Pursuant to 29 CFR 1320.8(d)(1), the EEOC solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the EEOC's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the EEOC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Regulatory Flexibility Act

The Commission certifies pursuant to 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act, Pub. L. No. 96–354, that this proposed change will not result in significant impact on small employers or other entities because the change involves elimination of reporting requirements, and that a regulatory flexibility analysis therefore is not required. The Commission hereby publishes this proposed rule for public information and comment. The rule appears below.

List of Subjects in 29 CFR Part 1602

Reporting and recordkeeping requirements.

Dated: November 30, 1995.

For the Commission.

Gilbert F. Casellas,

Chairman.

Accordingly, it is proposed to amend 29 CFR Part 1602 as follows:

1. The authority citation for part 1602 continues to read as follows:

Authority: 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 *et seq.*; 42 U.S.C. 12117.

§ 1602.41 [Amended]

2. Section 1602.41 is amended as follows:

(a) In the introductory text, in the first sentence, delete the phrase ''and individual schools within such systems or district''.

(b) In the concluding text, in the first sentence, delete the phrase, '', or the individual school which is the subject of the report, where more convenient,''

3. Section 1602.43 is revised to read as follows:

§ 1602.43 Commission's remedy for school systems' or districts' failure to file report.

Any school system or district failing or refusing to file report EEO–5 when required to do so may be compelled to file by order of a U.S. district court, upon application of the Commission or the Attorney General.

4. Section 1602.44 is revised to read as follows:

§ 1602.44 School systems' or districts' exemption from reporting requirements.

If it is claimed that the preparation or filing of the report would create undue hardship, the school system or district may apply to the Commission for an exemption from the requirements set forth in this part by submitting to the Commission or its delegate a specific proposal for an alternative reporting system prior to the date on which the report is due.

[FR Doc. 95–29552 Filed 12–7–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250, 251, and 256

RIN 1010–AB92

Revision of Requirements Governing Surety Bonds for Outer Continental Shelf Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would establish a deadline of 2 years for all Outer Continental Shelf (OCS) oil and gas and sulphur lessees to bring their bond coverage into compliance with the new levels of coverage established in 1993; clarify MMS's position that assignees, assignors, and co-lessees are jointly and severally liable for compliance with OCS oil and gas and sulphur leases; establish a regulatory framework for lease-specific abandonment accounts and acceptance of a third-party guarantee; and update the bond coverage required of right-of-way holders and Geological and Geophysical (G&G) exploration permittees. These changes are needed to reduce the risk of default by an underfunded company operating a lease or holding a right-of-way.

DATES: Comments must be received or postmarked no later than March 7, 1996 to be considered in this rulemaking.

ADDRESSES: Written comments must be mailed or hand-carried to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4700; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Engineering and Technology Division, telephone (703) 787–1609.

SUPPLEMENTARY INFORMATION: The MMS regulations at 30 CFR Part 250, Subpart G, Abandonment of Wells, Subpart I, Platforms and Structures, and Subpart J, Pipelines and Pipeline Rights-of-Way, specify that OCS lessees, right-of-way holders, and G&G exploration permittees are liable for all end-of-lease financial obligations including unpaid royalties; costs of well plugging and abandonment; removal of pipe, equipment, platform(s), and facilities; and clearance of obstructions to other uses of the sea. The levels of bond coverage required by the regulations do not limit the obligations of OCS oil and gas or sulphur lessees, holders of an OCS pipeline right-of-way, or exploration permittees conducting deep stratigraphic tests.

The transfer of OCS leases from large producing companies to smaller producers, some of which are marginally financed, has increased the risk that the responsible party will not be able to satisfy end-of-lease obligations.

The MMS continues to investigate ways to provide more flexibility to lessees in meeting bonding requirements. For example, MMS has allowed third-party guarantees and escrow accounts as alternatives to traditional bonds. These methods would be specifically addressed in regulations to facilitate their use. The MMS encourages lessees to suggest other alternatives to traditional bonds. The regulations provide flexibility to the Regional Director to consider alternate forms of surety.

Oil and Gas and Sulphur Lease Bond Coverage Requirements: To reduce the number of cases of underfunded liabilities, MMS published revised rules on August 27, 1993 (58 FR 45255), increasing the bond coverage required for OCS oil and gas or sulphur leases.

The MMS is phasing in the increases in the minimum levels of bond coverage as part of the process of reviewing requests for approval of lease assignments, Exploration Plans (EP), Development and Production Plans

(DPP), or Development Operations Coordination Documents (DOCD). The 1993 regulation replaced the requirement for a $50,000 bond for oil and gas and sulphur leases with requirements based upon the drilling or production stage of a lease as follows:

State 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

This proposed rule would require lessees not already in compliance with the higher bond levels to submit and maintain the higher lease or areawide bonds within 2 years of the promulgation of a final rule.

Assignors, Assignees, and Co-Lessees Liable for Compliance: When the designated operator is unable to meet end-of-lease obligations, MMS will require any or all of the lessees to bring the lease into compliance. If there is no lessee able to perform, MMS will require the prior lessee(s) to perform these functions.

