

proficiency check, and competency check under paragraph (e) of this section may be accomplished in a flight simulator that is used in accordance with an approved training course conducted by a training center certificated under part 142 of this chapter or under subpart K of part 91, part 121 or part 135 of this chapter.

(j) When an applicant for an initial second-in-command qualification for a particular type of aircraft receives all the training in a flight simulator, that applicant must satisfactorily complete one takeoff and one landing in an aircraft of the same type for which the qualification is sought. This requirement does not apply to an applicant who completes a proficiency check under part 121 or competency check under subpart K, part 91, part 125, or part 135 for the particular type of aircraft.

Issued in Washington, DC, on October 21, 2005.

**Rebecca B. MacPherson,**  
*Assistant Chief Counsel, Regulations Division, Office of the Chief Counsel.*  
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**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Parts 250 and 256**

**RIN 1010-AD27**

**Oil, Gas, and Sulphur Operations and Leasing in the Outer Continental Shelf (OCS)—Waiver of Fees**

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

**ACTION:** Final rule; waiver of fees.

**SUMMARY:** In light of the interruption of operations of the MMS Gulf of Mexico Region (GOMR) in the wake of Hurricanes Katrina and Rita, this rule waives until January 3, 2006, the

payment of certain existing cost recovery fees that would be paid to MMS.

**EFFECTIVE DATE:** This regulation is effective on October 27, 2005.

**FOR FURTHER INFORMATION CONTACT:** Angela Mazzullo, Offshore Minerals Management (OMM) Budget Office at (703) 787-1691.

**SUPPLEMENTARY INFORMATION:**

**Background**

MMS regulations currently charge cost recovery fees to lessees of Federal offshore oil and gas leases to offset the bureau's operating costs for specific administrative services provided to a particular lessee. These include pipeline right-of-way (ROW) grant applications, conversion of lease term pipelines to ROW pipelines, pipeline ROW assignments, record title/operating rights transfers, and filing of non-required documents.

Under current rules, these fees are established at the following rates under the following regulations:

|   |         |                      |
|---|---------|----------------------|
| Pipeline ROW grant application .....                    | \$2,350 | 30 CFR 250.1015(a).  |
| Conversion of lease term pipeline to ROW pipeline ..... | 300     | 30 CFR 250.1015(a).  |
| Pipeline ROW assignment .....                           | 60      | 30 CFR 250.1018(b).  |
| Record title/operating rights transfer .....            | 185     | 30 CFR 256.64(a)(8). |
| Non-required document filing .....                      | 25      | 30 CFR 256.64(a)(8). |

On August 29, 2005, Hurricane Katrina came ashore on the Gulf of Mexico coast. The resultant flood of the City of New Orleans, Louisiana, forced the evacuation of the city and areas in the immediate vicinity. The evacuation area included MMS' GOMR office in Metairie, Louisiana. MMS has not been able to re-occupy the GOMR office and will not be able to do so for some time. While MMS GOMR personnel have resumed certain essential operations and services at a new temporary location in Houston, Texas, it is not possible to restore all functions and systems in that location in the immediate future. In addition, many MMS employees in the GOMR office have suffered severe property loss and personal and family dislocation, and will not be able to return to work immediately. When Hurricane Rita struck the Louisiana/Texas coast in September 2005, it further exacerbated these problems.

Among the operations that have been disrupted as a result of the hurricanes and the closure of the GOMR office in Metairie, is the collection and disposition of, and proper accounting for, cost recovery fees, including the fees identified above. Because very few of the documents identified are filed in

either MMS' Pacific Region office or MMS' Alaska Region office, the computers that handle these payments are integrated with the GOMR office computers. Consequently MMS is temporarily unable to process payments that would be made to those offices.

**Immediate Final Rule**

Because the MMS presently cannot receive or handle cost recovery fee payments from lessees until it is able to restore or replace that part of its operations, MMS is suspending the operation of the provisions identified above until January 3, 2006.

The Administrative Procedure Act, at 5 U.S.C. 553(b), requires an agency to publish a proposed rule and seek public comment before promulgating a final rule, except

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

Under this provision, MMS for good cause finds that notice and public comment on this rulemaking is impracticable, unnecessary, and contrary to the public interest. The GOMR office's current situation cannot

be changed or affected through public comment, and the need to suspend the operation of the cost recovery provisions is immediate.

The Administrative Procedure Act, at 5 U.S.C. 553(d) further provides:

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

- (1) A substantive rule which grants or recognizes an exemption or relieves a restriction;
- (2) Interpretative rules and statements of policy; or
- (3) As otherwise provided by the agency for good cause found and published with the rule.

As explained above, the need to suspend the operation of the cost recovery provisions is immediate and arises in much less than 30 days. MMS operations would be unnecessarily hindered if MMS were not to make this rule effective immediately. Therefore, MMS for good cause finds that this rule should take effect immediately.

If the GOMR office is not able to restore normal operations by January 3, 2006, MMS may consider extending the suspension of the cost recovery provisions.

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

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

(1) This rule will not have an annual 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 waives for a limited time certain fees previously established based on cost recovery principles.

