(ACDA) is revoking its existing superseded employee responsibility and conduct regulations at 22 CFR part 606, and, in their stead, inserting cross-references to the executive branch-wide Standards, as well as to executive branch financial disclosure regulations.

EFFECTIVE DATE: These regulations are effective May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Janice F. Caramanica, Office of the General Counsel, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW, Washington, DC 20451, (202) 647–3596.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional extensions for certain existing provisions at 59 FR 4779–4780 and 60 FR 6390–6391. The executive branch-wide Standards are now codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

ACDA is revoking the provisions of its existing standards of conduct regulations that have already been superseded or that are superseded upon issuance of this regulation and replacing them with a new section that provides a cross reference to 5 CFR parts 2634 and 2635.

II. Revocation of ACDA's Responsibilities and Conduct Regulations

This final rule revokes ACDA's employee responsibility and conduct regulations at 22 CFR part 606, now superseded. Some of those regulations were superseded when the confidential financial disclosure provisions of the executive branch-wide financial disclosure regulations at 5 CFR part 2634 took effect on October 5, 1992, and many others were superseded when the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 became effective on February 3, 1993. Others were retained in ACDA's internal regulations since they dealt with other aspects of employee conduct such as indebtedness and political activity.

The ACDA residual standards rule replaces ACDA's revoked ethics regulations with a cross-reference at new 22 CFR part 606 to OGE's rules at 5 CFR parts 2634 and 2635.

III. Matters of Regulatory Procedure

Executive Order 12866

In issuing this rule, ACDA has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in Section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive Order, as it deals with agency organization, management, and personnel matters and is not, in any event, deemed ''significant'' thereunder.

Paperwork Reduction Act

ACDA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because the proposed regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Administrative Procedure Act

This rulemaking is related solely to ACDA's organization, procedure, and practice. Consequently, ACDA has found that good cause exists under 5 U.S.C. 553(b)(3) (A), (B), and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and revocations.

Regulatory Flexibility Act

ACDA hereby certifies that this rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families. Accordingly, a regulatory flexibility analysis is not required.

Unfunded Mandates Act Determination

ACDA has determined that this rule will not result in expenditures by state, local, and tribal government, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects in 22 CFR Part 606

Conflict of interests, Government employees.

Dated: May 7, 1997.

Mary Elizabeth Hoinkes,

General Counsel, United States Arms Control and Disarmament Agency.

For the reasons set forth in the preamble, the United States Arms Control and Disarmament Agency, with the concurrence of the Office of Government Ethics, revises title 22, chapter VI, part 606 of the Code of Federal Regulations to read as follows:

PART 606—EMPLOYEE ETHICAL RESPONSIBILITIES AND CONDUCT

Sec.

606.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Authority: 5 U.S.C. 7301; 18 U.S.C. 208(b)(2); 5 CFR 2634.

§ 606.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the United States Arms Control and Disarmament Agency (ACDA) should refer to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the Executive Branch financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 97–13390 Filed 5–21–97; 8:45 am]

BILLING CODE 6820–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 251, 256, 281, and 282

RIN 1010–AB92

Surety Bonds for Outer Continental Shelf Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the surety bond provisions of Minerals Management Service (MMS) regulations to establish December 8, 1997, as the deadline for Outer Continental Shelf (OCS) oil and gas and sulphur lessees to comply with new levels of bond coverage established in 1993. It also makes other changes that reduce the risk of default by an underfunded entity who operates a lease or holds a pipeline right-of-way or geological and geophysical (G&G) exploration permit to drill a deep stratigraphic test well.

EFFECTIVE DATE: August 20, 1997.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Engineering and Operations Division, at (703) 787–1607.

SUPPLEMENTARY INFORMATION: This rule:

(1) Establishes December 8, 1997, as the deadline for every lessee to comply with the bond coverage requirements established in the rule published August 27, 1993 (58 FR 45255).

(2) Clarifies our position that co-lessees and operating rights owners are

jointly and severally liable for compliance with our regulations and the terms and conditions of their OCS oil and gas and sulphur lease for nonmonetary obligations.

(3) Clarifies our position that an assignor of an OCS lease remains responsible for all wells and facilities that were in existence at the time the assignor assigns its interest until the wells are plugged and abandoned, the facilities are decommissioned, and the site is reclaimed.

(4) Establishes regulatory frameworks for acceptance of lease-specific abandonment accounts and third-party guarantees.

(5) Sets a higher more realistic level of bond coverage to be required of the holder of a G&G exploration permit to drill a deep stratigraphic test well and authorizes a demand for a supplemental bond from the holder of a G&G permit or pipeline right-of-way.

This rule is the product of our efforts to write regulations in plain English and continue our attempts to provide optimum flexibility for a lessee to meet our lease bond requirements and ensure that lessees adequately fund their end-of-lease obligations.

We have, on a case-by-case basis, allowed an individual lessee to furnish a third-party guarantee or to ensure funding for its lease abandonment obligations by the establishment and funding of a lease-specific abandonment account as alternatives to traditional supplemental bonds. These alternatives are specifically addressed in this rule. A third-party guarantor need not qualify as a surety with the Department of the Treasury (Treasury) but must agree to fully perform all lease obligations without the dollar limitation permitted a surety under this rule.

Our objectives for this rule are to: (1) Ensure a lessee's financial capability to perform its lease obligations; (2) protect the environment from threat of harm that might result from a lessee's failure to timely carry out proper well abandonment and site clearance operations; (3) achieve a reasonable degree of protection from default by a lessee, permittee, or pipeline right-of-way holder at a minimum increase in costs for lease, permit, or pipeline operations; and (4) select a method for attaining these goals that equitably affects all parties.

This rule implements the changes proposed by our notice of proposed rulemaking (NPRM) that was published December 8, 1995 (60 FR 63011). We received 17 sets of comments and recommendations in response to that NPRM. Four of those comments and recommendations were from industry associations, and 13 were from lessees or operators. We have carefully considered each of these comments and recommendations. We did not adopt the recommendations that did not appear to be in the public's best interest.

We rewrote the requirements of the rule in plain English and for technical accuracy. These additional revisions describe more clearly how the current rule works and do not affect the substance of the rule.

Nothing in this rule (e.g., the levels of bond coverage required) is intended to limit the obligations of either a lessee, the holder of an OCS pipeline right-of-way, or the holder of a G&G exploration permit, to fulfill all the requirements of the lease, right-of-way, or permit and any applicable regulations.

Discussion and Analysis of Comments

Comment: Many respondents indicated that they are ''supportive of'' or ''understand'' MMS's goal to insure against default of obligations by underfunded entities owning leases, rights-of-way, or exploration permits.

Response: We appreciate these expressions of understanding and support for our goal to ensure that financial obligations are properly addressed by the responsible party. Lessees must plug and abandon lease wells, remove platforms and other facilities, and clear the seafloor of obstructions at a time when their lease operations are no longer generating income. We, therefore, need assurances that OCS lessees have means for funding their lease abandonment and cleanup obligations.

Similarly, the holder of a pipeline right-of-way must remove all platforms, structures, domes over valves, pipes, taps, and valves along the right-of-way in compliance with our regulations at a time when its pipeline operation no longer generates income. Thus, we need assurances that the holder of an OCS pipeline right-of-way has a means for funding its right-of-way abandonment obligations.

Section-by-Section Analysis

Part 250—Oil and Gas and Sulphur Operations in the OCS

Section 250.8 Designation of operator. We have combined a portion of the provisions of proposed § 256.62(f) with the current provisions of § 250.8 and modified the text of the resulting provision to present the requirements in plain English. Since joint and several liability is closely related to the requirement for the designation of an operator, we have consolidated several provisions of the proposed rule in a revised § 250.8, though the proposed rule did not propose amendment of § 250.8. Every lessee or working interest owner who executes the designation of operator required under the provisions of § 250.8, Form MMS–1123, acknowledges its joint and several liability.

Comment: Twelve respondents expressed opposition to, or lack of support for, what they characterized as ''the effort to establish joint and several liability between co-lessees or between assignors and assignees of OCS leases.''