Relationship Between these Regulations and The Liability Regulations Published by MMS's Royalty Management Program: This proposed rule clarifies MMS's position with respect to the liability of assignees, assignors, and lessees (record title owners) for the plugging and abandonment of wells, removal of platforms and other facilities, and clearance of well and platform locations. These obligations are joint and several in nature. The obligations are not divisible, and a degree of residual liability is attached (i.e., an assignor may be required to perform lease and well abandonment and clearance obligations when an assignee refuses or is unable to carry out any or all of these responsibilities).

The indivisible nature of these obligations distinguishes them from the royalty and other payment obligations addressed in the regulations proposed for modification by the notice of proposed rulemaking (NPR) published on June 9, 1995, by MMS's Royalty Management Program (RMP) (60 FR 30492). The provisions of that NPR would establish liability for the payment of royalty due on Federal and Indian leases and establish responsibility to pay and report royalty and other payments.

The RMP's NPR dated June 9, 1995, proposes that royalty and other payment obligations be treated as divisible according to the division of the record title interests in a lease and proposes that a record title owner's (lessee's) liability for the payment of royalty and other payments be proportionate to percentage of the record title interest owned. That NPR also points out that lease obligations such as leasehold and well abandonment and reclamation are not divisible.

Neither of these NPR's address against whom MMS will take enforcement action if MMS discovers noncompliance either in payments due or required leases abandonment and reclamation activities. In every instance, MMS retains the discretion to determine which person to pursue. Once the lease has been brought into compliance, the person MMS takes enforcement action against could seek contributions from other liable persons.

While these proposed rule should make it easier to determine who the liable parties are, it is not MMS's intention that these rules govern the relationship or liabilities between and among the affected parties other than MMS.

Means for Financing Abandonment and Clearance Obligations: Since no revenues are being generated from a lease at the time lease wells are to be plugged and abandoned, platforms are to be removed, and the seafloor cleared of obstructions, MMS wants assurances that OCS lessees establish some means of funding their end-of-lease obligations.

Similarly, no revenues are generated by pipeline operations at the time the right-of-way holder is called upon to remove all platforms, structures, domes over valves, pipes, taps, and valves along the right-of-way in compliance with MMS regulations. The MMS wants assurances that holders of OCS pipeline right-of-way grants provide some means of funding their right-of-way abandonment obligations.

Supplemental bonds: The MMS's Regional Directors may require OCS lessees, on a case-by-case basis. To provide additional security in the form of a supplemental bond or bonds or an increase in the amount of coverage under an existing bond. The additional security is required when the Regional director deems it necessary to ensure that the lessee or its guarantor will be able to comply with all end-of-lease obligations. The Regional Director will also consider the added liability created when new leases are added to an existing areawide bond.

The proposed rule would increase the level of bond coverage for G&G exploration permittees drilling a deep stratigraphic test well and would provide authority for MMS's Regional Directors to require right-of-way holders and G&G exploration permittees, on a case-by-case basis, to post additional bonds or other security in the form of a supplemental bond or bonds or an increase in the amount of coverage under an existing bond. These changes recognize that the current bonding requirements found in §§ 250.159(b) and 251.6–4 are inadequate and also recognize the variation in costs associated with the abandonment of deep stratigraphic test wells and pipelines constructed on OCS right-of-ways.

Lease-Specific Abandonment Accounts and Third-Party Guarantee: Proposed § 256.56, Lease-specific abandonment accounts, and § 256.57, Third-party guarantee, would establish specific regulatory authority under which MMS's Regional Director may approve these alternate methods for funding end-of-lease abandonment obligations. Regional Directors already accept lease-specific abandonment accounts. A third-party guarantee or a supplemental bond may cover specific obligations, such as plugging and abandonment of specified leases or wells. However, the Regional Director's approval will depend on how well the combination of all bonds and guarantees is able to ensure that the lessee will meet all obligations.

Section-by-Section Discussion

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

Section 250.110 General Requirements

Current rules at § 256.62(d) provide that assignors remain ''liable for all obligations under the lease accruing prior to the approval of the assignment.'' The rule at § 250.110 of subpart G, Abandonment of Wells, is being amended to clarify existing requirements that when a well is drilled, a platform or other facility is installed, or an obstruction is created, the lessee's obligation accrues to properly plug and abandon the wellbore, remove the platform or other facility, and clear the ocean of obstructions in accordance with procedures specified in subpart G of 30 CFR part 250. When an assignment occurs, the assignor continues to have residual liability should the assignee fail to fully perform obligations that accrued before assignment with respect to wells and structures in existence at the time of the assignment.

The clarification also provides that when there are several responsible lessees, they are jointly and severally liable for end-of-lease obligations.

Section 250.159, General requirements for a pipeline right-of-way grant, would be modified to add a

provision under which the Regional Director could require the holder of a right-of-way to submit and maintain additional security in the form of a supplemental bond or bonds or by increasing the amount of coverage provided under an existing surety bond.

Part 251—G&G Explorations of the OCS

Section 251.6–4, Bonds, would be modified to increase the bond coverage required to $200,00 for drilling a deep stratigraphic test well unless an areawide bond is maintained. A provision would be added under which the Regional Director could require a permittee under a G&G Exploration permit to submit and maintain additional security in the form of a supplemental bond or bonds or by increasing the amount of coverage provided under an existing surety bond. Compliance with the increased amount of bond coverage would be required for all permits granted after the effective date of a final rule.

