[Federal Register: November 14, 2005 (Volume 70, Number 218)]
[Proposed Rules]
[Page 69118-69128]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr14no05-26]

==========

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 251, and 280

RIN 1010-**AD23**

Oil, Gas, and Sulphur Operations and Leasing in the Outer Continental Shelf (OCS)--Recovery of Costs Related to the Regulation of Oil and Gas Activities on the OCS

AGENCY: **Minerals Management Service** (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS is proposing regulations which impose new fees to process certain plans, applications, and permits. The proposed **service** fees would offset MMS's costs of processing these plans, applications, and permits.

DATES: MMS will consider all comments received by January 13, 2006. MMS will begin reviewing comments and may not fully consider comments received after January 13, 2006.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods listed below. Please use the regulatory identifier number (RIN) 1010-**AD23** as an identifier in your message. See also Public Comment Procedures under Procedural Matters.

Federal e-Rulemaking Portal: http://www.regulations.gov.

Follow the instructions on the website for submitting comments.

E-mail MMS at rules.comments@mms.gov. Use the RIN in the subject line.

Fax: 703-787-1546. Identify with the RIN.

Mail or hand-carry comments to the Department of the Interior; **Minerals Management Service**; Attention: Rules Processing Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference ``Recovery of Costs Related to the Regulation of Oil and Gas Activities on the OCS-**AD23**'' in your comments.

You may also send comments on the information collection aspects of this rule directly to the Office of **Management** and Budget (OMB) via: OMB e-mail: (OIRA_DOCKET@omb.eop.gov); mail or hand carry to the Office of Information and Regulatory Affairs, OMB Attention: Desk Officer for the Department of the Interior (1010-**AD23**) or by fax (202) 395-6566. Please also send a copy to MMS.

FOR FURTHER INFORMATION CONTACT: Martin Heinze, Program Analyst, Office of Planning, Budget and International Affairs at (703) 787-1010.

SUPPLEMENTARY INFORMATION:

Background

Federal agencies are generally authorized to recover the costs of providing services to non-federal entities through the provisions of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701. The Act requires implementation through rulemaking. There are several policy documents that provide MMS guidance on the process of charging applicants for **service** costs. The governing language concerning cost recovery can be found in OMB Circular No. A-25 which states in part, ``The provisions of this Circular cover all federal activities that convey benefits to recipients beyond those accruing to the general public. * * * When a **service** (or privilege) provides special benefits to an identifiable recipient, beyond those that accrue to the general public, a charge would be imposed (to recover the full costs to the Federal Government for providing this specific benefit, or the market price). * * * The general policy is that user charges will be instituted through the promulgation of regulations.'' The Department of the Interior (DOI) Manual mirrors this policy (330 DM 1.3 A.).

In this rulemaking, ``cost recovery'' means reimbursement to MMS for its costs of performing a **service** by charging a fee to the identifiable applicant/beneficiary of the **service**. Further guidance is provided by Solicitor's Opinion M-36987, ``BLM's Authority to Recover Costs of **Minerals** Document Processing'' (December 5, 1996). As explained in that Solicitor's Opinion, some costs, such as the costs of programmatic environmental studies and programmatic environmental

assessments in support of a general agency program are not recoverable because they create an ``independent public benefit'' rather than a specific benefit to an identifiable recipient. Id. at 9-10.

On March 25, 2005, MMS published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register titled, ``Recovery of Costs Related to the Regulation of Oil and Gas Activities on the Outer Continental Shelf,'' (70 FR 15246). (The cost recovery fees MMS is addressing in this proposed rule are for different activities than those addressed in the recently promulgated final rule issued on August 25, 2005 (70 FR 49871)). Through the ANPR, MMS alerted the public that we seek to recover the costs of processing certain permits and applications through the rulemaking process. MMS believes that cost recovery for the MMS-provided **service** of reviewing and

[[Page 69119]]

approving applications and permits is warranted because such **service** provides an identifiable recipient--the applicant--with direct benefits beyond those received by the general public.

The ANPR invited comments, recommendations, and specific remarks on a program of collecting fees for reviewing certain plans and permit applications such as:

Exploration Plans (Sec. 250.203).

Development and Production Plans (Sec. 250.204).

Deep Water Operations Plans (Notice To Lessees No. 2000-N06).

Application for Permit to Drill (APD; form MMS-123).

Application for Permit to Modify (APM; form MMS-124).

Application to Remove a Platform (required by Sec. 250.1727).

Facility Permits (required by Sec. 250.901 for the installation, modification, or repair of a platform).

Conservation Information Documents (Notice to Lessees No. 2000-N05).

Geological and Geophysical (G&G) Permits: Permit for Geophysical Exploration for Mineral Resources or Scientific Research on the Outer Continental Shelf (form MMS-328); Permit for Geological Exploration for Mineral Resources or Scientific Research on the OCS (form MMS-329).

Sand and Gravel Permits: Permit for Geophysical Prospecting for Mineral Resources or Scientific Research on the Outer Continental Shelf Related to **Minerals** Other than Oil, Gas, and Sulphur (form MMS-135); Permit for Geological Prospecting for Mineral Resources or Scientific Research on the Outer Continental Shelf Related to **Minerals** Other than Oil, Gas, and Sulphur (form MMS-136). The ANPR also solicited specific comments on the following:

1. Are there other actions for which MMS should require fees to recover costs from operators?

2. MMS plans to calculate the fees in a manner similar to that used in the recently published Cost Recovery Rule (RIN 1010-AD16, August 25, 2005, 70 FR 49871). Are there alternative ways to determine fair and equitable fees?

3. MMS may have large cost differences associated with issuing permits and reviewing plans in the different Regions (Gulf of Mexico, Pacific, Alaska); should the fee be uniform nationwide or vary by Region?