Response: This rule simply clarifies our position that nonmonetary lease obligations are joint and several among co-lessees (i.e., multiple lessees) and owners of operating rights. Section 5(a)(2)(C)(II) of the Outer Continental Shelf Lands Act (OCSLA) equates multiple lessees to ''partners.''

Our position on this matter remains the same as it was May 10, 1954, the effective date of the regulations the Department of the Interior (DOI) issued to implement the OCSLA of 1953. Section 250.31 of the May 1954 regulations required a designation of operator just as the current provisions of § 250.8, Designation of operator, do today in ''all cases where operations are not conducted by an exclusive owner of record * * *''

As previously noted, each party that executes a designation of operator agreement recognizes the joint and several nature of OCS lease obligations. The designation of operator (Form MMS–1123) designates the entity that the co-lessees authorize to conduct lease operations as each of the co-lessee's ''operator and local agent.'' Each lessee, by execution of the designation of operator, agrees that ''In case of default on the part of the designated operator, the signatory lessee will make full and prompt compliance with all regulations, lease terms, or orders of the Secretary of the Interior (Secretary) or his representative.''

Section 250.110 General requirements. *Comment:* Two respondents recommended that paragraph (b) of § 250.110, General requirements, be changed to clarify the extent of responsibility of prior lessees for obtaining compliance with accrued obligations.

Response: We have modified the text of this provision to present its contents in easily understood English. While this rule determines who is liable to MMS for performance of nonmonetary obligations, it is not our intention that this rule preclude private agreements concerning the allocation of liabilities between and among the affected parties. Nor does this rule specify against whom

we will take enforcement action if we discover noncompliance.

Comment: Two respondents expressed support for MMS's position on joint and several liability as the ''most practical approach'' or as ''understandable and acceptable.'' One respondent observed that it seems practical for multiple lessees of a single tract to police themselves in assuring the financial capability of each participant and in making appropriate arrangements to provide for property abandonment through a joint operating agreement that could include, among other things, escrow funds and third party guarantees.

Response: We appreciate these expressions of support. We agree that multiple lessees of a single tract should, as a matter of good business practice, police themselves in assuring the financial capability of each participant. The multiple lessees of a single tract need to make appropriate arrangements to provide for proper well abandonment and lease clearance. These arrangements may be in the form of a joint operating agreement that funds lease-specific abandonment accounts.

Comment: Eleven respondents urged MMS to abandon its joint and several liability proposal and instead to adopt in full the recommendations of the Ad Hoc Lease Abandonment and Bonding Issues Committee as a more reasonable approach.

Response: We have not adopted this suggestion. Adoption of some of the committee's recommendations does not appear to be in the public interest. For example, the committee's report provided no supporting justification for its recommendation for a reduction in royalty. A royalty reduction to fund lease abandonment and clearance liabilities would be a direct transfer of the lessee's financial obligations and responsibilities to the American taxpayer. Also, we cannot support severance of assignor liability. We do not have authorized funds available to correct a noncompliance or default when an assignee defaults. Correction of a noncompliance or default could be especially troublesome if the cost of correction exceeds the funds available under a forfeited bond and other security. Lastly, we are concerned that implementation of the committee's recommendations on lessee pro-rata responsibility would create a major increase in administrative burden for industry and Government without an appreciable reduction in risk to the Government.

Comment: A trade organization commented that the imposition of joint and several liability should be prospective only because the Secretary has no authority to issue retroactive rules.

Response: This rule merely codifies what has been the law under the OCSLA, since enactment and the common law. As previously noted, section 5(a)(2)(C)(II) of the OCSLA describes those who jointly own interests in a lease as ''partners.''

Comment: A trade organization stated, with respect to joint and several liability, that absent an express rule on the subject at the time of the lease, one should look to the common law to understand what the parties understood their contract to mean. It cites *Resolution Trust Corporation* v. *Feldman,* 3 F.3d 5 (1st Cir. 1993) for the proposition that parties to a contract may agree to limit the liability of each of several promisors.

Response: While parties to a contract may agree to limit liability, neither Congress nor the Secretary ever agreed to limit the liabilities of OCS lessees for operational obligations. The relevant common law rule is that stated in *Restatement of the Law of the Contracts, Second* § 289(1):

> Where two or more parties to a contract promise the same performance to the same promisee, each is bound for the whole performance thereof, whether his duty is joint, several, or joint and several . * * * A promise in the first person singular, signed by several persons, creates joint and several liability.

Indeed Resolution Trust Corporation concerned two different obligations: one on which the parties had agreed to limit particular parties to particular amounts of liability and another on which they had not. Absent specific provisions limiting promisors to particular sums, the court held the parties jointly and severally liable for the full amount of costs and fees. 3 F.d at 10.

Moreover, under the common law and the jurisprudence of the oil producing regions, when a lessee assigns an undivided interest in its lease to another, each of them is jointly and severally responsible for the performance of the lease covenants. *Hafeman* v. *Gem Oil Co.,* 80 N.W. 139, 163 (Nebr. 1956); *Problems Presented by Joint Ownership of Oil, Gas, and Other Minerals,* 32 Tex. L. Rev. 699, 715 (1954); Willis, *Thornton on the Law of Oil and Gas* § 341 (5th ed., 1932).

Comment: A trade association believes that when MMS requires parties submitting joint bids to state on the bid form the proportionate interest of each participating bidder, MMS limits the liability of each joint bidder. The comment states that, by allowing parties to designate percentage ownership interests, MMS has created a ''rule of property.''

Response: MMS has never given its imprimatur to efforts of lessees to limit their liabilities to MMS, much less created a property right to such limitations. The commenter does not point to any language in the lease instrument, bid form, or regulations that suggests that the opportunity for bidders to state their proportionate interests is intended to limit the promise of each such bidder to perform fully the terms of the lease. It is clear from the context of the lease sale notice that the purpose of requiring such statements of proportionate interest from joint bidders is to facilitate enforcement of the restrictions on joint bidding in 30 CFR part 256, subpart G and 30 CFR part 260, subpart D. Those regulations attribute proportionate shares of production of jointly held leases in determining whether those filing a joint bid exceed the average daily production limit of 1.6 million barrels a day.

Comment: A trade association criticized the joint and several liability provision on the grounds that MMS relied on the concept of ''indivisibility,'' a concept drawn from the common law of torts, to support its position that the operational obligations of a lease are joint and several obligations.

Response: MMS does not rely on ''indivisibility'' as the legal rationale for its regulation concerning the obligations of holders of undivided interests but on the contract and oil and gas and property law concepts cited in our responses to earlier comments. MMS used the notion of ''indivisibility'' to explain its policy choice in treating nonmonetary obligations differently than monetary obligations were treated in the proposed payor liability rule and the Royalty Simplification and Fairness Act. It does not serve the purposes of OCSLA for lessees of undivided interests in a lease to be freed, after mere partial performance, of the obligation to plug a well or remedy an oil spill.

Section 250.159 General requirements for a pipeline right-of-way grant.

Comment: A respondent expressed concern that the bond coverage requirements for pipeline right-of-way holders ($300,000) and G&G exploration permittees ($200,000) may prove to be troublesome for many existing permit holders. Another respondent suggested that the decision to require additional bonding should be tied to some of the same factors that are used to determine that supplemental bond coverage is needed for a lease.

Response: A properly funded holder of a pipeline right-of-way or G&G permit to drill a deep stratigraphic test well (§ 251.6–4) should not find compliance with this rule troublesome. This rule continues the level of bond coverage required of an applicant for a pipeline right-of-way at $300,000. The rule also provides specific regulatory authority for the Regional Director to require the holder of a right-of-way or the holder of a G&G permit to drill a deep stratigraphic test well to provide additional bond coverage. We expect the Regional Director to use factors similar to those used to determine that a supplemental bond is required under a lease. However, due to the differences between pipeline and lease operations, we have not adopted language specifying the factors that the Regional Director will use to determine that a supplemental bond is needed by a pipeline operator or permit holder. We have revised the text of §§ 250.159 and 251.6–4 to present the requirements of these provisions in plain English.

Part 256—Leasing of Sulphur or Oil and Gas in the OCS

Section 256.7 Cross references. We have added a new paragraph (b) to § 256.7 that cross references MMS's regulations governing appeals to orders and decisions issued under the regulations in 30 CFR part 256.

