

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 256

## Outer Continental Shelf Minerals Management; Bid Acceptance Procedures

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** This final rulemaking establishes the procedure for accepting or rejecting bids on Outer Continental Shelf leases in areas subject to another nation's claims of jurisdiction and control which conflict with claims of the United States. Section 256.47(e) gave the "authorized officer" 90 days in which to accept a bid. After 90 days, the bid was considered rejected. This requirement, however, is too inflexible when the Department offers tracts for lease in an area subject to claims of exclusive jurisdiction and control by nations in addition to the United States. To give the United States increased flexibility to resolve these matters in our foreign relations, the rule is amended to permit the Secretary to determine how long the authorized officer may consider the bid before it is deemed rejected.

**EFFECTIVE DATE:** March 16, 1984.

**ADDRESS:** Any recommendations or suggestions should be sent to: Director, Minerals Management Service, 18th and C Streets NW., Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Chris Oynes, (202) 343-6906.

**SUPPLEMENTARY INFORMATION:** This final rulemaking amends 30 CFR 256.47(e), which governs the acceptance or rejection of bids submitted on Outer Continental Shelf (OCS) leases. This section gave the "authorized officer" 90 days in which to accept a bid. After 90 days, the bid was considered rejected. This requirement, however, is too inflexible when the Department offers tracts for lease in an area subject to claims of exclusive jurisdiction and control by nations in addition to the United States. To give the United States increased flexibility to resolve these matters in our foreign relations, the rule is amended to permit the Secretary to determine how long the authorized officer may consider the bid before it is deemed rejected. This determination will appear in the final notice of sale.

The author of this final rulemaking is Poe Leggett, Assistant Solicitor, Offshore Minerals and International Law, Office of the Solicitor.

## Administrative Procedure Act

MMS is issuing this rulemaking effective immediately, based upon a number of separate and independent exemptions and exceptions contained in the Administrative Procedure Act (APA), 5 U.S.C. 553. First, the APA rulemaking procedures do not apply "to the extent that there is involved—(1) a military or foreign affairs function of the United States \* \* \*." 5 U.S.C. 553(a). This rulemaking is limited to tracts located in areas of competing claims of exclusive jurisdiction and control between the United States and foreign countries. Because of the sensitive nature of boundary issues, I find that a foreign affairs function is involved in the offering of tracts in these areas and that *this concern warrants special treatment under MMS rules.*

Second, the rulemaking prescribes internal agency procedures on bid acceptance. Accordingly, the rulemaking constitutes a rule of internal practice or procedure that is specifically excepted from the notice and comment provisions, as well as the 30-day advance publication requirement, prescribed in 5 U.S.C. 553(b)(A) and 5 U.S.C. 53(d)(2).

Third, Interior finds that the importance of making this rule effective immediately provides good cause for waiving the APA notice, comment, and advance publication provisions. This finding is based upon the statutory requirement under the OCSLA to expedite OCS leasing, particularly in frontier areas. Immediate adoption of the rule will allow Interior to apply it to Sale 83, Navarin Basin, in April 1984. The Navarin Basin, is a promising area for hydrocarbon exploration. Prospective bidders should not be discouraged from bidding because of international boundary issues.

Finally, the rulemaking involves "public property," another express statutory exception to the APA procedural requirements, 5 U.S.C. 553(a)(2). Although the Interior Department generally does not exempt rulemaking from the APA where public property is involved, that policy is overridden in the present instance by the importance of implementing the statutory objectives of the OCSLA, as explained in the preceding paragraph.

## Executive Order 12291

This final rulemaking is not a "rule" under section 1(a)(2) of the Executive Order. For the information of the public, the Department has determined that this final rule is not a major action and does not require the preparation of a regulatory impact analysis under Executive Order 12291 because it has no

economic impact. The rule will permit the Secretary to keep certain bonus bid deposits in escrow for more than 90 days. The funds will still be available to the U.S. Treasury because they will be invested in public debt securities. And because the funds will be invested, bidders will not lose interest on their bids if their bids are rejected.

## Regulatory Flexibility Act

This final rulemaking is not subject to the analyses required by 5 U.S.C. §§ 603 and 604. For the information of the public, the Department has also determined that this rule will not have a significant economic effect on a substantial number of small entities and does not, therefore, require a small entity flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it has no economic impact. Furthermore, small entities generally do not have the resources to bid on OCS leases, especially those in frontier areas adjoining our maritime boundaries.

## Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

## National Environmental Policy Act

This rule will not have a significant effect on the quality of the human environment. It is not a major federal action.

## List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts.

Under the authority of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*), § 256.47(e) of Title 30 of the Code of Federal Regulations is amended as set forth below.

Dated: March 13, 1984.

Garrey Carruthers,

Assistant Secretary of the Interior, Land and Minerals Management.

## PART 256—[AMENDED]

30 CFR 256.47 is amended by redesignating paragraph (e)(2) as (e)(3), a new paragraph (e)(2) added, and paragraph (e)(1) revised to read as follows:

## § 256.47 Award of leases.

(e)(1) The decision of the authorized officer on bids shall be the final action of the Department, subject only to reconsideration by the Secretary.

pursuant to written request, of the rejection of the high bid. The delegation of review authority to the Office of Hearings and Appeals shall not be applicable to decisions on high bids for leases on the Outer Continental Shelf.

(2) In the final notice of sale, the Secretary may identify tracts or blocks

which are subject to another nation's claims of jurisdiction and control which conflict with those of the United States. For a tract or block so identified, the authorized officer must accept or reject the bid within the time specified in the notice of sale. For a tract not so identified, the authorized officer must

accept or reject the bid within 90 days after the date on which bids are opened. Any bid not accepted within the prescribed time shall be considered rejected.

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