Comments on the ANPR

MMS received nine comment letters from industry and the general public. Four of the comment letters complained that there was insufficient time (30 days) provided for comment in the ANPR. The commenters asked for an extension of the comment period that ranged from 30-45 days. One commenter provided examples of recent comment time frames on MMS rulemakings that ranged from 30-90 days, and suggested that future rules have a standard comment period of either 60 or 90 days.

An ANPR simply informs the public that an agency expects to publish a proposed rule. Because the public is given another opportunity to comment in connection with the proposed rule, MMS believes that 30 days is a sufficient comment period for an ANPR. This proposed rule now being published has a 60-day comment period.

Three comment letters presented more extensive views of the offshore oil and gas industry. Two letters were from individual companies, and one letter was from a consortium of eight trade organizations that represented thousands of companies involved in the United States (U.S.) oil and gas industry. In general, industry respondents stated that the total of lease bonuses, rentals and royalty fees paid by industry adequately compensate MMS and the Federal Government for any **service** provided in the issuance of permits. Several commenters pointed to the MMS statistics for monies collected as proof that the Federal Government had been adequately compensated for the process of issuing offshore leases as well as ``for processing the necessary paperwork required by regulations to facilitate lessees bringing their leases to production.''

The relevant mineral leasing law (the Outer Continental Shelf Lands Act (OCSLA)), which granted the Secretary the authority to issue leases offshore on the OCS, was not enacted as a cost recovery mechanism. The monies collected as bonuses, rentals, and royalties under those leases are not intended to compensate the government for administrative costs. They instead reflect the value of the public's interest in the resource and property. When a lease is issued, the working interest is conveyed

to the lessee(s) to whom it is issued. The government reserves a royalty interest, which is a cost-free share of the production or the value of the production. Under the bidding system that is characteristic of most of the leases, the lessee pays a bonus to obtain the lease that is the result of competitive bidding. During the primary term of a lease and before the lease goes into production (in other words, during the time the lessor is not receiving any benefit from its retained royalty interest), the lessee must pay annual rentals. All of these obligations (royalties, bonus payments and rentals) reflect the value of the lessor's (i.e., the public's) property interest in the leased **minerals**. None of these obligations was ever intended to compensate the government for administrative costs.

In a related remark, one industry commenter asserted that a document cited by MMS, OMB Circular No. A-25, provides that new user charges should not be imposed in cases where other revenues from individuals already finance the government services provided to them. The commenter appears to be citing paragraph 7.c. of OMB Circular No. A-25, which addresses excise taxes. The paragraph states that ``[n]ew user charges should not be proposed in cases where an excise tax currently finances the government services that benefit specific individuals'' (giving the example of a gasoline tax to finance highway construction). Royalties, bonus payments, and rentals are not taxes, but payments that reflect the value of the resources. Reference to this paragraph of the OMB Circular is thus inappropriate.

Several commenters asserted that because neither existing lease terms nor regulations in effect at the time of lease issuance contain provisions allowing the new cost recovery fees, regulations imposing such fees that are promulgated after lease issuance ``are not within the scope of the contract''. They cite Mobil Exploration and Producing Southeast, Inc. v. United States, 530 U.S. 604 (2000), as standing for the proposition that offshore leases are subject only to regulations in existence at the time of lease issuance and those promulgated thereafter that concern prevention of waste and conservation of resources.

These comments fail to acknowledge that the Independent Officers Appropriation Act (IOAA), the statute under whose authority MMS is promulgating this rule, was enacted in 1952, and predates the OCSLA and the leases issued under the authority of that Act. The comments also misinterpret the Mobil decision. In Mobil, the Supreme Court addressed a statute enacted by Congress years after lease issuance (the Outer Banks Protection Act) whose substantive effect was to prohibit exploration of a certain class of existing leases. The Supreme Court held the statute to be a breach of contract on the part of the U.S. The Supreme Court in Mobil did not address regulations promulgated under authority already granted to the Secretary under a statute that predated the leases involved.

Only two commenters responded to the MMS list of specific questions. These commenters: (1) Did not agree

[[Page 69120]]

that MMS should charge the proposed fees and, therefore, had no suggestions for additional cost recovery; (2) did not propose alternative methods for determining fees (they did, however, recommend that MMS continue efforts to improve cost effectiveness and provide specific details on how any fees are to be determined); and (3) suggested that fees be assigned to the different regions based on the actual costs in those regions.

Regarding this last suggestion, MMS found, first, that the number of plans and permits processed in the Pacific and Alaska OCS Regions is very small. More than 98 percent of the MMS plan and permit applications processed are in the Gulf of Mexico (GOM) OCS Region. Second, MMS found that, due to the smaller number of plans in the Pacific and Alaska OCS Regions, and the controversy often involved with them, the processing costs per plan or permit in those regions are considerably higher than in the Gulf of Mexico OCS Region. MMS has determined that because of the higher expense and the small number of plans, applications and permits MMS processed in the Pacific and Alaska Regions, it is reasonable to set as the standard fee for all such activities the average cost for the GOM OCS Region. This fee structure will avoid creating disparity among leases in different parts of the country, due to unusual conditions in some regions, for receiving a similar final determination from MMS.

Regarding the comment that MMS should improve its cost and effectiveness, MMS will continue in its efforts to reduce costs through initiatives such as OCS Connect, a multi-year initiative to automate major business transactions and plan/application/permit reviews, resulting in more timely decisions.

One citizen commented that fees should also be recovered on applications for lease term pipelines; seismic data acquisition; surface co-mingling of OCS production; and applications for departures from operational requirements. All but the applications for departures have been included in the proposed rule. Departures were not included because departure requests are almost always part of another permit application.