Subpart I—Bonding

Section 256.52 Requirement to file a bond.

Comment: One respondent suggested an editorial change to proposed § 256.52, Requirement to file a bond, to clarify the intent of the provision.

Response: We have rewritten and renamed this provision to more clearly state the intent of the provision. Section 256.52 (formerly § 256.58) has been renamed ''Bond requirements for an oil and gas or sulphur lease.'' Our rewrite of the provisions of this section includes a rewrite of paragraph (e) and a new paragraph (h) to consolidate provisions addressing the need to replace a bond. We had not proposed to revise paragraph (e). Paragraph (c) clarifies that while an operator's bond may be substituted for a lease bond, an operator's bond may not be substituted for an areawide bond. Paragraph (f) codifies in our rule the Treasury Department's requirement that a pledge of Treasury Securities must be accompanied by authority to sell the securities in case of default. The new paragraph (h) incorporates portions of former § 256.58 (d) and (e) concerning the consequence of failure to replace a bond. Our rewrite of the proposed section, including our rewrite of former § 256.58(e), does not alter the requirements from those of the proposed rule.

Section 256.53 Additional bonds. We have revised the proposed text of § 256.53 (formerly § 256.61) to present the requirements of the provision in plain English.

We had proposed to require all OCS lessees to come into compliance with the levels of bond coverage established in the 1993 rule for new actions within 2 years of the final rule. This rule establishes December 8, 1997, as the deadline for each OCS lessee to comply with the lease bond coverage required at the development stage of its lease. A full year has already lapsed, and MMS has concluded that all lessees should be able to come into compliance by that date which is 2 years from publication of the proposed rule and 4 years after these levels of coverage became effective for new approvals.

The following table sets forth the levels of bond coverage required for each stage of lease development.

Stages of development	Lease bond	Areawide bond
Issuance of Lease	$50,000	$300,000
EP approval	200,000	1,000,000
DPP and DOCD approval	500,000	3,000,000

Comment: Three respondents indicated that MMS should review its policy of ''only requiring the operator'' to post a bond to cover lease obligations. They felt that everyone who owns a working or operating interest in a producing lease should have to post a bond and that, should the co-interest owners wish to agree *voluntarily* among themselves to allocate this responsibility, they should have the option to do so. Other respondents expressed the view that a requirement that each and every lessee and owner of other interests in an OCS lease submit and maintain a lease bond commensurate with its ownership in an OCS lease(s) could effectively deny independent producers sources of investment capital that historically have provided financial assistance for their conduct of oil and gas operations. Other respondents expressed the view that, from a practical standpoint, if a supplemental bond is not required because of the financial strength of one of the interest owners (i.e., one lessee), other lessees should not be required to furnish a supplemental bond.

Response: We do not have a policy of ''only requiring the operator'' to post a bond to cover lease obligations. We require the lessee to provide a bond that guarantees compliance with all the terms and conditions of the lease (i.e., a bond that covers all lease operations and obligations). However, we do permit an operator to provide bond coverage for a lease. Where there are multiple lessees, the bond provided by a lessee or the operator protects against noncompliance by all lessees, operating rights owners, and operators. As noted by some respondents, a requirement that everyone who owns an interest in a lease post a separate bond could effectively deny independent producers sources of investment capital that historically have provided financial assistance for their conduct of oil and gas operations. Since lessees are jointly and severally responsible for compliance with lease terms and conditions, it is not necessary, desirable, or practical to require that every owner of an interest in a lease submit and maintain a separate lease bond that only addresses its interest.

While this rule determines who is liable to MMS for performance of nonmonetary obligations, this rule is not intended to preclude agreements among the co-lessees or between assignors and assignees to apportion among themselves responsibility for such obligations. However, such agreements will not affect the parties' obligations to the United States under this rule.

Comment: A trade association advocates that all working interest holders be required to post supplemental bonds and not be allowed to ''hide behind'' a deep pocket.

Response: MMS has not concluded that it is necessary to require bonding in an amount equal to 100 percent of lease obligations in every case. A supplemental bond will be required only when MMS has reason to believe that the usual security requirements are inadequate to ensure performance of lease obligations. However, nothing in these regulations precludes any party from entering into arrangements with its partners to ensure full participation in the costs of compliance or bonding. MMS agrees that all bonds accepted must guarantee compliance by all record title-holders, all operating rights owners, and all operators on the lease premises and has so amended the regulation at § 256.54(a).

Section 256.54 Bond form. We have added a new paragraph (a) to § 256.54 ''General requirements for bonds,'' that more clearly states that any bond or other security provided under part 256 must be payable on demand by the Regional Director and guarantee compliance with all the lessee's obligations under the lease.

Comment: One respondent questioned the intent of § 256.54, which provides that surety bonds are to be noncancellable, since §§ 256.58 (a) and (b) allow for cancellation of bonds and MMS bond (Form MMS–2028) contains a cancellation clause.

Response: The commenter is correct that it was not our intention to preclude cancellation under the specific circumstances provided in § 256.58(b). It was our intention to clarify that, as provided in the approved MMS bond (Form MMS–2028), an event that might give rise to a performance or payment defense by a surety, or serve to diminish, terminate, or cancel a surety obligation, under State surety law, does not modify the surety's obligation under an MMS approved bond. We expect the surety under an MMS bond to continue to waive such defenses and to avoid any risk it considers unacceptable by following the process provided in § 256.58(a) to terminate the period of liability under its bond. We have modified § 256.54(d) to clearly state that bonds continue in force even though an event occurs that could diminish, terminate, or cancel a surety obligation under State surety law. We have also revised the text of § 256.58(b) to more clearly express the intent of § 256.54 (i.e., a bond will be released only under circumstances that include the submission and maintenance of a replacement bond or other form of security that specifically assumes the liabilities of the ''canceled'' bond as provided in § 256.58(b) or the Regional Director determines that there are no outstanding obligations).

Section 256.55 General terms and conditions of bond. Comment: One respondent recommended changes to paragraphs (d) and (e) of § 256.55, General terms and conditions of bond, to clarify that the rule was not intended to require notice of hearsay reports of insolvency.

Response: We have revised this provision to address only actual court filings. We have renamed § 256.55, ''Lapse of bond,'' and revised the text of the section to more clearly state that the lessee must promptly provide acceptable new bond coverage when its bond coverage lapses.

Section 256.56 Lease-specific abandonment accounts. Comment: Three respondents recommended that MMS establish a type of account with the Federal banking system that would allow lessees to deposit the required amounts into lease-specific abandonment accounts on a fully insured basis in trust for the benefit of MMS in the event a lessee fails to fully meet its end-of-lease obligations.

Response: We have revised the language of the rule to provide assurance that funds deposited in a lease-specific abandonment account will be available, if needed. The new language better describes the way funds in lease-specific abandonment accounts are to be handled. As funds accumulate in a lease-specific abandonment account in a federally insured institution, the managing institution will purchase Treasury securities pledged to MMS. The Treasury securities pledged to MMS will be purchased before the amount in the account equals the maximum insurable amount, as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The managing institution and the Regional Director may establish a Federal Reserve Circular 154 account to hold Treasury securities pledged to MMS, or the Regional Director may allow the managing institution to hold the pledged Treasury securities in a separate trust account (§ 256.56(d)).

Section 256.57 Third-party guarantee. The proposed text of § 256.57 has been revised to present the requirements of that section in plain English, and § 256.57 has been renamed ''Using a third-party guarantee instead of a bond.''

Section 256.56, Lease-specific abandonment accounts and § 256.57, Using a third-party guarantee instead of a bond, establish regulatory regimes under which we may accept alternate methods for funding lease abandonment and clearance obligations. A third-party guarantee or a supplemental bond may cover specific obligations, such as plugging and abandonment of specified leases or wells. However, the acceptance of a supplemental bond or guarantee limited to lease abandonment obligations will depend on how well the combination of all bonds and guarantees ensures that the full range of obligations will be met.

Section 256.58 Termination of the period of liability and cancellation of a bond. Comment: One respondent requested clarification of a number of issues relating to the use of the current OCS bond (Form MMS–2028) under § 256.58(a) and (b) and asked whether another form of bond would be needed under § 256.58(b). The respondent also questioned whether other forms of security including the new forms of third-party guarantees and escrow accounts could be used as replacements under § 256.58(a) and (b).

Response: We have revised the text of § 256.58, Termination of the period of liability and cancellation of a bond, to present the requirements of the rule in plain English. Subsection 256.58(b) spells out the circumstances under which a surety may be released from all further liability. Replacement security can be in any form that would be acceptable to MMS for a new lease, except that the security furnished in substitution for a terminated lease bond on which the Regional Director has not determined that all outstanding obligations have been performed will have to include a specific provision under which the surety agrees to assume all outstanding liabilities under the bond that is to be terminated under § 256.58(b).

Comment: One respondent recommended that, when all operations on a lease have ceased and abandonment and removal operations have been completed, MMS give a release to the lessees in a form that enables sureties and bonding companies to release their bond without further recourse or liabilities.

Response: We have not adopted this recommendation. Lessees and the guarantors of lessee compliance with lease terms and conditions remain responsible for the effectiveness of their compliance efforts such as lease abandonment and clearance work, subject to any applicable statute of limitations. The current bond form specifies a period of 6 years during which, under specified circumstances, a bond may be reinstated to cover liabilities that accrued during the period of bond coverage. It may be that this provides sufficient protection for MMS without total prohibition of bond cancellation. We will continue to review this issue. If we determine that additional changes in the rule are appropriate, we will propose those changes in a new rulemaking. We welcome any comments you may want to provide concerning the need for additional changes to the rule or approved bond form concerning release of bonds.

Section 256.59 Forfeiture of bonds and/or other securities. The proposed rule had provided that the Regional Director could require forfeiture of a bond upon the refusal or inability of ''a lessee'' to perform the obligations. Frequently, of course, there may be a number of record title owners, and the party providing the bond might be an operator who is not itself a lessee. As the singular language of the rule suggested, MMS intended to be able to pursue forfeiture of the bond after a demand against the single lessee or operator who provided the surety bond before proceeding against the bond. MMS should not have to pursue every interest holder for performance before

securing the benefits of a bond where the bonded party is jointly and severally liable for the obligations not performed. The surety would have the right to proceed against the responsible record title-holder or operating rights owners for contribution. In the final rule, we have added a paragraph (b) to make completely clear that making demands against obligors other than the party providing the bond is not a prerequisite to making a claim against the bond.

Comment: One respondent recommended that § 256.59(d)(1) be changed to clarify that it is the lessee(s) of the lease and its (their) third-party guarantor(s) at the time of a default who will first be required to bear the cost of compliance above the forfeited bond or security amount.

Response: We have revised § 256.59, Forfeiture of bonds and/or other securities, to present the requirements of the provision in plain English. The final provision clearly states that, when a surety chooses to take action to bring a lease into compliance in lieu of forfeiture of its bond, it commits to complete that action even if the cost exceeds the face amount of the bond or other security instrument. At the time of a default, or a threat of a default, we expect that we will look to the current lessee to bring the lease into compliance. However, if we determine that the current lessee is unable to perform, we will look to others.

Section 256.62 Assignment of leases or interests therein. Comment: A trade association raises numerous policy arguments against the policy of holding assignors responsible after assignment for obligations that accrued before assignment.

Response: The commenter is objecting to a rule that dates back to 1954. See § 201.60 of the May 1954 regulations and current § 256.62(d), both of which state that assignors continue to be responsible for obligations that accrued before the approval of an assignment. MMS is not persuaded that that rule should be changed. This rulemaking simply amends § 250.110 to specify when the obligation to plug and abandon accrues, so as to avoid confusion as to the application of existing § 256.62(d) to these important obligations. While an assignee becomes responsible directly to the lessor for the performance of the lease obligations, under contract law the assignor is not relieved of its obligations unless the lessor expressly discharges the assignor in writing. We do not discharge the assignor of its accrued obligations when we approve the assignment of record title in a lease. We have renamed § 256.62, ''Assignment of leases or interests in leases,'' and rewritten the text to present the requirements of the provision in plain English.

Comment: Two respondents suggested that an assignor should not be liable for increases in the end-of-lease obligations arising during the period of time between the effective date of assignment and the approval date of assignment.

Response: We have not adopted this recommendation. An assignor continues to be responsible for obligations that accrued before approval of the assignment. The parties to an assignment often ask that the effective date of the assignment be a date that is substantially in advance of the date that we receive the request for approval of the assignment. An assignor cannot escape its liability for an obligation by requesting an effective date for its assignment that predates the obligation.

Comment: Several commenters urged that interest holders be given the opportunity to object to a co-lessee's proposal to assign its interest to a party whom the co-owner believes to present an unreasonable risk.

Response: Nothing in MMS regulations precludes interest holders in leases from entering into agreements requiring co-owner concurrence in assignments. However, MMS does not believe it necessary or helpful to universally impose such a requirement. Also, we do not believe that MMS should be responsible for enforcing such agreements.

Comment: Five respondents expressed the view that the requirement that assignors retain liability after the effective date of a subsequent assignment will and probably has caused the early plugging and abandonment of wells and facilities or the nondevelopment of properties that were uneconomic for larger companies to operate or develop but could or would have been economic for a smaller independent.

Response: This requirement has been part of the offshore regulations since 1954, and we are not aware of evidence that it has resulted in premature abandonment of production. We have specific regulatory requirements that are designed to prevent the premature abandonment of recoverable reserves. Section 250.110, General requirements, specifically provides that ''no production well shall be abandoned until its lack of capacity for further profitable production of oil, gas, or sulphur has been demonstrated to the satisfaction of the District Supervisor.''

Section 256.64 Requirements for filing transfers. Comment: One respondent recommended that § 256.64(g) be revised to clarify the extent to which holders of operating rights and sublessees in a lease are jointly and severally liable with the lessees.

Response: We have renamed § 256.64, ''How to file transfers,'' and revised the text of paragraphs 256.64(a), (c), and (g) to present the requirements of the rule in plain English. The new style clearly describes the extent to which owners of working interests (e.g., the holders of operating rights) and sublessees are liable. We also clarified which assignments must be filed but need not be approved by the Regional Director.

We modified §§ 251.6–4, 256.54, 281.33 and 282.40 to reflect delegations of authority to the Associate Director for Offshore Minerals Management.

Authors

This document was prepared by Gerald D. Rhodes and John V. Mirabella of the Engineering and Operations Division, MMS and M. Dennis Daugherty of the DOI's Office of the Solicitor.

Executive Order (E.O.) 12866

This rule does not meet the criteria for a significant rule requiring review by the Office of Management and Budget (OMB) under E.O. 12866.

Regulatory Flexibility Act

This rule will not have a significant effect on a substantial number of small entities. This rule establishes December 8, 1997, as the deadline for OCS oil and gas lessees to bring their bond coverage into compliance with the new levels of coverage established in 1993; clarifies our position that co-lessees are jointly and severally liable for compliance with nonmonetary obligations arising under OCS oil and gas and sulphur leases; clarifies our position on the responsibility of each assignor and assignee for compliance with lease obligations; establishes regulatory frameworks for acceptance of lease-specific abandonment accounts and third-party guarantees; and modifies the bond coverage that may be required of the holder of a pipeline right-of-way or of a G&G exploration permit to drill a deep stratigraphic test well.

Offshore oil and gas lease exploration and development costs often exceed $10 million while typical abandonment and clearance costs for OCS oil and gas leases range from $3.25 million for leases in less than 50 feet of water to $94 million for leases in excess of 400 feet of water. In general, the entities that engage in offshore oil and gas exploration, development, and production activities, including pipeline transportation across the OCS, are not firms that would be considered small

due to the technical expertise, financial resources, and experience necessary to safely conduct such activities in an environmentally responsible manner.

Small entities who are likely to work on the OCS are primarily contractors who provide services such as catering and custodial services for manned facilities. This rule will not affect these activities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB previously approved the collection of information contained in the regulations affected by this rule. The OMB control number is 1010–0006 for 30 CFR part 256 (Leasing of Sulphur or Oil and Gas in the OCS). The OMB control numbers and pertinent information are included in § 250.0 for 30 CFR part 250 (Oil and Gas and Sulphur Operations in the OCS) and in § 251.0 for 30 CFR part 251 (Geological and Geophysical Explorations in the OCS). MMS has examined this rule under the Paperwork Reduction Act of 1995 and determined that it contains no new information collection requirements.

MMS collects the information under regulations implementing the OCSLA, as amended. MMS uses the information to determine the conditions under which the applicant filing for a lease on the OCS will be permitted to hold such a lease. The information is required to obtain or retain a benefit under 43 U.S.C. 1331 *et seq.* MMS will protect information considered confidential or proprietary under applicable law and under regulations at 30 CFR 251.14–1, Disclosure of information and data to the public; 30 CFR part 252, Outer Continental Shelf (OCS) Oil and Gas Information Program; and 30 CFR 256.10, Information to States.

MMS estimates the annual reporting burden for 30 CFR part 256 to be approximately 17,000 hours—an average of 3.5 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this collection to the Information Collection Clearance Officer, Mail Stop 2200, Minerals Management Service, 381 Elden Street, Herndon, VA 20170–4817; and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Officer for the Interior Department (1010–0006), 725 17th Street, N.W., Washington, DC 20503.

Takings Implication Assessment

DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

E.O. 12988

DOI has certified to OMB that the rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

National Environmental Policy Act

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

Unfunded Mandates Reform Act

DOI has determined and certifies according to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments, or the private sector.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

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 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.

30 CFR Part 281

Administrative practice and procedures, Bonds, Continental shelf, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 282

Administrative practice and procedure, Bonds, Continental shelf, Environmental protection, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: May 9, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service (MMS) amends 30 CFR parts 250, 251, 256, 281 and 282 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.*

2. Section 250.8 is revised to read as follows:

§ 250.8 Designation of operator.

This section explains the requirement for designation of an operator to conduct operations on a lease where the operator is not the sole lessee (record title owner) and owner of operating rights.

(a) Each record title owner (lessee) or operating rights owner for a lease must provide the Regional Supervisor a designation of operator in each case where someone other than an exclusive record title and operating rights owner will conduct lease operations. The designated operator must not begin operations on the lease until the Regional Supervisor receives the designation of operator.

(1) This designation of operator is authority for the operator to act on behalf of each lessee and operating rights owner and to fulfill each of their obligations under the Act, the lease, and the regulations in this part.

(2) You must immediately notify the Regional Supervisor in writing if you terminate the designation of operator.

(3) If you terminate a designation of operator or a controversy develops between you and your designated operator, you and the operator must protect the lessor's interests.

(4) You or the lease operator must immediately notify the Regional Supervisor in writing of any change of address.

(b) Lessees and operating rights owners are jointly and severally responsible for performing nonmonetary lease obligations, unless otherwise provided in the regulations in this chapter. If the designated operator fails to perform any obligation under the lease or the regulations in this chapter, the Regional Director may require any or all of the co-lessees and operating rights owners to bring the lease into compliance.

3. In § 250.110, the existing paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 250.110 General requirements.

* * * * *

(b) Lessees must plug and abandon all well bores, remove all platforms or other facilities, and clear the ocean of all obstructions to other users. This obligation:

(1) Accrues to the lessee when the well is drilled, the platform or other facility is installed, or the obstruction is created; and

(2) Is the joint and several responsibility of all lessees and owners of operating rights under the lease at the time the obligation accrues, and of each future lessee or owner of operating rights, until the obligation is satisfied under the requirements of this part.

4. In § 250.159, paragraph (b)(1) is revised to read as follows:

§ 250.159 General requirements for a pipeline right-of-way grant.

* * * * *

(b)(1) When you apply for, or are the holder of, a right-of-way, you must:

(i) Provide and maintain a $300,000 bond (in addition to the bond coverage required in part 256) that guarantees compliance with all the terms and conditions of the rights-of-way you hold in an OCS area; and

(ii) Provide additional security if the Regional Director determines that a bond in excess of $300,000 is needed.

* * * * *

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

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

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

6. Section 251.6–4 is revised to read as follows:

§ 251.6–4 Bonds.

(a) When you apply to the Minerals Management Service (MMS) for a permit authorizing the drilling of a deep stratigraphic test well, you must either:

(1) Furnish a bond of not less than $200,000 that guarantees compliance with all the terms and conditions of the permit; or

(2) Maintain a $1 million bond that guarantees compliance with all the terms and conditions of the permits you hold for the OCS area where you propose to drill.

(b) You must provide additional security to MMS if the Regional Director determines that it is necessary for the permit or area.

(c) The Regional Director may require you to provide a bond, in an amount the Regional Director prescribes, before authorizing you to drill a shallow test well.

(d) Your bond must be on a form approved by the Associate Director for Offshore Minerals Management.

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

7. The authority citation for part 256 continues to read as follows:

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

8. In § 256.7, paragraphs (b) through (h) are redesignated paragraphs (c) through (i), and a new paragraph (b) is added to read as follows:

§ 256.7 Cross references.

* * * * *

(b) For MMS regulations governing the appeal of an order or decision issued under the regulations in this part, see 30 CFR part 290.

* * * * *

9. Section 256.47 is amended by revising the fourth sentence of paragraph (f) as follows:

§ 256.47 Award of leases.

* * * * *

(f) * * * The bidder must also file a bond as required in § 256.52 of this title. * * *

* * * * *

10. Section 256.58 is redesignated as § 256.52, and revised to read as follows:

§ 256.52 Bond requirements for an oil and gas or sulphur lease.

This section establishes bond requirements for the lessee of an OCS oil and gas or sulphur lease.

(a) Before MMS will issue a new lease or approve the assignment of an existing lease to you as lessee, you or another record title owner for the lease must:

(1) Maintain with the Regional Director a $50,000 lease bond that guarantees compliance with all the terms and conditions of the lease; or

(2) Maintain a $300,000 areawide bond that guarantees compliance with all the terms and conditions of all your oil and gas and sulphur leases in the area where the lease is located; or

(3) Maintain a lease or areawide bond in the amount required in § 256.53(a) or (b) of this part.

(b) For the purpose of this section, there are four areas:

(1) The Gulf of Mexico;

(2) The area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii;

(3) The area offshore the Coast of Alaska; and

(4) The area offshore the Atlantic Coast.

(c) The requirement to maintain a lease bond (or substitute security instruments) under paragraph (a)(1) of this section and § 256.53 (a) and (b) is satisfied if your operator provides a lease bond in the required amount that guarantees compliance with all the terms and conditions of the lease. Your operator may not use an areawide bond under this paragraph to satisfy your bond obligation.

(d) If a surety makes payment to the United States under a bond or alternate form of security maintained under this section, the surety's remaining liability under the bond or alternate form of security is reduced by the amount of that payment. See paragraph (e) of this section for the requirement to replace the reduced bond coverage.

(e) If the value of your surety bond or alternate security is reduced because of a default, or for any other reason, you must provide additional bond coverage sufficient to meet the security required under this subpart within 6 months, or such shorter period of time as the Regional Director may direct.

(f) You may pledge U.S. Department of the Treasury (Treasury) securities instead of a bond. The Treasury securities you pledge must be negotiable for an amount of cash equal to the value of the bond they replace.

(1) If you pledge Treasury securities under this paragraph (f), you must monitor their value. If their market value falls below the level of bond coverage required under this subpart, you must pledge additional Treasury securities to raise the value of the securities pledged to the required amount.

(2) If you pledge Treasury securities, you must include authority for the Regional Director to sell them and use the proceeds when the Regional Director determines that you fail to satisfy any lease obligation.

(g) You may pledge alternate types of security instruments instead of providing a bond if the Regional Director determines that the alternate security protects the interests of the United States to the same extent as the required bond.

(1) If you pledge an alternate type of security under this paragraph, you must monitor the security's value. If its market value falls below the level of bond coverage required under this subpart, you must pledge additional securities to raise the value of the securities pledged to the required amount.

(2) If you pledge an alternate type of security, you must include authority for the Regional Director to sell the security and use the proceeds when the Regional Director determines that you failed to satisfy any lease obligation.