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

Subpart I—Bonding

Section 256.52 Requirement to File a Bond

Proposed § 256.52, Requirement to file a bond (current § 256.58, Acceptable bonds/alternate security instruments), expands upon the provisions of § 256.58 and establishes the bonding requirements for lessees. This section establishes the time at which a bond must be provided and recognizes alternate methods that a Regional Director may approve for providing additional security.

Proposed § 256.52(d) expands upon the provisions of current § 256.58(d) with regard to the results of a payment of a claim in the face amount of the surety.

Proposed § 256.52(f) expands upon the provisions of current § 256.58(f) with regard to the responsibility of the lessee to monitor the value of U.S. Department of the Treasury (U.S. Treasury) instruments provided to MMS and to submit additional U.S. Treasury instruments if the value of the instruments previously provided falls below the level of bond required.

In § 256.52, new paragraph (i) requires the lessee to give notice and to cease operations if the lease ceases to be in compliance with bonding requirements. Paragraph (i) also authorizes the Regional Director to allow continued operations when ceasing operations would pose a danger to the environment or to the producing reservoir but with all proceeds being paid into lease abandonment accounts.

Section 256.53 Additional Bonds

Proposed § 256.53, Additional bonds (existing § 256.61, Additional bonds), expands the provisions of current § 256.61 to establish a deadline (2 years after promulgation of a final rule) for lessees of existing leases to provide the required increased amounts of bond coverage.

Proposed § 256.53(d) modifies the generic criteria used by the Regional Director to assess the ability of a lessee to carry out its present and future financial obligations and the need for supplemental bond.

Proposed § 256.53(e) would expand § 256.61 to establish regulatory provisions for determining the amount of additional bond coverage to be required.

Section 256.54 Bond Form

Section 256.59, Form of bond, would be renumbered and renamed § 256.54, Bond form. New § 256.54 establishes certain required terms of surety bonds including a requirement that the bond be noncancellable.

Proposed § 256.54(d)(3) authorizes the submission of U.S. Treasury securities in lieu of surety bond, in accordance with 31 U.S.C. 9303. It specifies that the lessee using such Treasury securities shall also submit authorization for the Regional Director to sell such securities upon the lessee's default on its lease obligations.

The MMS is concerned that, should the lessee file for bankruptcy and MMS merely have a security interest in the Treasury securities, it will not be able to obtain prompt access to funds to provide for remediation of leaking wells and or other critical environmental problems. In that event, the Treasury bills or notes will not give MMS the same assurance of timely performance of lease obligations that a surety bond provides. Accordingly, MMS is exploring with the Department of the Treasury alternative procedures under which the lessee would transfer title to its book-entry Treasury bills to MMS or a third-party escrow agent, so that the bills would not be property of the bankruptcy estate in the event of insolvency. The MMS requests comments on its alternative approach which it may adopt in the final version of this rule.

Section 256.55 General Terms and Conditions of Bond

Proposed new § 256.55 would establish general terms and conditions of a bond and includes language which specifies that bonds are to be payable to the MMS Regional Director and conditioned upon compliance with *all* terms and conditions of the OCS oil and gas or sulphur leases and governing regulations. Lessees or sureties may propose alternate forms of bond for the Director's approval but should submit therewith an opinion of qualified counsel that the proposed bond form provides security equivalent to that of the standard MMS bond forms.

Proposed § 256.55(d) adds a requirement that the lessee give prompt notice to the Regional Director of any action alleging the insolvency or bankruptcy of the surety or alleging any matter which could result in suspension or revocation of the surety's charter or license to do business.

Section 256.56 Lease-Specific Abandonment Accounts

Proposed new § 256.56, Lease-specific abandonment accounts, establishes regulatory guidance for the establishment of lease-specific abandonment accounts in addition to the Treasury pledge accounts currently established to permit lessees to fund end-of-lease abandonment and clearance costs through scheduled payments into a lease-specific escrow account dedicated to lease abandonment and cleanup.

Section 256.57 Third-Party Guarantee

The third-party guarantee provisions of proposed § 256.57 would establish a regulatory framework for identifying some of the criteria that the Regional Director would use to approve a third-party guarantee of a lessee's compliance with its lease obligations and for establishing how MMS will obtain needed information.

Section 256.58 Termination of the Period of Liability and Cancellation of a Bond

Proposed new § 256.58(a) provides for termination of the period of liability under a bond and allows the Regional Director to permit a lessee to replace existing bonds with other forms of security that provide equivalent protection. Replacement of a bond pursuant to § 256.58(b) would conditionally release the existing bond.

Section 256.59 Forfeiture of Bonds and/or Other Securities

Proposed new § 256.59 specifies that if a lessee refuses or is unable to comply

with lease terms or if the lessee defaults on the conditions under which a bond and other security was accepted, the Regional Director will take action to forfeit all or part of a bond or other security.