Finally, several commenters believed that the fees proposed by the ANPR seem contrary to the administration's national energy policy. They maintained that every dollar collected by MMS for the processing of applications and permits is a dollar that would not be spent producing energy on the OCS.

MMS works closely with industry to ensure that energy production on the OCS will continue to contribute significantly to the nation's

energy supply. For example, MMS provides incentives for industry production of offshore oil and gas, such as royalty relief for deep-water and deep-gas development. The proposed **service** fees would not affect existing incentives and would only marginally add to the cost of operating offshore.

Proposed Regulation

What Type of Fees Does This Proposed Rule Propose?

MMS is proposing fixed fees for certain services based on cost recovery principles. A fixed fee would remain the same for each request of a similar type. The fixed fee approach would provide objectivity and certainty because each applicant's fees are based on the same predetermined fee structure.

Which MMS Services Would Be Subject To a Cost Recovery Fee?

The following table lists the plan/application/permit requests for which we are proposing a cost recovery fee under this proposed rule. The table includes some additional requests that were not included in the ANPR.

Service: processing of the following . . .	Proposed fee	30 CFR citation
Exploration Plan (EP).....	$3,250 for each surface location.	Sec. 250.211(d).
Development and Production Plan (DPP)/Development Operations Coordination Document (DOCD).	$3,750 for each well proposed.	Sec. 250.241.
Deepwater Operations Plan...	$3,150.....	Sec. 250.292.
Conservation Information Document.	$24,200.....	Sec. 250.296.
Application for Permit to Drill (APD; form MMS-123).	$1,850 Initial applications only, no fee for revisions.	Sec. 250.410(d); Sec. 250.411; Sec. 250.460; Sec. 250.513; Sec. 250.515; Sec. 250.1605; Sec. 250.1617; Sec. 250.1622.
Application for Permit to Modify (APM; form MMS-124).	$110.....	Sec. 250.460; Sec. 250.465; Sec.

		250.513; Sec. 250.515; Sec. 250.613; Sec. 250.615; Sec. 250.1618; Sec. 250.1622; Sec. 250.1704.
New Facility Production Safety System Application.	$4,750 (> 125 components). (Additional fee of $12,500 will be charged if MMS deems it necessary to visit a facility offshore; and $6,500 to visit a facility in a shipyard). $1,150 (25-125 components). (Additional fee of $7,850 will be charged if MMS deems it necessary to visit a facility offshore; and $4,500 to visit a facility in a shipyard). $570 (< 25 components).	Sec. 250.802(e)
Production Safety System Application--Modification.	$530 (> 125 components). $190 (25-125 components). $80 (< 25 components).	Sec. 250.802(e).
Platform Application--Installation--under the Platform Verification Program.	$19,900.....	Sec. 250.905(k).
Platform Application--Installation--Fixed Structure Under the Platform Approval Program.	$2,850.....	Sec. 250.905(k).
Platform Application--Installation--Caisson/Well Protector.	$1,450.....	Sec. 250.905(k).

Platform Application--Modification. $3,400..... Sec. 250.905(k).
New Pipeline Application--Lease Term. $3,100..... Sec. 250.1000(b).
Pipeline Application--Modification (Lease Term). $1,800..... Sec. 250.1000(b).
Pipeline Application--Modification (ROW). $3,650..... Sec. 250.1000(b).
Pipeline Repair Notification $340..... Sec. 250.1008(e).

[[Page 69121]]

Complex Surface Commingling and Measurement Application. $3,550 (see proposed rule text). Sec. 250.1204(a).
Simple Surface Commingling and Measurement Application. $1,200 (see proposed rule text). Sec. 250.1204(a).
Application to Remove a Platform. $4,100..... Sec. 250.1727.
Application to Decommission a Pipeline (Lease Term). $1,000..... Sec. 250.1751 and Sec. 250.1752.
Application to Decommission a Pipeline (ROW). $1,900..... Sec. 250.1751 and Sec. 250.1752.
Permit for Geological or Geophysical Exploration for Mineral Resources or Scientific Research on the OCS related to oil, gas and Sulphur. $1,900..... Sec. 251.5 (form MMS-327).
Permit for Geological or Geophysical Prospecting for Mineral Resources or Scientific Research on the OCS Related to **Minerals** Other than Oil, Gas, and Sulphur. $1,900..... Sec. 280.12 (form MMS-134).

How Did MMS Determine the Costs To Be Covered By the Proposed Fees and What Are the Fee Amounts Based On?

The cost methodology used in developing the fee schedule for the proposed rule includes the sum of direct costs and indirect costs. Direct costs are comprised of the salaries, benefits, materials and contracts/equipment (including information technology) and direct support costs attributed to processing each step of a request.

Steps include receiving, validating and entering data, technical and administrative review of the plan/application/permit for compliance with safety and other regulatory requirements, assessing the nature of the impact, National Environmental Policy Act (NEPA) analysis or Categorical Exclusion Reviews (CERs), and site visits, if required.

Indirect costs include centrally paid items such as telecommunications, space, utilities, security, property **management**, workman's compensation and unemployment compensation, as well as bureau support functions such as personnel services, finance, procurement, and **management**. The indirect rate applied to MMS direct costs is 21.5 percent.

MMS is using a cost estimation methodology based on its Activity Based Costing (ABC) System. ABC provides reasonable managerial accounting for costs and provides a sound basis for establishing the costs in this rule.

Fiscal Year 2004 was the baseline year used for the cost analysis of user-submitted plans/applications/permits. MMS used FY 2004 activity-based costing data collected through its timekeeping and financial systems. Non-labor and labor costs are coded to MMS work activities. Each MMS employee codes his or her order time to work activities as part of payroll timekeeping. Examples of MMS work activities include: Process Exploration Plans, Process Well Permits, and Perform NEPA Compliance for Development Plans and Permit Applications.

