

who request use of an area which is not part of their lease, *i.e.*, a right-of-use and easement. The proposed rule would cover applications granted after the effective date of a final rule for new areas or applications to modify an existing area. The proposed rule includes a rental of \$5 per acre affected in water depths less than 200 meters and \$7.50 per acre affected in water depths of 200 meters or greater. These rental rates correspond to the rental rates charged for leases in those water depths. The total proposed annual rental depends on the size of the area requested except that a minimum annual rental will be charged based on 90 acres. The proposed minimum rental is \$450 per year in water depths of less than 200 meters and \$675 per year in water depths of 200 meters or greater. Establishing the minimum charge based on 90 acres will ensure that the government receives sufficient payment to cover administrative costs.

Existing regulations for payment of pipeline right-of-way rentals allows for payment on an annual basis, for a 5-year period, or for multiples of 5 years. This proposed regulation retains that option for pipeline rights-of-way and establishes the same option for rights-of-use and easements.

Section 160 was rewritten to add a table. Section 1009 was separated and redesignated as sections 1009 through 1014. Current sections 1010 through 1014 were redesignated as sections 1015 through 1019. Redesignated section 1012 was rewritten to add a table. The use of tables and the use of shorter sections with titles are intended to improve the clarity and readability of the regulation.

## 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, and 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 was determined by the Office of Management and Budget to be significant and has been reviewed by OMB under Executive Order 12866.

Over the next 5 years, in water depths 200 meters or greater, MMS anticipates that it will receive an average of two requests per year for a new or modified right-of-use and easement and an average of two requests per year for a new or modified pipeline right-of-way that includes an area for an accessory. These requests would be affected by this rule. Based on historical data, we estimate that the affected area per request in water depths 200 meters or greater will average 5,760 acres, which is the typical size of one OCS lease block. In these water depths, the new rule proposes a rental of \$7.50 per acre affected. This equates to a total cost of \$86,400 ( $5,760 \times \$7.50 \times 2$ ) for pipeline right-of-way applicants and \$86,400 ( $5,760 \times \$7.50 \times 2$ ) for right-of-use and easement applicants.

Over the next 5 years, in water depths less than 200 meters, MMS anticipates, based on requests in recent years, that it will receive an average of 10 requests per year for a new right-of-use and easement and an average of two requests per year for a new or modified pipeline right-of-way that includes an area for an accessory. These requests would be affected by this rule. We estimate that the affected area per request in water depths less than 200 meters will average 90 acres, which is the proposed minimum size of an affected area. In these water depths, the new rule proposes a rental of \$5 per acre affected. This equates to a total annual cost of \$4,500 ( $90 \times \$5 \times 10$ ) for right-of-use and easement applicants and \$900 ( $90 \times \$5 \times 2$ ) for pipeline right-of-way applicants.

The annual cost to industry for rentals would be \$178,200 ( $\$86,400 + \$86,400 + \$4,500 + \$900$ ).

Since the current regulations provide for an annual rental of \$75 per site included in an application for pipeline rights-of-way accessories and no cost for right-of-use and easement applications, the total cost under current rules for these same activities is \$300 per year for pipeline right-of-way applicants ( $\$75 \times 2 + \$75 \times 2$ ) and no cost for right-of-use and easement applicants.

(1) This rule would 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.

(2) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Issuance of a pipeline right-of-way or right-of-use and easement does not interfere with the ability of other agencies to exercise their authority.

(3) This rule would 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 may raise novel legal or policy issues.

### Regulatory Flexibility (RF) Act

The Department certifies that this rule would 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 would affect lessees and operators of leases and holders of pipeline rights-of-way in the OCS. This includes about 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Based on these criteria, we estimate that about 70 percent of these 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 the small companies have annual sales between \$10 million and \$40 million. As discussed earlier, the total annual cost to industry is estimated to be \$178,800. No large or small company will bear a significant cost.

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 actions of MMS, call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from