(h) If you fail to replace a deficient bond or to provide additional bond coverage upon demand, the Regional Director may:

(1) Assess penalties under part 250, subpart N of this chapter;

(2) Suspend production and other operations on your leases in accordance with § 250.10 of this chapter; and

(3) Initiate action to cancel your lease.

11. Section 256.61 of subpart I is redesignated as § 256.53 of subpart I; introductory texts are added to paragraphs (a) and (b); paragraphs (a)(1), (b)(1), and (d) are revised; and paragraphs (e), (f), and (g) are added to read as follows:

§ 256.53 Additional bonds.

(a) This paragraph explains what bonds the lessee must provide before lease exploration activities commence.

(1)(i) You must furnish the Regional Director a $200,000 bond that guarantees compliance with all the terms and conditions of the lease by the earliest of:

(A) The date you submit a proposed Exploration Plan (EP) for approval;

(B) The date you submit a request for approval of the assignment of a lease on which an EP has been approved; or

(C) December 8, 1997, for any lease for which an EP has been approved.

(ii) The Regional Director may authorize you to submit the $200,000 lease exploration bond after you submit an EP but before he/she approves drilling activities under the EP.

(iii) You may satisfy the bond requirement of this paragraph (a) by providing a new bond or by increasing the amount of your existing bond.

* * * * *

(b) This paragraph explains what bonds you (the lessee) must provide before lease development and production activities commence.

(1)(i) You must furnish the Regional Director a $500,000 bond that guarantees compliance with all the terms and conditions of the lease by the earliest of:

(A) The date you submit a proposed Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD) for approval;

(B) The date you submit a request for approval of the assignment of a lease on which a DPP or DOCD has been approved; or

(C) December 8, 1997, for any lease for which a DPP or DOCD has been approved.

(ii) The Regional Director may authorize you to submit the $500,000 lease development bond after you submit a DPP or DOCD, but before he/she approves the installation of a platform or the commencement of drilling activities under the DPP or DOCD.

(iii) You may satisfy the bond requirement of this paragraph by providing a new bond or by increasing the amount of your existing bond.

* * * * *

(d) The Regional Director may determine that additional security (i.e., security above the amounts prescribed in §§ 256.52(a) and 256.53 (a) and (b) of this part) is necessary to ensure compliance with the obligations under your lease and the regulations in this chapter.

(1) The Regional Director's determination will be based on his/her evaluation of your ability to carry out present and future financial obligations demonstrated by:

(i) Financial capacity substantially in excess of existing and anticipated lease and other obligations, as evidenced by audited financial statements (including auditor's certificate, balance sheet, and profit and loss sheet);

(ii) Projected financial strength significantly in excess of existing and future lease obligations based on the estimated value of your existing OCS lease production and proven reserves of future production;

(iii) Business stability based on 5 years of continuous operation and production of oil and gas or sulphur in the OCS or in the onshore oil and gas industry;

(iv) Reliability in meeting obligations based on:

(A) Credit rating(s); or

(B) Trade references, including names and addresses of other lessees, drilling contractors, and suppliers with whom you have dealt; and

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

(2) You may satisfy the Regional Director's demand for additional security by increasing the amount of your existing bond or by providing a supplemental bond or bonds.

(e) The Regional Director will determine the amount of supplemental bond required to guarantee compliance. The Regional Director will consider potential underpayment of royalty and cumulative obligations to abandon wells, remove platforms and facilities, and clear the seafloor of obstructions in the Regional Director's case-specific analysis.

(f) If your cumulative potential obligations and liabilities either increase or decrease, the Regional Director may adjust the amount of supplemental bond required.

(1) If the Regional Director proposes an adjustment, the Regional Director will:

(i) Notify you and the surety of any proposed adjustment to the amount of bond required; and

(ii) Give you an opportunity to submit written or oral comment on the adjustment.

(2) If you request a reduction of the amount of supplemental bond required, you must submit evidence to the Regional Director demonstrating that the projected amount of royalties due the Government and the estimated costs of lease abandonment and cleanup are less than the required bond amount. If the Regional Director finds that the evidence you submit is convincing, he/she may reduce the amount of supplemental bond required.

12. Section 256.59 of subpart I is redesignated as § 256.54 of subpart I, and revised to read as follows:

§ 256.54 General requirements for bonds.

(a) Any bond or other security that you, as lessee or operator, provide under this part must:

(1) Be payable upon demand to the Regional Director;

(2) Guarantee compliance with all of your obligations under the lease and regulations in this chapter; and

(3) Guarantee compliance with the obligations of all lessees, operating rights owners and operators on the lease.

(b) All bonds and pledges you furnish under this part must be on a form or in a form approved by the Associate Director for Offshore Minerals Management. Surety bonds must be issued by a surety that the Treasury certifies as an acceptable surety on Federal bonds and that is listed in the current Treasury Circular No. 570. You

may obtain a copy of the current Treasury Circular No. 570 from the Surety Bond Branch, Financial Management Service, Department of the Treasury, East-West Highway, Hyattsville, MD 20782.

(c) You and a qualified surety must execute your bond. When either party is a corporation, an authorized official for the party must sign the bond and attest to it by an imprint of the corporate seal.

(d) Bonds must be noncancellable, except as provided in § 256.58 of this part. Bonds must continue in full force and effect even though an event occurs that could diminish, terminate, or cancel a surety obligation under State surety law.

(e) Lease bonds must be:

(1) A surety bond;

(2) Treasury securities as provided in § 256.52(f);

(3) Another form of security approved by the Regional Director; or

(4) A combination of these security methods.

(f) You may submit a bond to the Regional Director executed on a form approved under paragraph (b) of this section that you have reproduced or generated by use of a computer. If you do this, and if the document omits terms or conditions contained on the form approved by the Associate Director for Offshore Minerals Management the bond you submit will be deemed to contain the omitted terms and conditions.

13. Sections 256.55 through 256.59 are added to subpart I to read as follows:

§ 256.55 Lapse of bond.

(a) If your surety becomes bankrupt, insolvent, or has its charter or license suspended or revoked, any bond coverage from that surety terminates immediately. In that event, you must promptly provide a new bond in the amount required under §§ 256.52 and 256.53 of this part to the Regional Director and advise the Regional Director of the lapse in your previous bond.

(b) You must notify the Regional Director of any action filed alleging that you, your surety, or guarantor are insolvent or bankrupt. You must notify the Regional Director within 72 hours of learning of such an action. All bonds must require the surety to provide this information to you and directly to MMS.

§ 256.56 Lease-specific abandonment accounts.

(a) The Regional Director may authorize you to establish a lease-specific abandonment account in a federally insured institution in lieu of the bond required under § 256.53(d). The account must provide that, except as provided in paragraph (a)(3) of this section, funds may not be withdrawn without the written approval of the Regional Director.

(1) Funds in a lease-specific abandonment account must be payable upon demand to MMS and pledged to meet the lessee's obligations under § 250.110 of this chapter.

(2) You must fully fund the lease-specific abandonment account to cover all the costs of lease abandonment and site clearance as estimated by MMS within the timeframe the Regional Director prescribes.

(3) You must provide binding instructions under which the institution managing the account is to purchase Treasury securities pledged to MMS under paragraph (d) of this section.

(b) Any interest paid on funds in a lease-specific abandonment account will be treated as other funds in the account unless the Regional Director authorizes in writing the payment of interest to the party who deposits the funds.

(c) The Regional Director may allow you to pledge Treasury securities that are made payable upon demand to the Regional Director to satisfy your obligation to make payments into a lease-specific abandonment account.

(d) Before the amount of funds in a lease-specific abandonment account equals the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, the institution managing the account must use the funds in the account to purchase Treasury securities pledged to MMS under paragraph (c) of this section. The institution managing the lease specific-abandonment account will join with the Regional Director to establish a Federal Reserve Circular 154 account to hold these Treasury securities, unless the Regional Director authorizes the managing institution to retain the pledged Treasury securities in a separate trust account. You may obtain a copy of the current Treasury Circular No. 154 from the Surety Bond Branch, Financial Management Service, Department of the Treasury, East-West Highway, Hyattsville, MD 20782.

(e) The Regional Director may require you to create an overriding royalty or production payment obligation for the benefit of a lease-specific account pledged for the abandonment and clearance of a lease. The required obligation may be associated with oil and gas or sulphur production from a lease other than the lease bonded through the lease-specific abandonment account.