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

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

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

*Regulatory Flexibility Act (RFA)*

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

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

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. MMS is simply waiving certain service-based fees, not increasing them. The total estimated fee revenue MMS would waive until

January 3, 2006 is between \$400,000 and \$500,000.

Comments are important. The SBA 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 actions of MMS, call 1-888-734-3247. You may comment to the SBA without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

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

This is not a major rule under the SBREFA (5 U.S.C. 804(2)). 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) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing on the U.S. OCS is limited to residents of the U.S. or companies incorporated in the U.S. This rule does not change that requirement.

*Unfunded Mandates Reform Act  
(UMRA) of 1995*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule will 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 will not affect State, local, or tribal governments, and the effect on the private sector is small.

*Takings Implication Assessment  
(Executive Order 12630)*

With respect to E.O. 12630, the rule will not have significant takings implications. A Takings Implication Assessment is not required. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

*Federalism (Executive Order 13132)*

With respect to E.O. 13132, the rule will not have Federalism implications. It will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this change will not affect that role.

*Civil Justice Reform (Executive Order  
12988)*

With respect to E.O. 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system, and meets the requirements of Sections 3(a) and 3(b)(2) of the E.O.

*Paperwork Reduction Act (PRA) of 1995*

This rulemaking relates to 30 CFR part 250, subpart J and to 30 CFR part 256, subpart J. The rulemaking affects the information collections for these regulations but will not change the approved burden hours, just the associated fees. Therefore, OMB has determined that there is no change in the information collection and that MMS does not need to make a formal submission by Form OMB 83-I for this rulemaking.

OMB has approved the information collections for the affected regulations as 30 CFR part 250, subpart J, 1010-0050 and 30 CFR part 256, subpart J, 1010-0006. 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.

*National Environmental Policy Act  
(NEPA) of 1969*

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

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

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

E.O. 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. This rule is not a significant energy action, and therefore does not require a Statement of Energy Effects, because it:

- (1) Is not a significant regulatory action under E.O. 12866,
- (2) Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and
- (3) Has not been designated by the Administrator of the OIRA, OMB, as a significant energy action.

*Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)*

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

**Clarity of This Regulation**

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the rule clearly stated?
- (2) Does the rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?
- (4) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule? What else can we do to make the rule easier to understand?

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

**List of Subjects in 30 CFR Part 250**

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur.

*List of Subjects in 30 CFR Part 256*

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Intergovernmental relations, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: October 17, 2005.

**Chad Calvert,**

*Acting Assistant Secretary—Land and Minerals Management.*

- For the reasons explained in the preamble, MMS amends 30 CFR parts 250 and 256 as follows:

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

- 1. The authority citation for part 250 continues to read as follows:

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

- 2. Section 250.1015 is amended by adding a new paragraph (e) as follows:

**§ 250.1015 Applications for pipeline rights-of-way grants.**

\* \* \* \* \*

(e) Notwithstanding the provisions of paragraph (a) of this section, the requirements to pay filing fees under that paragraph are suspended until January 3, 2006.

- 3. Section 250.1018 is amended by adding a new paragraph (c) as follows:

**§ 250.1018 Assignment of pipeline right-of-way grants.**

\* \* \* \* \*

(c) Notwithstanding the provisions of paragraph (b) of this section, the requirement to pay a filing fee under that paragraph is suspended until January 3, 2006.

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

- 4. The authority for part 256 continues to read as follows:

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

- 5. Section 256.64 is amended by adding a new paragraph (a)(9) as follows:

\* \* \* \* \*

(a) \* \* \*

(9) Notwithstanding the provisions of paragraph (a)(8) of this section, the requirements to pay a filing fee in connection with any application for approval of any instrument of transfer and to pay a fee in connection with

documents not required to be filed are suspended until January 3, 2006.

\* \* \* \* \*

[FR Doc. 05–21281 Filed 10–26–05; 8:45 am]

**BILLING CODE 4310-MR-P**

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 7**

**RIN 1024—AC93**

**Pictured Rocks National Lakeshore, Personal Watercraft Use**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Final rule.

**SUMMARY:** This final rule designates areas where personal watercraft (PWC) may be used in Pictured Rocks National Lakeshore, Michigan. This final rule implements the provisions of the National Park Service (NPS) general regulations authorizing parks to allow the use of PWC by promulgating a special regulation. The NPS Management Policies 2001 require individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

**DATES:** This rule is effective October 27, 2005.

**ADDRESSES:** Mail inquiries to Superintendent, Pictured Rocks National Lakeshore, N8391 Sand Point Road, P.O. Box 40, Munising, Michigan 49862–0040. E-mail to [PIRO@den.nps.gov](mailto:PIRO@den.nps.gov).

**FOR FURTHER INFORMATION CONTACT:** Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208–4206. E-mail: [Jerry\\_Case@nps.gov](mailto:Jerry_Case@nps.gov).

**SUPPLEMENTARY INFORMATION:****Background***Personal Watercraft Regulation*

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of personal watercraft (PWC) use within all units of the national park system (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall