

Housing Act of 1937 in effect before January 1, 1975, or section 8 of the United States Housing Act of 1937, if:

(i) For purposes of subparts A, B, and C of this part, more than 50 percent of the units in the project are receiving such assistance; or

(ii) For purposes of subpart D of this part, any of the units in the project are receiving such assistance.

Housing assistance payments under the section 8 Rental Certificate program, 24 CFR part 882, subparts A, B, C, and F, and the section 8 Rental Voucher program, 24 CFR part 887, are excluded in determining whether a project is a subsidized rental housing project.

Unsubsidized mortgage means any HUD-held mortgage which is not a subsidized mortgage.

* * * * *

4. A new subpart D would be added to part 290 to read as follows:

Subpart D—Sale of HUD-Held Mortgages

290.200 Purpose

290.201 Sale of Subsidized HUD-held Mortgages

290.202 Sale of Unsubsidized HUD-held Mortgages

Subpart D—Sale of HUD-Held Mortgages

§ 290.200 Purpose.

The purpose of this subpart is to set forth HUD's policy regarding the sale of subsidized and unsubsidized HUD-held mortgages.

§ 290.201 Sale of Subsidized HUD-Held Mortgages.

HUD's policy for selling subsidized HUD-held mortgages is as follows:

(a) HUD will sell current mortgages with FHA mortgage insurance on a competitive basis to FHA-approved mortgagees; or

(b) HUD will sell current mortgages on a negotiated basis to State or local governments, or a group of investors which includes an agency of a State or local government if:

(1) The terms of the sale include an agreement by the State or local government, or agency of same to act as mortgagee or owner of a beneficial interest in the mortgage, and ensure that the project will maintain occupancy by the tenant group originally intended to be served by the subsidized housing program; and

(2) The sales price is the best price that the Secretary can obtain from an agency of a State or local government, while maintaining occupancy for the tenant group originally intended to be served by the subsidized housing program.

(c) HUD will sell current mortgages without FHA mortgage insurance if HUD can offer protections equivalent to an insured sale.

(d) HUD will sell delinquent mortgages only if as part of the sales transaction those mortgages are restructured and either FHA mortgage insurance or equivalent protections are provided.

§ 290.202 Sale of Unsubsidized HUD-Held Mortgages.

HUD's policy for selling unsubsidized HUD-held mortgages is as follows:

(a) HUD will sell current unsubsidized mortgages with or without FHA mortgage insurance.

(b) HUD will sell delinquent unsubsidized mortgages without FHA mortgage insurance.

(c) HUD will not sell delinquent mortgages if it believes that foreclosure is unavoidable, and the project securing the mortgage is occupied by low-income tenants who are not receiving housing assistance but would do so if HUD foreclosed upon the mortgage.

Dated: March 16, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94-8820 Filed 4-12-94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 220

RIN 1010-AB48

Extension of Time Period for Maintaining Records on Outer Continental Shelf Net Profit Share Oil and Gas Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) previously published a Notice of Proposed Rulemaking to amend its offshore Net Profit Share Lease (NPSL) regulations relating to record maintenance requirements and certain audit requirements. The MMS now is issuing a further notice of proposed rulemaking on this proposed change.

DATES: Written comments must be received on or before June 13, 1994.

ADDRESSES: Mail your written comments to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box

25165, Mail Stop 3901, Denver, Colorado 80225-0165. Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff at (303) 231-3432.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rule is David A. Hubbard of the MMS Royalty Management Program, Valuation and Standards Division, Lakewood, Colorado.

I. Background

(a) History of NPSL Accounting Rules

A chronology of the NPSL rules follows:

- May 30, 1980—before Congress passes the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C., 1701 et seq.—the Department of Energy (DOE) publishes regulations on accounting procedures for offshore NPSL's (10 CFR part 390).

- December 1981—the Secretary of the Interior receives authority to administer the NPSL rules (Pub. L. 97-100).

- January 11, 1983 (48 FR 1182)—NPSL rules transferred to the Department of the Interior (Department), MMS, and redesignated 30 CFR part 261.

- August 5, 1983—30 CFR part 261 is redesignated 30 CFR part 220 (48 FR 35642).