§ 256.57 Using a third-party guarantee instead of a bond.

(a) *When the Regional Director may accept a third-party guarantee.* The Regional Director may accept a third-party guarantee instead of an additional bond under § 256.53(d) if:

(1) The guarantee meets the criteria in paragraph (c) of this section;

(2) The guarantee includes the terms specified in paragraph (d) of this section;

(3) The guarantor's total outstanding and proposed guarantees do not exceed 25 percent of its unencumbered net worth in the United States; and

(4) The guarantor submits an indemnity agreement meeting the criteria in paragraph (e) of this section.

(b) *What to do if your guarantor becomes unqualified.* If, during the life of your third-party guarantee, your guarantor no longer meets the criteria of paragraphs (a)(3) and (c)(3) of this section, you must:

(1) Notify the Regional Director immediately; and

(2) Cease production until you comply with the bond coverage requirements of this subpart.

(c) *Criteria for acceptable guarantees.* If you propose to furnish a third party's guarantee, that guarantee must ensure compliance with all lessees' lease obligations, the obligations of all operating rights owners, and the obligations of all operators on the lease. The Regional Director will base acceptance of your third-party guarantee on the following criteria:

(1) The period of time that your third-party guarantor (guarantor) has been in continuous operation as a business entity where:

(i) Continuous operation is the time that your guarantor conducts business immediately before you post the guarantee; and

(ii) Continuous operation excludes periods of interruption in operations that are beyond your guarantor's control and that do not affect your guarantor's likelihood of remaining in business during exploration, development, production, abandonment, and clearance operations on your lease.

(2) Financial information available in the public record or submitted by your guarantor, on your guarantor's own initiative, in sufficient detail to show to the Regional Director's satisfaction that your guarantor is qualified based on:

(i) Your guarantor's current rating for its most recent bond issuance by either Moody's Investor Service or Standard and Poor's Corporation;

(ii) Your guarantor's net worth, taking into account liabilities under its guarantee of compliance with all the

terms and conditions of your lease, the regulations in this chapter, and your guarantor's other guarantees;

(iii) Your guarantor's ratio of current assets to current liabilities, taking into account liabilities under its guarantee of compliance with all the terms and conditions of your lease and the regulations in this chapter and your guarantor's other guarantees; and

(iv) Your guarantor's unencumbered fixed assets in the United States.

(3) When the information required by paragraph (c) of this section is not publicly available, your guarantor may submit the information in the following table. Your guarantor must update the information annually within 90 days of the end of the fiscal year or by the date prescribed by the Regional Director.

The guarantor should submit—	that—
(i) Financial statements for the most recently completed fiscal year.	Include a report by an independent certified public accountant containing the accountant's audit opinion or review opinion of the statements. The report must be prepared in conformance with generally accepted accounting principles and contain no adverse opinion.
(ii) Financial statements for completed quarters in the current fiscal year.	Your guarantor's financial officer certifies to be correct.
(iii) Additional information as requested by the Regional Director.	Your guarantor's financial officer certifies to be correct.

(d) *Provisions required in all third-party guarantees.* Your third-party guarantee must contain each of the following provisions.

(1) If you, your operator, or an operating rights owner fails to comply with any lease term or regulation, your guarantor must either:

(i) Take corrective action; or

(ii) Be liable under the indemnity agreement to provide, within 7 calendar days, sufficient funds for the Regional Director to complete corrective action.

(2) If your guarantor complies with paragraph (d)(1) of this section, this compliance will not reduce its liability.

(3) If your guarantor wishes to terminate the period of liability under its guarantee, it must:

(i) Notify you and the Regional Director at least 90 days before the proposed termination date;

(ii) Obtain the Regional Director's approval for the termination of the period of liability for all or a specified portion of your guarantor's guarantee; and

(iii) Remain liable for all work and workmanship performed during the period that your guarantor's guarantee is in effect.

(4) You must provide a suitable replacement security instrument before the termination of the period of liability under your third-party guarantee.

(e) *Required criteria for indemnity agreements.* If the Regional Director approves your third-party guarantee, the guarantor must submit an indemnity agreement.

(1) The indemnity agreement must be executed by your guarantor and all persons and parties bound by the agreement.

(2) The indemnity agreement must bind each person and party executing the agreement jointly and severally.

(3) When a person or party bound by the indemnity agreement is a corporate entity, two corporate officers who are authorized to bind the corporation must sign the indemnity agreement.

(4) Your guarantor and the other corporate entities bound by the indemnity agreement must provide the Regional Director copies of:

(i) The authorization of the signatory corporate officials to bind their respective corporations;

(ii) An affidavit certifying that the agreement is valid under all applicable laws; and

(iii) Each corporation's corporate authorization to execute the indemnity agreement.

(5) If your third-party guarantor or another party bound by the indemnity agreement is a partnership, joint venture, or syndicate, the indemnity agreement must:

(i) Bind each partner or party who has a beneficial interest in your guarantor; and

(ii) Provide that, upon demand by the Regional Director under your third-party guarantee, each partner is jointly and severally liable for compliance with all terms and conditions of your lease.

(6) When forfeiture is called for under § 256.59 of this part, the indemnity agreement must provide that your guarantor will either:

(i) Bring your lease into compliance; or

(ii) Provide, within 7 calendar days, sufficient funds to permit the Regional Director to complete corrective action.

(7) The indemnity agreement must contain a confession of judgment. It must provide that, if the Regional Director determines that you, your operator, or an operating rights owner is in default of the lease, the guarantor:

(i) Will not challenge the determination; and

(ii) Will remedy the default.

(8) Each indemnity agreement is deemed to contain all terms and conditions contained in this paragraph (e), even if the guarantor has omitted them.

§ 256.58 Termination of the period of liability and cancellation of a bond.

This section defines the terms and conditions under which the Regional Director may terminate the period of liability of a bond or cancel a bond.

(a) When the surety under your bond requests termination of the period of liability under its bond, the Regional Director will terminate the period of liability under your bond and demand that you provide a replacement bond of equivalent amount.

(1) Termination of the period of liability under a bond does not release the surety of that bond.

(2) Your surety is responsible for all obligations and liabilities that accrue before the effective date of the Regional Director's termination of the period of liability under its bond.

(b) The Regional Director's cancellation or release of a bond may include lease obligations that accrue before the effective date of the cancellation only when:

(1) The Regional Director determines that there are no outstanding obligations; or

(2) You furnish a replacement bond:

(i) In which your new surety agrees to assume all outstanding liabilities under the bond that is to be canceled; and

(ii) That is in an amount equal to or greater than the amount of the bond that is to be canceled.

(c) The Regional Director will issue a written instrument to cancel or release your bond. This instrument will subject the bond to automatic reinstatement, as if no cancellation or release had occurred, if:

(1) A person makes a payment under the lease and the payment is rescinded or must be repaid by the recipient because the person making the payment is insolvent, bankrupt, subject to reorganization, or placed in receivership; or

(2) The responsible party represents to MMS that it has discharged its obligations under the lease and the representation is materially false when the bond is canceled, or released.

§ 256.59 Forfeiture of bonds and/or other securities.

This section explains how a bond or other security may be forfeited.

(a) The Regional Director will call for forfeiture of all or part of the bond, other form of security, or guarantee you provide under this part if:

(1) You (the party who provided the bond) refuse, or the Regional Director determines that you are unable, to comply with any term or condition of your lease; or

(2) You default under one of the conditions under which the Regional Director accepts your bond, third-party guarantee, and/or other form of security.

(b) The Regional Director may pursue forfeiture of your bond without first making demands for performance against any lessee, operating rights owner, or other person authorized to perform lease obligations.

(c) The Regional Director will:

(1) Notify you, the surety on your bond or other form of security, and any third-party guarantor, of his/her determination to call for forfeiture of the bond, security, or guarantee under this section.

(i) This notice will be in writing and will provide the reasons for the forfeiture and the amount to be forfeited.

(ii) The Regional Director must base the amount he/she determines is forfeited upon his/her estimate of the total cost of corrective action to bring your lease into compliance.