Section 256.62 Assignment of Leases or Interests Therein

Under the proposed rulemaking, § 256.62 would be modified to clarify and make explicit existing authority that—

(1) The approval of a lease assignment is subject to the lessee furnishing bond coverage pursuant to the revised bonding requirements.

(2) Having a lease assignment become effective any date other than the first day of the lease month following the filing of documents is at the discretion of the Regional Director.

(3) Approval of an assignment by the Regional Director does not relieve the assignor of accrued lease obligations if the assignee subsequently fails to perform.

(4) Approval of an assignment will not be given until the assignee submits an acceptable level of surety coverage.

(5) When the lessee is not the sole lessee, the Regional Director will look first to the designated operator to perform lease obligations, but all lessees are jointly and severally liable for their performance.

(6) The assignee assumes a responsibility to remedy all existing environmental problems on the tract and to properly abandon all wells and reclaim the lease site.

Section 256.64 Requirements for Filing Transfers

Under the proposed rulemaking, § 256.64 would be modified to clarify that—

(1) Neither the transfer of operating rights, nor the creation of a sublease(s), releases the lessee from performance of any obligation under any lease or under any regulation.

(2) The lessee(s) are jointly and severally liable with sublessees and operating rights owners (to the extent of their interests) for the performance of each obligation under the lease and under the governing regulations with each party holding an interest at the time the obligation was accruing.

The provisions of these proposed rules have been designed to meet the objectives to: (1) ensure lessee's financial capability to perform lease obligations, (2) protect the environment from threat of harm which might result from a lessee's failure to timely carry out proper well abandonment and site clearance operations on a lease, (3) achieve a reasonable degree of protection at a minimum increase in costs to the lessee or lease operator, and (4) select a method of attaining these goals which impact equitably on all parties who would be affected.

The MMS does not have authorized funds available to use to correct a noncompliance or default when the cost of corrective action exceeds the funds available under a forfeited bond and other security.

Author: This document was prepared by Gerald D. Rhodes, Engineering and Technology Division, MMS.

Executive Order (E.O.) 12866

This proposed rule is not a significant rule under E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this proposed rule will not have a significant effect on a substantial number of small entities because, in general, the entities that engage in offshore exploration, development, and production activities including pipeline transportation across the OCS are not considered small due to the technical expertise, financial resources, and experience necessary to safely conduct such activities in an environmentally responsible manner.

Paperwork Reduction Act

This proposed rule does not contain new information collection requirements which require approval by the Office of Management and Budget (OMB). The information collection requirements in 30 CFR part 256 are approved by OMB under approval No. 1010–0006.

Takings Implication Assessment

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

E.O. 12778

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

National Environmental Policy Act

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

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.

Dated: September 5, 1995.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, MMS proposes to amend 30 CFR parts 250, 251, and 256 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. 1334.

2. 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) The obligations to plug and abandon wellbores, remove platforms or other facilities, and to clear the ocean of obstructions accrue when the well is drilled, the platform or other facility is installed, or the obstruction is created and continue until the requirements of subpart G are fully accomplished. These obligations are the joint and several responsibility of all lessees.

3. 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 applying for a right-of-way grant, the applicant or the right-of-way holder shall provide the surety bonds described in this section in addition to the bonds required of a lessee in 30 CFR part 256.

(i) Each applicant or holder of a right-of-way shall furnish the Regional Supervisor a $300,000 corporate surety bond conditioned on compliance with the terms of all right-of-way grants held by the applicant in the Outer Continental Shelf (OCS) area in which the right-of-way is located.

(ii) If the Regional Director determines that a surety bond in excess of $300,000 is necessary to cover the costs and liabilities of compliance with the terms of the right-of-way, he/she may require the applicant or the holder of the right-of-way to submit additional security in the form of a supplemental bond or an increase in the amount of the existing surety bond.

* * * * *

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

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

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

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

§ 251.6–4 Bonds.

(a) Before the Minerals Management Service (MMS) will issue a permit authorizing the drilling of a deep stratigraphic test well, the applicant must either:

(1) Furnish MMS a bond of not less than $200,000 conditioned on compliance with the terms of the permit; or

(2) Maintain with or furnish to MMS a $1 million bond conditioned on compliance with the terms of the permit issued to him/her for the area of the OCS where the applicant proposes to drill a deep stratigraphic test.

(b) If the Regional Director determines that security in excess of $1 million is needed, he/she may require the permittee to provide additional security in the form of a supplemental bond or bonds or an increase in the amount of the existing surety bond.

(c) The Director of MMS may require the submission of a bond before authorizing shallow test drilling.

(d) Any bond furnished shall be on a form approved or prescribed by the Director, MMS.

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

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

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

7. Section 256.58 is redesignated as § 256.52.

8. Newly designated § 256.52 is amended by revising the heading and paragraphs (a), (c), (d), (f), and (g); and by adding a new paragraph (i) to read as follows:

§ 256.52 Requirement to file a bond.

(a) Before an oil and gas or sulphur lease will be issued the successful bidder must:

(1) Furnish the Regional Director a $50,000 lease surety bond, conditioned on compliance with all the terms and conditions of the lease;

(2) Maintain or furnish a $300,000 areawide bond, issued by a qualified surety and conditioned on compliance with all the terms and conditions of oil and gas and sulphur leases held by the bidder in the OCS for the area in which the lease to be issued is situated;

(3) Maintain or furnish an areawide bond under § 256.53 (a)(2) or (b)(2) of this part; or

(4) Furnish a substitute security instrument in accordance with paragraphs (f) and (g) of this section.

* * * * *

(c) The lessee shall maintain a separate areawide surety bond as required by paragraph (a) of this section for each of the areas identified in paragraph (b) of this section.

(1) If the Regional Director approves, the lessee may substitute for its bond either:

(i) An operator's bond in the same amount as the lease bond required under paragraph (a); or

(ii) Alternate security instruments as provided in paragraphs (f) and (g) of this section.

(2) The lessee(s)' substitution of an operator's bond or an alternate form of security for its bond does not relieve the lessee(s) of its (their) obligation to comply with all the terms and conditions of the lease.

(d) If a default causes the surety or other guarantor to pay the United States any indebtedness under a lease secured by a bond or alternate form of security, the face amount of the bond or alternate form of security and the surety's liability will be reduced by the amount of the payment.

* * * * *

(f) U.S. Department of the Treasury (Treasury) securities (U.S. Bonds or Notes) may be submitted in lieu of a bond, provided the Treasury instrument or legal tender submitted is negotiable at the time of submission for an amount of cash equal to the value of the required bond. The entity submitting Treasury instruments under this paragraph is responsible for monitoring the value of those instruments. If the value of those instruments falls below the level of bond required, the entity must submit additional Treasury instruments or legal tender to raise the value of the securities held by MMS to the value of the required bond.

(g) As provided in § 256.54, the Regional Director may accept alternate types of security instruments in lieu of the surety bonds required by this section if he/she determines that the interests of the Government are protected to the same extent that these interests would be protected by the required surety bond.

* * * * *

(i) Any time that a lease is not in compliance with bonding requirements of this subpart, the Regional Director will notify the lessee in writing and specify a reasonable period, not to exceed 90 days, to post an adequate bond.

(1) If an adequate bond or other guarantee is not provided by the end of the period allowed, the lessee shall cease mineral production, unless the Regional Director authorizes continued production from the lease to avoid premature lease abandonment or damage to the environment or to the producing reservoir(s).

(2) The lessee shall immediately begin preparation for lease abandonment and clearance and shall submit to the Regional Director its plans for paying outstanding royalty underpayments and for meeting all regulatory and lease requirements.

(3) Mineral production shall not resume until the Regional Director determines that an adequate bond has been posted or other guarantee provided.

(4) When the Regional Director authorizes continued production under this section, the net proceeds from that production, less the royalties paid to the United States, shall be paid into one or more lease-specific abandonment accounts approved by the Regional Director.

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

§ 256.53 Additional bonds.

(a) Activities under an Exploration Plan (EP).

(1) When submitting a proposed EP, when submitting a proposed assignment of a lease with an approved EP, or 2 years after publication of a final rule, whichever is earliest, a lessee must submit a $200,000 surety bond issued by a qualified surety and conditioned on compliance with all the terms and conditions of the lease shall be furnished to the Regional Director. Approval of the EP or assignment shall be conditioned upon receipt of a $200,000 lease surety bond, unless the Regional Director authorizes the submission of the $200,000 lease exploration bond after the submission of the EP but before approval of drilling activities under the EP. This bond coverage may be provided by increasing the bond coverage provided in § 256.52(a) of this part.

(2) * * *

(b) Operations under a Development and Production Plan (DPP) or a Development Operations Coordination Document (DOCD).

(1) When submitting a proposed DPP or DOCD, when submitting a proposed assignment of a lease with an approved DPP or DOCD, or 2 years after publication of a final rule, whichever is earliest, a lessee must submit a $500,000 surety issued by a qualified surety and conditioned on compliance with all the terms and conditions of the lease shall be furnished to the Regional Director. Approval of a DPP, a DOCD, or an assignment of a lease with an approved DPP or DOCD shall be conditioned on receipt of a $500,000 lease surety bond, unless the Regional Director authorizes the submission of the $500,000 lease development bond after the submission of the DPP or DOCD, but prior to the approval of platform installation or drilling activities under the approved DPP or DOCD. The lessee may provide this additional bond by submission of a new bond or by increasing the lease bond coverage provided under paragraph (a) of this section.

(2) * * *

* * * * *

(d) The Regional Director may require additional security (i.e., security over and above the amounts prescribed in §§ 256.52(a) and 256.53 (a) and (b) of this part) in the form of a supplemental bond or bonds or increased amount of coverage of an existing surety bond when he/she determines that additional security is necessary to cover royalty due the Government, penalties and interest assessed against the lessee, and/or costs and liabilities of the lessee for regulatory compliance. The Regional Director shall base the decision on an evaluation of the ability of the lessee to carry out its present and future financial obligations as demonstrated by factors such as:

(1) Financial capacity substantially in excess of existing and anticipated lease and other obligations (e.g., costs of well abandonment and platform removal, amount of underpaid royalties, and penalties and interest assessed by the Government), as evidenced by audited financial statements (including auditor's certificate, balance sheet, and profit and loss sheet);

