

OCS areas or areas under lease to other companies. Since the rights-of-use and easements are of value to the recipient of the rights, MMS believes that it is equitable to charge for the rights at a per acre rate that is generally consistent with the rate paid by lessees. This rule establishes that charge for the rights conveyed.

On April 24, 2003, MMS published a proposed rule to modify 30 CFR 250.160, in subpart A, and 30 CFR 250.1009, in Subpart J, to allow MMS to charge an annual rental to compensate the United States for the use of areas outside of the company's lease and to change the rental amount charged to a pipeline right-of-way holder for accessories for the pipeline right-of-way. This rule applies to applicants for pipeline rights-of-way who request a site for accessories for the pipeline right-of-way, and to applicants who request use of an area that is not part of their lease (*i.e.*, a right-of-use and easement). The rule covers new rights-of-use and easements and rights-of-way granted after the effective date of this rule and modifications to existing rights-of-use and easements and rights-of-way when the modification is granted after the effective date of this rule. The 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 annual rental depends on the size of the area requested, except that a minimum annual rental will be charged based on 90 acres. Therefore, the 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 Federal Government receives sufficient payment to cover administrative costs.

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

Section 160 of Title 30 CFR is rewritten to add a table. Section 1009 is separated and redesignated as Sections 1009 through 1014. Current Sections 1010 through 1014 are redesignated as Sections 1015 through 1019. Redesignated Section 1012 is 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.

The comment period following publication of the proposed rule ended on May 27, 2003. Five comment letters were received during the comment period. One letter from an oil and gas company protested the rule as being in conflict with other rules that provide a royalty suspension under certain circumstances. The company argued that this rule will reduce the effect of the royalty reduction. Of the other four letters, two were received from oil and gas companies, one from seven different associations representing the natural gas and oil industry, and one from a law student. These four letters all supported the proposed rule. The commentors supporting the rule cited the increasing need for large rights-of-use and easement in deep water and considered the proposed rentals reasonable.

As mentioned above, one commentor argued that the fees established in the rule will reduce the effect of the royalty reduction. MMS believes that the increase in rental fees is appropriate because the purposes of these rentals and the purposes of royalty and royalty relief are very different and are unrelated. Royalty reduction provides major financial incentives to encourage specific actions such as deep water exploration that would not be undertaken under normal royalty obligations. This rule does not change that incentive. This rule simply establishes reasonable charges for companies choosing to use large areas of the OCS. Based on the majority of comments received, the rental fees being established are reasonable and will not discourage deep water exploration. In addition, lessees who receive deep-water royalty relief receive a financial benefit and incentive that is of a much greater magnitude than the amount of rentals owed under this rule.

One comment letter supported the change in the regulation but expressed the opinion that the estimate of two requests per year for new or modified rights-of-use and easements is low. The opinion was based on an expectation that production of methane hydrates will require larger rights-of-use and easements. MMS recognizes the potential for production of methane hydrates and the possible need for rights-of-use and easements associated with that production. However, MMS does not agree that such activity will occur soon. The economic effects estimated for the proposed rule were based on projections for the next 5 years. MMS believes that the estimates used are a good estimate of the requests that will be received over the next 5 years.

Commentors made no suggestions for revisions to the proposed regulation.

In revised Section 250.1012(b), the proposed rule used the phrase "including fixed and floating platforms, subsea manifolds, and other similar structures" to describe an accessory to a pipeline right-of-way. The proposed phrase is different from the existing text of the regulation, which used the phrase "including but not limited to a platform." No substantive change was intended. The final rule uses the original phrase to clarify that the rule changes the amount of the rental but does not change the criteria used to determine when a site will be considered an accessory to a pipeline right-of-way.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This rule was determined by the Office of Management and Budget (OMB) 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 will be affected by this rule. Based on historical data, the estimated 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 imposes a rental of \$7.50 per acre affected. This equates to a total cost of \$86,400 ($5,760 \times \7.50×2) for pipeline right-of-way applicants and \$86,400 ($5,760 \times \7.50×2) 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 applicants will submit 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 will be affected by this rule. The estimated affected area per request in water depths less than 200 meters will average 90 acres. In these water depths, the new rule imposes a rental of \$5 per acre affected. This equates to a total annual cost of \$4,500 ($90 \times \5×10) for right-of-use and easement applicants and \$900 ($90 \times \5×2) for pipeline right-of-way applicants.