MMS has adjusted the FY 2004 baseline plan/permit costs by the FY 2005 New Orleans general schedule increase and locality adjustment of 3.26 percent (salary adjustment for federal employees). We incorporated this adjustment into the fee schedule.

Only direct and indirect costs incurred in the direct support of processing plans/applications/permits were included in the cost analysis. Costs were determined as follows:

1. The FY 2004 work activity labor costs recorded by each employee supporting the plans/applications/permits processes were analyzed along with organizational non-labor costs. These individual employee and non-labor cost breakdowns were reviewed by the managers responsible for each group of employees. The managers verified the accuracy of the labor costs and non-labor costs and made adjustments if necessary. Non-labor costs include travel, printing, transportation, contracts, equipment purchases, data backup and operation and maintenance (O&M) costs for MMS' TIMS (Technical Information **Management** System). For TIMS costs, MMS determined the number of modules or objects in TIMS that assist in the review and approval of plans/applications/permits and compared that number to the total number of modules or objects in TIMS. We then used this ratio to calculate the proportion of TIMS O&M costs included in the cost analysis for these fees. IT infrastructure (desktop & network), O&M and **management**/administrative support costs

were determined using the ratio of the plan/permit approval processes costs to the program's total costs.

2. Each GOM Region District is approximately the same size and has a similar workload. District permit work activity costs were assigned to different types of permits using a weighted percentage distribution from the activity-based costing system.

3. MMS indirect costs have been allocated to individual plans/applications/permits based on a flat bureau-wide indirect cost rate of 21.5 percent applied to the program's total plan/permit cost. The indirect rate was calculated bureau-wide for all MMS cost purposes using FY 2004 costs and is consistent with the rate charged for MMS administrative reimbursable agreements.

This full cost analysis differs slightly from the methodology used in the final MMS cost recovery rulemaking published on August 25, 2005 (70 FR 49871). MMS completed its second year of bureau-wide activity-based-costing at the end of FY 2004. MMS evaluated the reliability of its FY 2004 data and determined that it was reliable (with minor adjustments) for cost recovery analysis. Since this data was not fully available when the recent final rule was developed, that rule used employee surveys to identify processing costs rather than using costs coded to work activities. MMS is confident that both methodologies produce reliable cost data, but since data is now available, this proposed rule uses actual work activity (ABC) data coded into the MMS financial system as the basis for its cost analysis.

MMS is not proposing to recover the following costs in this proposed rule:

1. Operational and Safety Research--Information derived from this program is directly integrated into MMS's offshore operations and is used to make decisions pertaining to plans, safety and pollution inspections, enforcement actions, and training requirements. MMS cannot approve plans proposing

[[Page 69122]]

the use of new technology without this type of evaluation. MMS is examining these costs and is not proposing to recover these costs at this time.

2. Regulation Development--MMS spends more than $1 million yearly developing regulations and guidance for the planning and permitting process. MMS is examining these costs and is not proposing to recover these costs at this time.

3. Work activities funded by the Oil Pollution Act of 1990--This includes research conducted to prevent or cleanup oil spills. It also includes the work of Regional and District engineers whose salaries are paid by funds provided to MMS under this Act. These costs have already been paid by industry through their contributions to the Oil Spill

Liability Trust Fund through a five-cent per barrel fee on imported and domestic oil that was collected until December 31, 1994.

How Did MMS Round Fees?

MMS rounded fees in the following manner. Fees calculated to be less than $1,000 have been rounded down or up to the nearest $10. Fees $1,000-$10,000 have been rounded down or up to the nearest $50. Fees above $10,000 have been rounded down or up to the nearest $100.

Would the Proposed Fees Be Adjusted for Inflation?

Yes. Since MMS used current salary and expense levels, the cost figures we generated reflect current dollars. To keep the **service** fees in line with inflation, we propose to adjust the fees periodically according to the Implicit Price Deflator for the Gross Domestic Product (GDP), starting in 2005 dollars. This inflation index, as published by the U.S. Department of Commerce, is generally accepted by economists as the most reliable general price index and is used by MMS for other inflation adjustments. MMS would amend the fees by publication in the Federal Register. Because we are proposing to establish the process for changing fees in this rule and the application of that process is simply a mathematical calculation, new rulemaking would not be necessary when adjustments are made. MMS would also review our costs for administering each type of request every 2 years. If MMS decides to amend fees based on this analysis, we would do so through notice and comment rulemaking.

How would MMS handle the payment of fees for denied requests or verbal approvals? Would there be any refunds?

Fees proposed in this rule would be non-refundable. However, if a request is deemed not complete, an additional fee would not be charged for its resubmission. Any verbal approvals that MMS provides would need to be preceded by payment of the applicable fee. MMS is currently considering the different payment options available, and would notify lessees of the available payment options via a Notice to Lessees or notice in a final rule.

Are Fixed Fees Appealable?

No. The amount of a fixed fee would not be appealable to the Interior Board of Land Appeals because it is set by regulation. There is no discretion to change it.

Procedural Matters

Public Comment Procedures: All submissions received must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. MMS's practice is to make comments, including names and addresses of respondents, available for public review. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. Except for proprietary information, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is not a significant rule as determined by the Office of **Management** and Budget (OMB) and is not subject to review under E.O. 12866.

(1) The proposed rule would not have an annual effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. This proposed rule would establish fees based on cost recovery principles. Based on historical filings, we project the fees would raise revenue by approximately $16.5 million annually.

(2) The proposed rule would not create a serious inconsistency or otherwise interfere with action taken or planned by another agency because the costs incurred are for specific MMS services and other agencies are not involved in these aspects of the OCS Program.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients. This change would have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs. The fees proposed in this rule are **service** fees based on cost recovery, and not user fees.

(4) This proposed rule would not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities

under the RFA (5 U.S.C. 601 et seq.).

The changes proposed in the rule would affect lessees and operators of leases and pipeline right-of-way holders on the OCS. This includes about 130 active federal oil and gas lessees and 115 pipeline rights-of-way holders. Small lessees that operate under this rule fall under the Small Business Administration's (SBA) North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent of these companies are considered small. This proposed rule, therefore would affect a substantial number of small entities.

The fees proposed in the rule would not have a significant economic effect on a substantial number of small entities because the fees are small compared to normal costs of doing business on the OCS. For example, depending on water depth and well depth, cost estimates for drilling a well range from $5 million to $23 million. Thus, the proposed fees, ranging from $80 to $24,200, are dwarfed by the millions of dollars that industry already commits to exploration, development, production, and transportation.

MMS conducted an additional analysis to study the potential impacts of these fees on small entities. MMS charted the 2004 production of all companies operating on the OCS. Using corresponding rolling annual average

[[Page 69123]]

prices, MMS calculated each company's federal OCS gross revenues. Using TIMS (and other databases) 2004 company data, plan/application/permit fees were calculated and compared with each company's calculated gross revenue. The analysis indicates that no company would have its offshore revenues affected by 0.5 percent or more.

MMS does not have revenue data for most of the 115 pipeline right-of-way holders. However, MMS does not expect the companies to be significantly impacted.

Additionally, the **service** fees established in the rule would apply in a non-discriminating way to both large and small firms. Also, applying for MMS services provides a benefit to both a large and small applicant if the applicant decides to operate on the OCS.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1-888-734-3247. You may comment to the Small Business Administration without fear

of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The proposed rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This proposed rule:

(a) Would not have an annual effect on the economy of $100 million or more.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing on the U.S. OCS is limited to residents of the U.S. or companies incorporated in the U.S. This proposed rule would not change that requirement.

Unfunded Mandates Reform Act (UMRA) of 1995

This proposed rule would not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 et seq.) is not required. This is because the proposal would not affect state, local, or tribal governments, and the effect on the private sector is small.

Takings Implication Assessment (TIA) (Executive Order 12630)

The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to prepare a TIA according to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Federalism (Executive Order 13132)

With respect to E.O. 13132, this proposed rule would not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the federal and state governments. To the extent that state and local governments have a role in OCS activities, this proposed rule would not affect that role.

Civil Justice Reform (Executive Order 12988)

With respect to E.O. 12988, MMS finds that this proposed rule would not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the E.O. MMS consulted with the Department of the Interior Office of the Solicitor throughout this drafting process.

Paperwork Reduction Act (PRA) of 1995

The proposed rulemaking relates to 30 CFR part 250, subparts B, D, E, H, I, J, L, P, and Q; 30 CFR part 251; and 30 CFR part 280. The rulemaking affects the information collections for these regulations but would not change the approved burden hours; it would just add the associated fees. Therefore, OMB has ruled that there is no change in the information collection and that MMS does not need to make a formal submission by Form OMB 83-I for this rulemaking. If the rule is finalized, we will submit Form OMB 83-C to add the fees in each collection.

OMB has approved the information collections for the affected regulations at 30 CFR part 250, subpart B, 1010-0151; subpart D, 1010-0141; subpart E, 1010-0067, subpart H, 1010-0059; subpart I, 1010-0149; subpart J, 1010-0050; subpart L 1010-0051; subpart P, 1010-0086, subpart Q, 1010-0142; 30 CFR part 251, 1010-0048; and 30 part CFR 280, 1010-0072.

National Environmental Policy Act (NEPA) of 1969

The MMS has determined that this rule is administrative and involves only procedural changes addressing fee requirements. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the NEPA, pursuant to 516 DM 2.3A and 516 DM 2, Appendix 1, Item 1.10.

In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term `categorical exclusions' means categories of action which do not individually or cumulatively have a significant effect on the human environment and which have no such effect in procedures adopted by a federal agency and therefore require neither an environmental assessment nor an environmental impact statement.

Effects on the Nation's Energy Supply (Executive Order 13211)

E.O. 13211 requires the agency to prepare a Statement of Energy

Effects when it takes a regulatory action that is identified as a significant energy action. This proposed rule is not a significant energy action, and therefore would not require a Statement of Energy Effects because it:

(1) Is not a significant regulatory action under E.O. 12866,

(2) Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and

(3) Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, OMB, as a significant energy action.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, this proposed rule would not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

Clarity of This Regulation

E.O. 12866 requires each agency to write regulations that are easy to understand. MMS invites your comments on how to make this

[[Page 69124]]

proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Is the description of the rule in the ``Supplementary Information'' section of this preamble helpful in understanding the rule? What else can MMS do to make the rule easier to understand?

Send a copy of any comments that concern how MMS could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

List of Subjects

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government

contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur.

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands--mineral resources, Reporting and recordkeeping requirements, Research.

30 CFR Part 280

Continental shelf, Public lands--mineral resources, Reporting and recordkeeping requirements, Research.

Dated: October 24, 2005.
Chad Calvert,
Acting Assistant Secretary--Land and **Minerals Management**.

For the reasons stated in the preamble, the **Minerals Management Service** (MMS) proposes to amend 30 CFR parts 250, 251, and 280 as follows:

PART 250--OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 is revised to read as follows:

Authority: 43 U.S.C. 1331 et seq.; 31 U.S.C. 9701.

2. In Sec. 250.125, revise the table in paragraph (a) and paragraph (b) to read as follows:

Sec. 250.125 **Service** Fees

(a) * * *

Service Fee Table

Service--processing of the following:	Fee amount	30 CFR citation
Change in Designation of Operator.	$150.....	Sec. 250.143.
Suspension of Operators/	$1,800.....	Sec. 250.171.

Suspension of Production (SOO/SOP) Request.		
Exploration Plan (EP).....	$3,250 for each surface location.	Sec. 250.211(d).
Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD).	$3,750 for each well proposed.	Sec. 250.241(e).
Deepwater Operations Plan...	$3,150.....	Sec. 50.292(p). Sec. 250.296(a).
Conservation Information Document.	$24,200.....	Sec. 250.296(a).
Application for Permit to Drill (APD; form MMS-123).	$1,850. Initial applications only, no fee for revisions.	Sec. 250.410(d); Sec. 250.411; Sec. 250.460; Sec. 250.513(b); Sec. 250.515; Sec. 250.1605; Sec. 250.1617(a); Sec. 250.1622.
Application for Permit to Modify (APM; form MMS-124).	$110.....	Sec. 250.460; Sec. 250.465(b); Sec. 250.513(b); Sec. 250.515; Sec. 250.613(b); Sec. 250.615; Sec. 250.1618(a); Sec. 250.1622; Sec. 250.1704(g).
New Facility Production Safety System Application for facility with more than 125 components.	$4,750 (Additional fee of $12,500 will be charged if MMS deems it necessary to visit a facility offshore; and $6,500 to visit a facility in a shipyard).	Sec. 250.802(e).
New Facility Production Safety System Application for facility 25-125 components.	$1,150 (Additional fee of $7,850 will be charged if MMS deems it necessary to visit a facility offshore; and $4,500 to visit a facility in a	Sec. 250.802(e).

shipyard).

New Facility Production Safety System Application for facility with fewer than 25 components.	$570.....	Sec. 250.802(e).
Production Safety System Application--Modification with more than 125 components reviewed.	$530.....	Sec. 250.802(e).
Production Safety System Application--Modification with 25-125 components reviewed.	$190.....	Sec. 250.802(e).
Production Safety System Application--Modification with fewer than 25 components reviewed.	$80.....	Sec. 250.802(e).
Platform Application--Installation--under the Platform Verification Program.	$19,900.....	Sec. 250.905(k).
Platform Application--Installation--Fixed Structure Under the Platform Approval Program.	$2,850.....	Sec. 250.905(k).
Platform Application--Installation--Caisson/Well Protector.	$1,450.....	Sec. 250.905(k).
Platform Application--Modification.	$3,400.....	Sec. 250.905(k).
New Pipeline Application (Lease Term).	$3,100.....	Sec. 250.1000(b).
Pipeline Application--Modification (Lease Term).	$1,800.....	Sec. 250.1000(b).
Pipeline Application--Modification (ROW).	$3,650.....	Sec. 250.1000(b).

[[Page 69125]]

Pipeline Repair Notification	$340.....	Sec. 250.1008(e).
Pipeline Right-of-Way (ROW) Grant Application.	$1,800.....	Sec. 250.1015.
Pipeline Conversion of Lease Term to ROW.	$200.....	Sec. 250.1015.
Pipeline ROW Assignment.....	$170.....	Sec. 250.1018.

500 Feet From Lease/Unit Line Production Request.	$3,300.....	Sec. 250.1101.
Gas Cap Production Request..	$4,200.....	Sec. 250.1101.
Downhole Commingling Request	$4,900.....	Sec. 250.1106.
Complex Surface Commingling and Measurement Application.	$3,550.....	Sec. 250.1204(a).
Simple Surface Commingling and Measurement Application.	$1,200.....	Sec. 250.1204(a).
Voluntary Unitization Proposal or Unit Expansion.	$10,700.....	Sec. 250.1303.
Unitization Revision.....	$760.....	Sec. 250.1303.
Application to Remove a Platform or Other Facility.	$4,100.....	Sec. 250.1727.
Application to Decommission a Pipeline (Lease Term).	$1,000.....	Sec. 250.1751(a) or Sec. 250.1752(a).
Application to Decommission a Pipeline (ROW).	$1,900.....	Sec. 250.1751(a) or Sec. 250.1752(a).

(b) Payment of the fees listed in paragraph (a) must accompany the submission of the document for approval. Once a fee is paid, it is nonrefundable, even if an application or other request is withdrawn. If your application is returned to you as incomplete, you are not required to submit a new fee with the amended application.

3. In Sec. 250.211, add a new paragraph (d) to read as follows:

Sec. 250.211 What must the EP include?

* * * * *

(d) **Service** fee. You must include payment of the **service** fee listed in Sec. 250.125.

4. In Sec. 250.241, add a new paragraph (e) to read as follows:

Sec. 250.241 What must the DPP or DOCD include?

* * * * *

(e) **Service** fee. You must include payment of the **service** fee listed in Sec. 250.125.

5. In Sec. 250.292, revise paragraphs (n) and (o); and add a new paragraph (p) to read as follows:

Sec. 250.292 What must the DWOP contain?

(n) A discussion of any new technology that affects hydrocarbon recovery systems;

(o) A list of any alternate compliance procedures or departures for which you anticipate requesting approval; and

(p) Payment of the **service** fee listed in Sec. 250.125.

6. In Sec. 250.296, add the following sentence at the end of paragraph (a):

Sec. 250.296 When and how must I submit a CID or a revision to a CID?

(a) * * * The submission of your CID must be accompanied by payment of the **service** fee listed in Sec. 250.125.

* * * * *

7. In Sec. 250.410, revise the introductory paragraph and paragraph (d) to read as follows:

Sec. 250.410 How do I obtain approval to drill a well?

You must obtain written approval from the District Manager before you begin drilling any well or before you sidetrack, bypass, or deepen a well. To obtain approval, you must:

* * * * *

(d) Submit the following to the District Manager:

(1) An original and two complete copies of form MMS-123, Application for a Permit to Drill (APD), and form MMS-123S, Supplemental APD Information Sheet;

(2) A separate public information copy of forms MMS-123 and MMS-123S that meets the requirements of Sec. 250.127; and

(3) Payment of the **service** fee listed in Sec. 250.125.