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

(3) Business stability as evidenced by 5 years of continuous operation and production of oil and gas or sulphur in the OCS or in the onshore oil and gas industry;

(4) Reliability in meeting obligations as evidenced by:

(i) Credit rating; or

(ii) Trade references including names and addresses of other lessees, drilling contractors, and suppliers with whom lessee has dealt; and

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

(e) The amount of the bond shall be sufficient to ensure the compliance with all lease terms and conditions, including any outstanding underpayment of royalty and cumulative end-of-lease obligations to abandon wells, remove platforms and facilities, and clear the seafloor in the event of default. The Regional Director will determine the amount of supplemental bond required based on an analysis conducted by MMS. The lessee may submit data for consideration by MMS.

(f) The Regional Director may adjust the amount of supplemental bond or deposit required and the terms for the acceptance of the lessee's bond if the liability for outstanding underpaid royalties and end-of-lease abandonment and clearance either increases or decreases. The Regional Director shall:

(1) Notify the lessee and the surety of any proposed adjustment to the amount of bond required; and

(2) Give the lessee an opportunity to submit written or oral comment on the adjustment.

(g) A lessee may request a reduction of the amount of supplemental bond required by submitting to the Regional Director evidence demonstrating that the projected royalties and costs of end-of-lease abandonment and clearance of the seafloor are less than the specified bond coverage.

10. Section 256.59 is redesignated as § 256.54 and revised to read as follows:

§ 256.54 Bond form.

(a) All bonds must be on a form or in a form approved by the Director. Bonds submitted after November 26, 1993, must be issued by a qualified surety certified by the U.S. Treasury as an acceptable surety on Federal bonds and listed in the current U.S. Treasury Circular No. 570 which is available from the Surety Bond Branch, Financial Management Service, Department of the Treasury, 401 14th Street SW., Washington, D.C. 20227.

(b) A surety bond must be executed by the lessee and a qualified surety.

(c) Surety bonds must be noncancellable.

(d) Lease bonds must be:

(1) A surety bond;

(2) A lease-specific abandonment account in accordance with § 256.56;

(3) United States Treasury securities negotiable for an amount equal to the amount of bond required, accompanied by a conveyance of full authority to the Secretary to sell the securities in case of default;

(4) A combination of these security methods; or

(5) Another form of security approved by the Regional Director.

11. Sections 256.55, 256.56, 256.57, 256.58, and 256.59 are added to read as follows:

§ 256.55 General terms and conditions of bond.

(a) The Regional Director shall determine the amount of the lease bond as provided in §§ 256.52 and 256.53 of this part.

(b) A lease bond must be payable to MMS.

(c) A lease bond shall be conditioned upon compliance with all the terms and conditions of the lease and governing regulations.

(d) Lessees must notify the Regional Director of any action filed alleging the insolvency or bankruptcy of the lessee, a surety company, or a third-party guarantor. The lessee shall notify the Regional Director within 72 hours of any such action filed or within 72 hours of learning of an action that involves a company other than the lessee. Lease bonds must require the surety to provide this information to the lessee and directly to MMS.

(e) Upon the incapacity of a surety company by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the lessee is deemed to be without bond coverage

and must promptly notify the Regional Director.

§ 256.56 Lease-specific abandonment accounts.

(a) The Regional Director may authorize the lessee or guarantor to supplement its bond(s) by establishing a lease(s)-specific abandonment account in one or more federally insured accounts made payable upon demand to the Regional Director. The total security, including the lease-specific abandonment account(s), shall not be less than the amount required to meet outstanding underpayments of royalty and lessee's end-of-lease abandonment and clearance obligations.

(b) Any interest paid on an abandonment account shall be retained in the account unless the Regional Director approves the payment of the interest to the lessee or guarantor.

(c) When authorized by the Regional Director, U.S. Treasury obligations may be substituted for payments into an abandonment account.

(d) An individual abandonment account shall not contain more than $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(e) The Regional Director may require the lessee to make an overriding royalty or production payment into an escrow account. The required overriding royalty or payment out of production may be associated with production from a lease(s) other than the lease(s) bonded through the escrow account.

§ 256.57 Third-party guarantee.

(a) The Regional Director may accept a third party's written guarantee as surety for a lessee's lease obligations, following a review of:

(1) The period of time that the guarantor has been in continuous operation as a business entity;

(i) Continuous operation is the time that business was conducted immediately preceding the posting of a guarantee.

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

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

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

(ii) The guarantor's net worth taking into account liabilities under this and other guarantees.

(iii) The guarantor's ratio of current assets to current liabilities taking into account liabilities under this and other guarantees; and

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

(3) When the information required by paragraph (2) is not publicly available, the guarantor may submit the information voluntarily. If this is done, the guarantor must update the information annually within 90 days of the end of the fiscal year or as otherwise approved by the Regional Director. The information should include:

(i) Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformance with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements, with no adverse opinion;

(ii) Financial statements, certified to be correct by the guarantor's financial officer, for completed quarters in the current fiscal year; and

(iii) Additional information, certified to be correct by the guarantor's financial officer, as requested by the Regional Director.

