

result in any 1-year expenditure that would exceed \$100 million adjusted for inflation. The current inflation-adjusted statutory threshold is \$110 million.

#### V. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

#### VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

#### VII. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by March 26, 2001. This comment period runs concurrently with the comment period for the direct final rule; any comments received will be considered as comments regarding the direct final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. In the event the direct final rule is withdrawn, all comments received will be considered comments on this proposed rule.

#### List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 14 be amended to read as follows:

#### PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR part 14 is revised to read as follows:

**Authority:** 5 U.S.C. App. 2; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

2. Section 14.75 is amended by revising paragraph (a)(1) to read as follows:

#### § 14.75 Examination of administrative record and other advisory committee records.

(a) \* \* \*

(1) The written information for consideration by the committee at any meeting: Whenever practicable, before or at the time of the meeting.

\* \* \* \* \*

Dated: December 29, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 01–390 Filed 1–5–01; 8:45 am]

**BILLING CODE 4160–01–F**

#### DEPARTMENT OF THE INTERIOR

#### Minerals Management Service

#### 30 CFR Part 256

#### RIN 1010–AC–68

#### Revision of Requirements Governing Surety Bonds for Outer Continental Shelf Leases.

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

**ACTION:** Proposed rule.

**SUMMARY:** The MMS is proposing to modify requirements governing surety bonds for activities on the Outer Continental Shelf (OCS). These changes will codify the terms and conditions under which a surety will be relieved of responsibility when MMS terminates the period of liability of a bond. Codifying these terms and conditions is necessary to clarify the responsibilities of the lessee and the surety after the lease expires.

**DATES:** We will consider all comments we receive by March 9, 2001. We will begin reviewing comments then and may not fully consider comments we receive after March 9, 2001.

**ADDRESSES:** If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon,

Virginia 20170–4817; Attention: Rules Processing Team (RPT). You may also send your comments by e-mail or e-mail attachment. The RPT's e-mail address is: rules.comments@mms.gov.

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

**SUPPLEMENTARY INFORMATION:** OCS lessees must comply with regulations governing operations, payments of rents and royalties, and end-of-lease obligations. To ensure that the lessee will be financially able to meet all requirements, including end-of-lease requirements, MMS requires the lessee to post a bond. This rule would amend the provisions of 30 CFR 256.58 concerning the cancellation of a bond.

When the lessee has met all end-of-lease obligations, MMS terminates the liability period of the bond. This amendment addresses situations when the lessee appears to meet all end-of-lease requirements and we later discover that obligations still exist. For example, an audit may reveal that the lessee owes us additional royalty. As another example, a plugged well may start to leak. In either case, the lessee must correct the problem.

In the case of royalties, the liability would be discovered when the audit is conducted after the end of the surety's liability period. By statute, any demand for performance of a monetary obligation must be made within 7 years. In the example of the leaking well, there is not a stipulated time period. Problems associated with plugged wells in the OCS are rare; when they do occur, they are generally discovered within a few years of the plugging activity.

Should the lessee fail to perform a lease obligation, MMS turns to the surety for performance. This rule addresses how long a bond will be held before cancellation to assure availability to cover a problem that is discovered after the liability period on a bond has ended. The current regulation does not set a limit on the period that MMS may continue to hold the bond company responsible for a problem that occurs during the liability period.

OCS wells rarely start to leak following plugging operations. Therefore, we have difficulty predicting when a leak might occur. This notice proposes a period of 7 years (plus such additional time taken for appeals or litigation) during which MMS may hold the bond for claims based upon obligations that accrued during the period of liability. During this period, we will retain security or collateral pledged to MMS in lieu of a surety. The bond will be canceled after 7 years and

any other forms of security will be returned. We believe that a 7-year period will provide adequate protection to the Government and will provide a measure of certainty to bond companies.

The 7-year provision applies to all base bonds, unless we find that less security needs to be retained. The rule would release supplemental bond providers, upon completion of the bonded work, from liability for obligations that accrued before acceptance of the reclamation work, unless we find that potential liability is greater than the amount of the base bond. We will normally release the supplemental bond upon completion of the bonded work because in most cases, we anticipate that the general bond will be sufficient to cover our estimate of potential residual liabilities.