8. In Sec. 250.465, revise paragraph (b)(1) to read as follows:

Sec. 250.465 When must I submit an Application for Permit to Modify (APM) or an End of Operations Report to MMS?

* * * * *

(b) * * *

(1) Your APM (form MMS-124) must contain a detailed statement of the proposed work that would materially change from the approved APD and the submission of your APM must be accompanied by payment of the **service** fee listed in Sec. 250.125:

* * * * *

9. In Sec. 250.513, revise the last sentence in paragraph (a); and revise the introductory language of paragraph (b) and paragraphs (b)(3) and (4) and adding paragraph (b)(5) to read as follows:

Sec. 250.513 Approval and reporting of well-completion operations.

(a) * * * If the completion has not been approved or if the completion objective or plans have significantly changed, approval for such operations must be requested on Form MMS-124, Application for Permit to Modify (APM).

(b) You must submit the following with Form MMS-124 (or with Form MMS-123; Form MMS-123S):

* * * * *

(3) For multiple completions, a partial electric log showing the zones proposed for completion, if logs have not been previously submitted;

(4) When the well-completion is in a zone known to contain H2S or a zone where the presence of H2S is unknown, information pursuant to Sec. 250.490 of this part; and

(5) Payment of the **service** fee listed in Sec. 250.125.

* * * * *

10. In Sec. 250.613, revise the last sentence in paragraph (a) and revise the introductory language of paragraph (b) and paragraphs (b)(2) and (3) and adding (b)(4) to read as follows:

Sec. 250.613 Approval and reporting for well-workover operations.

(a) * * * Approval for such operations must be requested on Form

[[Page 69126]]

MMS-124, Application for Permit to Modify.

(b) You must submit the following with Form MMS-124:

* * * * *

(2) When changes in existing subsurface equipment are proposed, a schematic drawing of the well showing the zone proposed for workover and the workover equipment to be used;

(3) Where the well-workover is in a zone known to contain H2S or a zone where the presence of H2S is unknown, information pursuant to Sec. 250.490 of this part; and

(4) Payment of the **service** fee listed in Sec. 250.125.

* * * * *

11. In Sec. 250.802, add a new paragraph (e)(7) to read as follows:

Sec. 250.802 Design, installation, and operation of surface production safety systems.

* * * * *

(e) * * *

(7) The **service** fee listed in Sec. 250.125 of this part. The fee you must pay will be determined by the number of components involved in the review and approval process.

12. In Sec. 250.905, revise the introductory language and table headings add paragraph (k) to the table to read as follows:

Sec. 250.905 How do I get approval for the installation, modification, or repair of my platform?

The Platform Approval Program requires that you submit the information, documents and fees listed in the following table for your proposed project.

Required submittal	Required contents	Other requirements j
* * * * * * *		
(k) Payment of the **service** fee listed in Sec. 250l.125.		

13. In Sec. 250.1000, revise paragraph (b) to read as follows:

Sec. 250.1000 General Requirements.

* * * * *

(b) An application must be accompanied by payment of the **service** fee listed in Sec. 250.125 and submitted to the Regional Supervisor and approval obtained before:

(1) Installation, modification or abandonment of a lease term pipeline

(2) Installation or modification of a right-of-way (other than lease term) pipeline; or

(3) Modification or relinquishment of a pipeline right-of way.

* * * * *

14. In Sec. 250.1008, revise paragraph (e) to read as follows:

Sec. 250.1008 Reports.

* * * * *

(e) The lessee or right-of-way holder must notify the Regional Supervisor before the repair of any pipeline or as soon as practicable. Your notification must be accompanied by payment of the **service** fee listed in Sec. 250.125. You must submit a detailed report of the repair of a pipeline or pipeline component to the Regional Supervisor within 30 days after the completion of the repairs. In the report you must include the following:

(1) Description of repairs,

(2) Results of pressure test, and

(3) Date returned to **service**.

* * * * *

15. In Sec. 250.1204, revise paragraph (a)(1) to read as follows:

Sec. 250.1204 Surface commingling.

(a) * * *

(1) Submit a written application to, and obtain approval from, the Regional Supervisor before commencing the commingling of production or making changes to previously approved commingling applications. Your application must be accompanied by payment of the **service** fee listed in Sec. 250.125. The **service** fees are divided into two levels for simple applications and complex applications.

Application type	Actions
(i) Simple applications consist of those that update or correct previously approved measurement and commingling records such as:	Lease terminations. Well status changes. Well name changes. Platform removals. Application cancellations FMP status changes. Meter updates. Operator changes. Meter proving and well test waivers. Applications to temporarily reroute production.

	Production tests prior to pipeline construction.
(ii) Complex applications include applications not categorized as simple and entail:	Creation of a new facility measurement points (FMPs). Association of leases or units to existing FMPs. Inclusion of production from additional structures. Meter updates which add buy-back gas meters or pigging meters. Other applications which are deviations from the approved allocation procedures.

* * * * *

16. In Sec. 250.1617, revise paragraph (a) to read as follows:

Sec. 250.1617 Application for permit to drill.

(a) Before drilling a well under an approved Exploration Plan, Development and Production Plan, or Development Operations Coordination Document, you must file Form MMS-123, APD, with the District Manager for approval. The submission of your APD must be accompanied by payment of the **service** fee listed in Sec. 250.125. Before

[[Page 69127]]

starting operations, you must receive written approval from the District Manager unless you received oral approval under Sec. 250.140.