(b) The terms of a third-party guarantee shall provide for the following:

(1) If the lessee fails to comply with any governing lease term, the guarantor shall take corrective actions or be liable under the indemnity agreement to provide funds to the Regional Director sufficient to complete the required corrective action.

(2) If the guarantor wishes to terminate the period of liability under a third-party guarantee it must:

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

(ii) Obtain the Regional Director's approval for the termination of the period of liability for all or a specified portion of its guarantee.

(3) The lessee must obtain a suitable replacement security instrument before the proposed termination date or if no activities have taken place on the lease(s) for which the guarantee was approved, before any activities take place.

(c) The total amount of all outstanding and proposed guarantees by the guarantor must not exceed 25 percent of that guarantor's unencumbered net worth in the United States.

(d) If the Regional Director approves a third-party guarantee, the guarantor must submit an indemnity agreement.

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the guarantor, and shall bind each jointly and severally.

(2) Two corporate officers who are authorized to bind their corporation must sign the indemnity agreement.

(3) The guarantor must provide the Regional Director copies of:

(i) The authorization of the signatory officials to bind the corporation;

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

(iii) The corporate authorization, demonstrating that the corporation can guarantee the obligation and execute the indemnity agreement.

(4) if the third-party guarantor is a partnership, joint venture, or syndicate, the agreement shall:

(i) Bind each partner or party who has a beneficial interest, directly or indirectly, in the guarantor; and

(ii) Provide that, if the third-party guarantee is forfeited, each partner or party shall be jointly and severally liable for compliance with all terms and conditions of the lease(s).

(5) Pursuant to § 256.59 of this chapter, the guarantor shall bring the lease into compliance or pay the Regional Director the amount necessary to bring the lease into compliance. The indemnity agreement, upon default by the lessee or operator, shall operate as a judgment against those parties liable under the indemnity agreement.

(e) If during the life a third-party guarantee the guarantor no longer meets the criteria of paragraphs (a)(3) and (c) of this section, the lessee must:

(i) Notify the Regional Director immediately; and

(ii) Bring the lease into compliance with the requirements of this subpart within 90 days.

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

(a) The Regional Director shall terminate the period of liability under a bond upon the request of the surety and demand a replacement bond of equivalent amount from the lessee. The termination of the period of liability under a bond does not constitute release of the bond. The surety continues to be responsible for all obligations and liabilities accruing before the effective date of the termination of the period of liability.

(b) The Regional Director will cancel or release a bond as to obligations that

accrued before the cancellation only upon:

(1) Being furnished a replacement bond in which the surety agrees to assume all outstanding liabilities under the bond to be cancelled, in an amount equal to or greater than the amount of the bond to be cancelled; or

(2) The determination that all outstanding obligations have been fulfilled. Such cancellation shall be by a written instrument that subjects the bond to automatic reinstatement, as if no cancellation had occurred, if at any time within 6 years of such cancellation:

(i) Any payment made by the principal(s) is rescinded or must be restored due to insolvency, bankruptcy, reorganization, or receivership; or

(ii) The principal's representation to MMS that it has paid its financial obligations or performed the other obligations of the lease in accordance with MMS specifications is materially false at the time of cancellation.

(c) Failure of the lessee to replace a deficient bond could result in penalties under subpart N of part 250 of this Title or suspension of production or other operations in accordance with § 250.10.

§ 256.59 Forfeiture of bonds and/or other securities.

(a) If a lessee refuses or is unable to comply with lease terms or defaults on the conditions under which a bond, third-party guarantee, and/or other form of security was accepted, the Regional Director shall:

(1) Notify in writing the lessee, third-party guarantor, and any surety on the bond or other form of guarantee of the determination to call or forfeit all or part of the bond or guarantee, the reasons for the forfeiture, and the amount to be forfeited. The amount shall be based on the estimated total cost of correcting the lessee's noncompliance or default.

(2) Advise the lessee, third-party guarantor, and any surety that they can avoid forfeiture by:

(i) Agreeing to correct the noncompliance or default and demonstrating that they have the ability to do so; or

(ii) Agreeing that the surety will complete actions required for compliance in accordance with a schedule that meets the conditions of the lease and governing regulations if the surety can demonstrate the ability to carry out the action required.

(b) If there is a default, the Regional Director may cause the forfeiture of any and all bonds or other security deposited on condition of compliance with all the terms and conditions of the lease or leases.

(c) If forfeiture of the bond or security is required by this section, the Regional Director shall:

(1) Collect the forfeited amount, and

(2) Use funds collected from bond or security forfeiture to correct the noncompliance or default.

(d) If the amount forfeited is insufficient to pay for the full cost of corrective actions:

(1) the lessee(s) and any third-party guarantor(s) are jointly and severally liable for the remaining costs of obtaining full compliance with the terms and conditions of the lease, and

(2) The Regional Director may take or authorize required corrective action to obtain full compliance and may recover from the lessee(s) and any third-party guarantor(s) all costs in excess of the amount forfeited.

(3) If the amount of bond or security forfeited exceeds the total costs of the corrective actions required to obtain compliance, the Regional Director shall return the excess amount to the party from whom it was collected.

