furnished by a bidder, lessee, or operator shall be on a form, or in a form, approved by the Director. Bonds required by this part and submitted after November 26, 1993 shall be issued by a qualified surety company certified by the U.S. Treasury as an acceptable surety on Federal bonds and listed in the current U.S. Treasury Circular No. 570 which is available from Surety Bond Branch, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227.

7. Section 256.61 is revised to read as follows:

§ 256.61 Additional bonds.

(a)(1) A surety bond in the amount of $200,000 issued by a qualified surety, and conditioned on compliance with all the terms and conditions of the lease, shall be furnished to the authorized officer with a proposed Exploration Plan (EP) or a proposed assignment of a lease with an approved EP submitted for approval on or after November 26, 1993. Approval of the EP or assignment shall be conditioned upon receipt of a lease surety bond in the amount of $200,000, unless the authorized officer, for good cause, authorizes the submission of the $200,000 lease exploration bond after the submission of the EP but prior to approval of drilling activities under the approved EP. This bond coverage may be provided by increasing the bond coverage provided pursuant to § 256.58(a) of this part.

(2) A $200,000 lease exploration bond pursuant to paragraph (a)(1) of this section need not be submitted and maintained if the lessee either:

(i) Furnishes and maintains an areawide bond in the sum of $1 million issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulphur leases held by the lease on the OCS for the area in which the lessee is situated; or

(ii) Furnishes and maintains a bond pursuant to paragraph (b)(2) of this section.

(b)(1) A surety bond in the amount of $500,000 issued by a qualified surety and conditioned on compliance with all the terms and conditions of the lease shall be furnished to the authorized officer with a proposed Development and Production Plan (DPP), Development Operations Coordination Document (DOCD), or a proposed assignment of a lease with an approved DPP or DOCD submitted for approval on or after November 26, 1993. Approval of a DPP, DOCD, or assignment of a lease with an approved DPP or DOCD shall be conditioned on receipt of a lease surety bond in the amount of $500,000, unless the authorized officer, for good cause, authorizes the submission of the $500,000 lease development bond after the submission of the DPP or DOCD but prior to the approval of platform installation or drilling activities under the approved DPP or DOCD. The lessee may provide this additional bond by submission of a new bond or by increasing the lease bond coverage of $200,000 provided under paragraph (a) of this section.

(2) The lessee need not submit and maintain a $500,000 lease development bond pursuant to paragraph (b)(1) of this section if the lessee furnishes and maintains an areawide bond in the sum of $3 million issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulphur leases held by the lessee on the OCS for the area in which the lease is situated.

(c) When a lessee can demonstrate to the satisfaction of the authorized officer that wells and platforms can be abandoned and removed and the drilling and platform sites cleared of obstructions for less than the amount of lease bond coverage required under paragraph (b)(1) of this section, the authorized officer may accept a lease surety bond in an amount less than the prescribed amount but not less than the amount of the cost for well abandonment, platform removal, and site clearance.

(d) The authorized officer may require additional security (i.e., security over and above the amounts prescribed in §§ 256.58(a) and 256.61 (a), (b), and (c) of this part) in the form of a supplemental bond or bonds or increased amount of coverage of an existing surety bond if the authorized officer deems such additional security necessary to cover royalty due the Government or costs and liabilities of the lessee for regulatory compliance, e.g., abandonment of wells, removal of platforms, and clearance of equipment and facilities from the lease once production ceases and the lease expires. The authorized officer shall base the decision on an evaluation of the ability of the lessee to carry out its present and future financial obligations, as demonstrated by factors such as:

(1) Financial capacity of the lessee substantially in excess of existing and anticipated lease and other obligations (including but not limited to well abandonment, platform removal, and royalty due to the Government) as evidenced by audited financial statements including auditor's certificate, balance sheet, and profit and loss sheet;

(2) Projected financial strength as evidenced by existing OCS production and proven reserves of future production valued significantly in excess of existing and future obligations;

(3) Business stability as evidenced by years of successful operation in the OCS or in the oil and gas industry;

(4) Reliability in meeting obligations as evidenced by credit ratings and trade references (for which purpose a lessee shall upon request furnish a list of the names and addresses of lessees, drilling contractors, and suppliers with whom it has dealt); and

(5) Record of compliance with laws, regulations, and lease terms.

8. In § 256.62, paragraph (e) is revised to read as follows:

§ 256.62 Assignment of leases or interests therein.

* * * * *

(e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the act including the requirement to furnish surety bonds as specified in OCS leases and §§ 256.58 and 256.61 of this part.

[FR Doc. 93-20494 Filed 8-26-93; 8:45 am]
BILLING CODE 4310-MR-M