* * * * *

17. In Sec. 250.1618, revise the section heading and paragraph (a) to read as follows:

Sec. 250.1618 Application for Permit to Modify.

(a) You must submit requests for changes in plans, changes in major drilling equipment, proposals to deepen, sidetrack, complete, workover, or plug back a well, or engage in similar activities to the District Manager on Form MMS-124, Application for Permit to Modify (APM). The submission of your APM must be accompanied by payment of the **service** fee listed in Sec. 250.125. Before starting operations associated with

the change, you must receive written approval from the District Manager unless you received oral approval under Sec. 250.140.

* * * * *

18. In Sec. 250.1704, revise the Decommissioning Applications and Reports Table to read as follows:

Sec. 250.1704 When must I submit decommissioning applications and reports?

* * * * *

Decommissioning Applications and Reports Table

Decommissioning applications and reports	When to submit	Instructions
(a) Initial platform removal application [not required in the Gulf of Mexico OCS Region].	In the Pacific OCS Region or Alaska OCS Region, submit the application to the Regional Supervisor at least 2 years before production is projected to cease.	Include information required under Sec. 250.1726.
(b) Final removal application for a platform or other facility.	Before removing a platform or other facility in the Gulf of Mexico OCS Region, or not more than 2 years after the submittal of an initial platform removal application to the Pacific OCS Region and the Alaska OCS Region.	Include information required under Sec. 250.1727.
(c) Post-removal report for a platform or other facility.	Within 30 days after you remove a platform or other facility * * *.	Include information required under Sec. 250.1729.
(d) Pipeline decommissioning application.	Before you decommission a pipeline * * *.	Include information required under Sec. 250.1751(a) Sec. 250.1752(a), as

	applicable.	
(e) Post-pipeline decommissioning report.	Within 30 days after you decommission a pipeline * * *.	Include information required under Sec. 250.1753.
(f) Site clearance report for a platform or other facility.	Within 30 days after you complete site clearance verification activities.	Include information required under Sec. 250.1743(b)
(g) Form MMS-124, Application for Permit to Modify (APM). The submission of your APM must be accompanied by payment of the **service** fee listed in Sec. 250.125.	(1) Before you temporarily abandon or permanently plug a well or zone.	Include information required under Sec. 250.1712 and 250.1721.
	(2) Within 30 days after you plug a well.	Include information required under Sec. 250.1717.
	(3) Before you install a subsea protective device.	Refer to Sec. 250.1722(a).
	(4) Within 30 days after your complete a protective device trawl test.	Include information required under 250.1722(d).
	(5) Before you remove any casing stub or mud line suspension equipment and any subsea protective device.	Refer to Sec. 250.1723.
	(6) Within 30 days after you complete site clearance verfication activities.	Include information required under Sec. 250.1743(a).

---

19. In Sec. 250.1727, revise the introductory paragraph to read as follows:

Sec. 250.1727 What information must I include in my final application to remove a platform or other facility?

You must submit to the Regional Supervisor, a final application for approval to remove a platform or other facility. Your application must be accompanied by payment of the **service** fee listed in Sec. 250.125. If you are proposing to use explosives, provide three copies of the application. If you are not proposing to use explosives, provide two copies of the application. Include the following information in the final removal application, as applicable:

* * * * *

20. In Sec. 250.1751, revise paragraph (a) introductory text to read as follows:

Sec. 250.1751 How do I decommission a pipeline in place?

* * * * *

(a) Submit a pipeline decommissioning application in triplicate to the Regional Supervisor for approval. Your application must be accompanied by payment of the **service** fee listed in Sec. 250.125. Your application must include the following information:

* * * * *

21. In Sec. 250.1752, revise the introductory text of paragraph (a) to read as follows:

Sec. 250.1752 How do I remove a pipeline?

* * * * *

(a) Submit a pipeline removal application in triplicate to the Regional Supervisor for approval. Your application must be accompanied by payment of the **service** fee listed in Sec. 250.125. Your application must include the following information:

* * * * *

[[Page 69128]]

PART 251--GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

22. The authority citation for part 251 is revised to read as follows:

Authority: 43 U.S.C. 1331 et seq.; 31 U.S.C. 9701.

23. In Sec. 251.5, revise paragraph (a) to read as follows:

Sec. 251.5 Applying for permits or filing Notices.

(a) Permits. You must submit a signed original and three copies of the MMS permit application form (Form MMS-327). The form includes names of persons, type, location, purpose, and dates of activity, and environmental and other information. A nonrefundable **service** fee of $ 1,900 must accompany your application. The time period for extensions is defined on the permit form (Form MMS-328 (Geophysical Prospecting) or MMS-329 (Geological Prospecting)).
* * * * *

PART 280--PROSPECTING FOR **MINERALS** OTHER THAN OIL, GAS, AND SULPHUR
ON THE OUTER CONTINENTAL SHELF

24. The authority citation for part 280 is revised to read as follows:

Authority: 43 U.S.C. 1331 et seq.; 42 U.S.C. 4332 et seq.; 31 U.S.C. 9701.

25. In Sec. 280.12, revise paragraph (a) to read as follows:

Sec. 280.12 What must I include in my application or notification?

(a) Permits. You must submit to the RD a signed original and three copies of the permit application form (form MMS-134) at least 30 days before the startup date for activities in the permit area. If unusual circumstances prevent you from meeting this deadline, you must immediately contact the RD to arrange an acceptable deadline. The form includes names of persons, type, location, purpose, and dates of activity, as well as environmental and other information. A nonrefundable **service** fee of $ 1,900 must accompany your application. The time period for extensions is defined on the permit form (Form MMS-135 (Geophysical Exploration) or MMS-136 (Geological Exploration)).
* * * * *

[FR Doc. 05-22504 Filed 11-10-05; 8:45 am]
BILLING CODE 4310-MR-P