12. In § 256.62, paragraphs (a), (d), and (e) are revised, and paragraph (f) is added to read as follows:

§ 256.62 Assignment of leases or interests therein.

(a) Subject to the approval of the Regional Director and the furnishing of bond coverage pursuant to the requirements of subpart I of this part, leases, or any undivided interests therein, may be assigned in whole, or as to any officially designated subdivision, to anyone qualified under § 256.35(b) of this part to hold a lease.

* * * * *

(d) The assignor is liable for all obligations under the lease accruing before the approval of the lease assignment. Approval of the assignment by the Regional Director does not relieve the assignor of accrued lease obligations which the assignee subsequently fails to perform.

(e) After the Regional Director approves a lease assignment, the assignee is liable for all obligations under the lease and must comply with all regulations issued under the Act. The assignee must remedy all existing environmental problems on the tract, properly abandon all wells, and reclaim the lease site in accordance with part 250, subpart G. Before MMS approves an assignment, the assignee must submit acceptable bond coverage as required by §§ 256.52 and 256.53 of this part.

(f) Where there is more than one lessee, the lessees are jointly and severally responsible for performing the obligations of the lease, unless provided otherwise in these regulations. The Regional Director will look to the designated operator to perform lessee obligations under any lease and under any regulations in this chapter. Should the operator fail or be unable to perform any obligation of the lessee(s), the Regional Director will require any or all the lessee(s) to bring the lease into compliance. If there is no lessee able to perform, the Regional Director will require prior lessees to bring the lease into compliance to the extent that the obligation accrued before assignment.

13. In § 256.64, paragraphs (a)(1), (c), and (g) are revised to read as follows:

§ 256.64 Requirements for filing transfers.

(a) All instruments of transfer of a lease or of an interest therein as to any officially designated subdivision, including operating rights, subleases and record title interests, shall be submitted in duplicate to the Regional Director for approval within 90 days from the date of final execution. Instruments of transfer shall include a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and shall contain all of the terms and conditions agreed upon by the parties thereto.

(1) Neither the transfer of operating rights or creation of a sublease(s) releases the lessee from any obligation under the lease or regulations.

(2) The assignment of record title interests does not release the lessee from any accrued obligation under any lease or regulations.

(3) Carried working interests, overriding royalty interests, or payments out of production may be created or transferred without filing an approval.

* * * * *

(c) Where an assignment is of all the lease title interest in a lease or creates a segregated lease, the assignee must furnish a bond in the amount prescribed in §§ 256.52 and 256.53 of this part. Where an assignment is of less than all the lease title and the assignment does not create separate leases, the assignee, if the assignment provides and the surety consents, may become a joint principal on the bond with the assignor.

* * * * *

(g) Each obligation under any lease and under the regulations in this part binds the heirs, executors, administrators, successors, and assignees of the lessee. Except as otherwise provided in the regulations in this chapter, the lessee(s) (and to the extent of their interests, sublessees and operating rights owners) are jointly and severally liable for the performance of each obligation under the lease and

under the governing regulations with each prior lessee and operating rights owner holding an interest when the obligation was accruing.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA7–1–5542; FRL–5343–2]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, Environmental Protection Agency (EPA) invites public comment on its proposed granting of a temporary waiver of the attainment date for the Wallula, Washington particulate nonattainment area. This is based on EPA's review of the State implementation plan (SIP) revision submitted by the State of Washington for the purpose of bringing about attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the State to satisfy certain federal Clean Air Act requirements for an approvable moderate nonattainment area PM–10 SIP for a geographic area referred to as Wallula, Washington due on November 15, 1991.

DATES: Comments on this proposed action must be postmarked by January 8, 1996.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, United States Environmental Protection Agency, Air Programs Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's submittals and other information supporting this proposed action are available for inspection during normal business hours at the following locations: United States Environmental Protection Agency, Office of Air, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and the State of Washington Department of Ecology, 4450 Third Ave. SE, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: George Lauderdale, Office of Air (AT–082), US Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6511.

SUPPLEMENTARY INFORMATION:

I. Background

The Wallula, Washington, area was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, by operation of law upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991) (official designation codified at 40 CFR 81.348). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of Part D, Title I of the Act.[2] The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM–10 nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Washington moderate PM–10 SIP for the Wallula nonattainment area, EPA is proposing to apply its interpretations, taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above. EPA will consider any timely submitted comments before taking final action on today's proposal.

Those States containing initial moderate PM–10 nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a date later than November 15, 1991. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Such States also were to submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–44).

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–66). For PM–10 nonattainment areas Section 188(f), Waivers for Certain Areas, can apply as well.

In this action, EPA is proposing to grant a temporary waiver of the attainment date for the Wallula nonattainment area. Discussion of EPA's requirements for a temporary waiver are detailed in 59 FR 41998–42017 (August 16, 1994). In this guidance EPA provides certain flexibility for areas where the significance of anthropogenic and nonanthropogenic sources is unknown. The Washington Department of Ecology (Ecology) has presented preliminary data, based on a crude emission inventory of eastern Washington, indicating that nonanthropogenic sources may be significant in the Wallula situation. EPA

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's notice and supporting information.