(2) Advise you, your third-party guarantor, and any surety, that you, your guarantor, and any surety may avoid forfeiture if, within 5 working days:

(i) You agree to, and demonstrate that you will, bring your lease into compliance within the timeframe that the Regional Director prescribes;

(ii) Your third-party guarantor agrees to, and demonstrates that it will, complete the corrective action to bring your lease into compliance within the timeframe that the Regional Director prescribes; or

(iii) Your surety agrees to, and demonstrates that it will, bring your lease into compliance within the timeframe that the Regional Director prescribes, even if the cost of compliance exceeds the face amount of the bond or other surety instrument.

(d) If the Regional Director finds you are in default, he/she may cause the forfeiture of any bonds and other security deposited as your guarantee of compliance with the terms and conditions of your lease and the regulations in this chapter.

(e) If the Regional Director determines that your bond and/or other security is forfeited, the Regional Director will:

(1) Collect the forfeited amount; and

(2) Use the funds collected to bring your leases into compliance and to correct any default.

(f) If the amount the Regional Director collects under your bond and other security is insufficient to pay the full cost of corrective actions he/she may:

(1) Take or direct action to obtain full compliance with your lease and the regulations in this chapter; and

(2) Recover from you, any co-lessee, operating rights owner, and/or any third-party guarantor responsible under this subpart all costs in excess of the amount he/she collects under your forfeited bond and other security.

(g) The amount that the Regional Director collects under your forfeited bond and other security may exceed the costs of taking the corrective actions required to obtain full compliance with the terms and conditions of your lease and the regulations in this chapter. In this case, the Regional Director will return the excess funds to the party from whom they were collected.

14. In § 256.62, the section heading is revised, introductory text is added, paragraphs (a), (d), and (e) are revised, and paragraph (f) is added to read as follows:

§ 256.62 Assignment of lease or interest in lease.

This section explains how to assign record title and other interests in OCS oil and gas or sulphur leases.

(a) MMS may approve the assignment to you of the ownership of the record title to a lease or any undivided interest in a lease, or an officially designated subdivision of a lease, only if:

(1) You qualify to hold a lease under § 256.35(b);

(2) You provide the bond coverage required under subpart I of this part; and

(3) The Regional Director approves the assignment.

* * * * *

(d) You, as assignor, are liable for all obligations that accrue under your lease before the date that the Regional Director approves your request for assignment of the record title in the lease. The Regional Director's approval of the assignment does not relieve you of accrued lease obligations that your assignee, or a subsequent assignee, fails to perform.

(e) Your assignee and each subsequent assignee are liable for all obligations that accrue under the lease after the date that the Regional Director approves the governing assignment. They must:

(1) Comply with all the terms and conditions of the lease and all regulations issued under the Act; and

(2) Remedy all existing environmental problems on the tract, properly abandon all wells, and reclaim the lease site in accordance with part 250, subpart G.

(f) If your assignee, or a subsequent assignee, fails to perform any obligation under the lease or the regulations in this chapter, the Regional Director may require you to bring the lease into compliance to the extent that the obligation accrued before the Regional Director approved the assignment of your interest in the lease.

15. In § 256.64, the section heading is revised, introductory text and paragraph (a) introductory text are added, paragraph (a)(1) is revised, paragraph (a)(2) is redesignated (a)(8), new paragraphs (a)(2) through (a)(7) are added, paragraphs (d) through (h) are redesignated as paragraphs (e) through (i), paragraph (c) and redesignated paragraph (h) are revised, and a new paragraph (d) is added to read as follows:

§ 256.64 How to file transfers.

This section explains how to file instruments with MMS that create and/or transfer interests in OCS oil and gas or sulphur leases.

(a) You must submit to the Regional Director for approval all instruments that create or transfer ownership of a lease interest.

(1) You must submit two copies of the instruments that create or transfer an interest. Each instrument that creates or transfers an interest must describe by officially designated subdivision the interest you propose to create or transfer.

(2) You must submit your proposal to create or transfer an interest, or create or transfer separate operating rights, subleases, and record title interests within 90 days of the last date that a party executes the transfer agreement.

(3) The transferee must meet the citizenship and other qualification criteria specified in § 256.35 of this part. When you submit an instrument to create or transfer an interest as an association, you must include a statement signed by the transferee about the transferee's citizenship and qualifications to own a lease.

(4) Your instrument to create or transfer an interest must contain all of the terms and conditions to which you and the other parties agree.

(5) You do not gain a release of any nonmonetary obligation under your lease or the regulations in this chapter by creating a sublease or transferring operating rights.

(6) You do not gain a release from any accrued obligation under your lease or the regulations in this chapter by

assigning your record title interest in the lease.

(7) You may create or transfer carried working interests, overriding royalty interests, or payments out of production without obtaining the Regional Director's approval. However, you must file instruments creating or transferring carried working interests, overriding royalty interests, or payments out of production with the Regional Director for record purposes.

* * * * *

(c) When you request approval for an assignment that assigns all your record title interest in a lease or that creates a segregated lease, your assignee must furnish a bond in the amount prescribed in §§ 256.52 and 256.53 of this part.

(d) When you request approval for an assignment that assigns less than all the record title of a lease and that does not create a separate lease, the assignee may, with the surety's consent, become a joint principal on the surety instrument that guarantees compliance with all the terms and conditions of the lease.

* * * * *

(h) Your heirs, executors, administrators, successors, and assigns are bound to comply with each obligation under any lease and under the regulations in this chapter.

(1) You are jointly and severally liable for the performance of each nonmonetary obligation under the lease and under the regulations in this chapter with each prior lessee and with each operating rights owner holding an interest at the time the obligation accrued, unless this chapter provides otherwise.

(2) Sublessees and operating rights owners are jointly and severally liable for the performance of each nonmonetary obligation under the lease and under the regulations in this chapter to the extent that:

(i) The obligation relates to the area embraced by the sublease;

(ii) Those owners held their respective interest at the time the obligation accrued; and

(iii) This chapter does not provide otherwise.

* * * * *

PART 281—[AMENDED]

16. The authority citation for part 281 is revised to read as follows:

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

17. Section 281.33 is amended by revising the first sentence of the introductory text of paragraph (b) to read as follows:

§ 281.33 Bonds and bonding requirements.

* * * * *

(b) All bonds to guarantee payment of the deferred portion of the high cash bonus bid furnished by the lessee must be in a form or on a form approved by the Associate Director for Offshore Minerals Management. * * *

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PART 282—[AMENDED]

18. The authority citation for part 282 is revised to read as follows:

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

19. Section 282.40 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 282.40 Bonds.

* * * * *

(b) All bonds furnished by a lessee or operator must be in a form approved by the Associate Director for Offshore Minerals Management. * * *

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[FR Doc. 97–13199 Filed 5–21–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–97–029]

RIN 2115–AE46

Special Local Regulation: Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the permanent regulations for the annual Harvard-Yale Regatta, a rowing competition held on the Thames River in New London, CT. The regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on the affected navigable waters.

DATES: 33 CFR 100.101 is effective on June 1, 1997, from 3:30 p.m. to 8 p.m. If the regatta is canceled due to weather, this section will be in effect on the following day, Monday June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J.B. Donovan, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION: This notice implements the permanent special local regulation governing the 1997 Harvard-Yale Regatta. A portion of the Thames River in New London, Connecticut, will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area of the river between the Penn Central Draw Bridge and Bartlett's Cove. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.101.

Dated: May 6, 1997.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 97–13514 Filed 5–21–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–97–020]

RIN 2115–AE46

Special Local Regulations for Marine Events; Virginia is for Lovers Cup Unlimited Hydroplane Races, Willoughby Bay, Norfolk, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporaty final rule.

SUMMARY: Special local regulations are being adopted for the Virginia is for Lovers Cup Unlimited Hydroplane Races to be held in Willoughby Bay, Norfolk, Virginia. The event will be held from 8 a.m. to 5 p.m. EDT (Eastern Daylight Time) May 24, 1997 to May 26, 1997. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

DATES: This regulation is effective from 8 a.m. to 5 p.m. EDT on May 24, May 25, and May 26, 1997.

FOR FURTHER INFORMATION CONTACT: LTJG R. Christensen, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, Virginia 23703, (757) 483–8521.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in