The proposal would not change the provision in 30 CFR 256.58(c) that allows MMS to reinstate your bond. That provision allows us to reinstate your bond as if no cancellation or release had occurred if:

(1) You make a payment under the lease and the payment is rescinded or must be repaid by the recipient because you are insolvent, bankrupt, subject to reorganization, or placed in receivership; or

(2) You represent to us that you have discharged your obligations under the lease and your representation was materially false.

#### Procedural Matters

*Public Comment Procedure:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the

Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule, in many important ways, follows aspects of current policy included in the bond form. The rule will also extend that policy to other forms of security such as escrow accounts which are not currently used for base bonds. Since this rule normally will not apply to supplemental bonds without specific action by the Regional Supervisor, the impact of this change is minimal.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Other agencies are not affected by the bonds and other forms of surety that protect the government's interests.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs.

(4) This rule does not raise novel legal or policy issues. The rule more clearly conforms MMS practice to that of the private sector and provides certainty with respect to the cancellation of surety bonds and other lease security.

#### Regulatory Flexibility (RF) Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*).

This rule will affect lessees and operators of leases on the OCS. This includes about 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) code 211111, Crude Petroleum and Natural Gas Extraction, which includes companies that extract crude petroleum and natural gas. For this NAICS code, a small company is one with fewer than 500 employees. Based on these criteria, we estimate that about 54 percent of the companies are considered small. This rule, therefore, affects a substantial number of small entities.

The companies that are considered small have an average of about 15 offshore facilities. We estimate that these small companies have annual sales between \$1 million and \$380 million.

As discussed in the Regulatory Planning and Review section, we expect this rule to have only minimal effects and, accordingly, we do not expect this rule to have a significant effect on any company, large or small. Under current regulations, when a lessee meets all of the lease requirements, the period of liability ends. If MMS later discovers a problem with the way the work was performed, we will hold the lessee responsible. If the lessee is not able to meet the obligation, we hold the bond company responsible. This regulation establishes a time period during which MMS will hold the bond before cancellation. The codification of a policy on bond cancellation is new. The other change for current practice is that MMS retains pledged securities for the same length of time we have been waiting before canceling surety bonds. While this new provision is needed to ensure consistency of agency practice, the provision will not have a significant effect since companies currently do not use instruments other than surety bonds to meet the basic bond requirement.

This rule will also affect companies that sell surety bonds or provide other types of security to OCS lessees. For those companies, this rule will provide certainty with regard to residual liabilities. Since the provisions in this rule are generally the same as current practice, any effects on bonding companies will be minor. Those minor effects will be reflected in costs charged to oil and gas lessees and will ultimately be borne by oil and gas lessees. These effects are included in the estimates addressing the oil and gas lessees. Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734-3247.

#### Paperwork Reduction Act (PRA) of 1995

The information collection aspects of this rule remain unchanged. The proposed revisions contain no additional information collection or recordkeeping requirements, and a submission to OMB under the PRA is not required. The OMB has approved the information collection requirements in the current regulations and assigned OMB control number 1010-0006, with a

current expiration date of March 31, 2000.

**Federalism (Executive Order 13132)**

With respect to Executive Order 13132, the rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. The bonding program is between the Federal Government and the lessees of Federal leases. The bond does not affect obligations between the lessee and any State or local government. This rule does not impose costs on States or localities. State or local governments do not provide bonds and do not need to comply with bonding requirements.

**Takings (Executive Order 12630)**

With respect to Executive Order 12630, the proposed rule does not have significant Takings implications. A Takings Implication Assessment is not required. The proposed rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

**Civil Justice Reform (Executive Order 12988)**

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

**National Environmental Policy Act (NEPA) of 1969**

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

**Small Business Regulatory Enforcement Fairness Act (SBREFA)**

This rule is not a major rule under (5 U.S.C. 804(2)) the SBREFA. This rule:  
 (a) Does not have an annual effect on the economy of \$100 million or more.  
 (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

We do not expect this rule to have a significant effect because, as discussed earlier, this rule would, generally, codify policies already in use. The substantive change for securities other than surety bonds will not have a significant effect because the rule applies to the general bond requirement, and surety bonds are used by almost all MMS lessees to satisfy the base bond requirement.

**Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)**

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

**List of Subjects in 30 CFR Part 256**

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

Dated: December 20, 2000.

**Sylvia V. Baca,**

*Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR part 256 as follows:

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

**Authority:** 43 U.S.C. 1331 *et seq.*; 42 U.S.C. 6213.

2. Section 256.58 is revised to read as follows:

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

This section defines the terms and conditions under which MMS will terminate the period of liability of a bond or cancel a bond. Terminating the period of liability of a bond ends the period during which obligations continue to accrue but does not relieve the surety of the responsibility for obligations that accrued during the period of liability. Canceling a bond relieves the surety of all liability.

(a) When the surety under your bond requests termination:

(1) The Regional Director will terminate the period of liability under your bond within 90 days after MMS receives the request; and

(2) If you intend to continue operations, or have not completed abandonment, you must provide a replacement bond of an equivalent amount.

(b) If, following the termination of the period of liability of a bond, you provide a replacement bond according to this paragraph, the Regional Director will cancel your terminated bond and the surety that provided your terminated bond will not retain any liability. The Regional Director will cancel your bond if:

(1) The surety issuing the new bond agrees to assume all outstanding liabilities that accrued during the period of liability that was terminated; and

(2) The new bond is equal to or greater than the bond that is to be canceled.

(c) If the period of liability is terminated for a bond but the bond is not replaced by a bond of an equivalent amount, the surety that provided your terminated bond will continue to be responsible for accrued obligations until the obligations are satisfied and for additional periods of time according to paragraph (d) of this section.

(d) At the time your lease expires or is terminated, the surety or sureties that issued the bond(s) covering accrued obligations will continue to be responsible, and the Regional Director will retain other forms of security for the period of time and under the terms shown in the following table:

| For the type of bond below                                       | The period of liability will end   | Your bond will be cancelled   |
|--|--|---|
| (1) Base Bonds submitted under § 256.52(a), § 256.53(a), or (b). | When the Regional Director determines that you have met all of your obligations under the lease. | Seven years after the completion of all bonded obligations, or at the conclusion of any appeals or litigation related to your bonded obligations, whichever is later. The Regional Director may:<br>(i) determine that you need less than the full amount of the base bond to meet any possible future problems; and<br>(ii) reduce the amount of your bond or return a portion of your security. |

| For the type of bond below                          | The period of liability will end   | Your bond will be cancelled  |
|---|--|--|
| (2) Supplemental bonds submitted under § 256.53(d). | When the Regional Director determines that you have met all your obligations covered by the supplemental bond. | When you meet your bonded obligations, unless the Regional Director: <ul style="list-style-type: none"> <li>(i) determines that the future potential liability resulting from any undetected problems is greater than the amount of the base bond; and</li> <li>(ii) notifies the provider of the bond that the Regional Director will wait up to 7 years before canceling all or a part of the bond (or longer period as necessary to complete any appeals or judicial litigation related to your bonded obligations).</li> </ul> |

(e) For all bonds, the Regional Director may reinstate your bond 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 was materially false when the bond was canceled or released.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 326

#### National Reconnaissance Office Privacy Act Program

**AGENCY:** National Reconnaissance Office, DOD.

**ACTION:** Proposed rule.

**SUMMARY:** The National Reconnaissance Office (NRO) is proposing to exempt one Privacy Act systems of records. The system of records is QNRO-23, Counterintelligence Issue Files. The exemptions are intended to increase the value of the systems of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the systems of records.

**DATES:** Comments must be received by March 9, 2001 to be considered by the agency.

**ADDRESSES:** National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Freimann at (703) 808-5029.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

It has been determined that this Privacy Act rule for the Department of Defense does not constitute "significant regulatory action". Analysis of the rule indicates that it does not have an annual effect on the economy of \$100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

##### Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

##### Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act, and 44 U.S.C. Chapter 35.

##### List of Subjects in 32 CFR Part 326

Privacy.

1. The authority citation for 32 CFR part 326 continues to read as follows:

**Authority:** Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 326.17 is proposed to be amended by adding paragraphs (e) as follows:

##### § 326.17 Exemptions.

\* \* \* \* \*

(e) QNRO-23

(1) System name: Counterintelligence Issue Files.

(2) Exemptions: (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(3) Authority: 5 U.S.C. 552a(k)(2) and (k)(5).

(4) Reasons: (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.