(b) Current and Original Rules Compared

Other than minor administrative changes, MMS' version of the NPSL accounting rules in 30 CFR part 220 duplicates DOE's original rules in 10 CFR part 390. Both provide that:

- Ledger cards showing charges and credits to the NPSL capital account must be maintained for 36 months after the lessee ceases NPSL operations;

- All other documents, journals, and records must be maintained for 36 months from the due date or date of mailing of the statement of account on an NPSL, whichever comes later;

- The Department has the right to start an audit any time within 36 months of the due date of the statement to be audited or the date it was mailed, whichever is later.

(c) NPSL vs. FOGRMA Recordkeeping Requirements

The record maintenance periods in the NPSL rules conflict with current statutory record maintenance requirements on all Federal and Indian oil and gas leases, including leases on the OCS. Section 103 of FOGRMA, 30 U.S.C. 1713, "Required Recordkeeping,"

states, in part that a lessee, operator, or other person * * * shall establish and maintain any records, make any reports, and provide any information that the Secretary may, by rule, reasonably require * * *. Upon the request of any officer or employee duly designated by the Secretary or any State or Indian tribe * * * the appropriate records, reports, or information * * * shall be made available for inspection and duplication by such officer or employee, State, or Indian tribe. Records * * * shall be maintained for 6 years * * * unless the Secretary notifies the record holder that he has initiated an audit * * * and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records.

Section 3(5) of FOGRMA, 30 U.S.C. 1702, defines the term "lease" to include "any * * * profit share arrangement * * * issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas." So, FOGRMA applies to NPSL records.

(d) General MMS Recordkeeping Rules

The MMS issued regulations at 30 CFR 212.50, "Required recordkeeping and reports," after FOGRMA's enactment. They state in part that all records * * * shall be maintained * * * for 6 years * * * unless the recordholder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released by written notice of the obligation to maintain records.

Paragraphs (a) and (b) of MMS regulations at 30 CFR 212.51, "Records and files maintenance," state in part that each lessee * * * shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, *net profit shares*, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders * * *. Lessees * * * required to keep records under this section shall maintain and preserve them for 6 years * * * unless the Secretary notifies the recordholder of an audit * * * and that they must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released in writing from the obligation to maintain the records * * *.

Thus, part 212 specifically requires that NPSL records be maintained at least 6 years after generation. Under § 212.50, this period may be longer if the recordholder is notified in writing.

(e) Who Is Responsible for NPSL Reporting?

The June 11, 1981, Notice to Lessees for Implementation of Net Profit Share Accounting for OCS Oil and Gas Leases, 46 FR 30897, clarifies NPSL reporting responsibilities. It states:

- The designated NPSL operator must meet the reporting requirements of 30 CFR 390.031 (1980) (now 30 CFR 220.031 (1992)) for all lease interest holders.

- Until production starts, each operator must file an annual report by 60 days after the lease anniversary date.

- After production starts, a monthly report must be filed and payments made.

- Each operator is responsible for making NPSL payments.

Further, the *MMS Oil and Gas Payor Handbook*, vol. II, section 3.3.8, states that NPSL operators must file a Report of Sales and Royalty Remittance (Form MMS-2014) monthly.

(f) First Proposed Rule

On June 7, 1990, MMS published a Notice of Proposed Rulemaking in the *Federal Register* (55 FR 23248). The MMS proposed to amend the FOGRMA implementation requirement at 30 CFR 220.030 to make its recordkeeping requirements the same as FOGRMA's and those of 30 CFR 212:50 and 212.51. The MMS proposed the changes because the NPSL accounting procedures predate and conflict with FOGRMA and MMS' general recordkeeping rules.

The MMS also proposed to delete 30 CFR 220.033 because 30 CFR 217.50 already applies to all oil and gas audits, including NPSL's. The MMS is preparing separately a proposed rulemaking to revise 30 CFR part 217, Audits and Inspections; NPSL audit requirements will be included in that rulemaking.

(g) Agreements With Operators

After MMS published the proposed rule, it signed agreements with over half of the existing NPSL operators. Under these agreements operators can either supply NPSL records directly to MMS or maintain them until MMS completes a lease audit. All who signed the agreement opted to maintain the records themselves rather than send them to MMS.

II. Further Notice of Proposed Rulemaking

The June 1990 proposed rule would have assured consistency between the NPSL rules and FOGRMA by putting the FOGRMA 6-year recordkeeping requirements in the NPSL rules. But, given the audit needs described in paragraph IV below, MMS concluded that a modified approach was needed.

The main thrust of this revised proposed rule parallels the recordkeeping agreements now in place between MMS and a majority of NPSL operators. Because of this substantial change from the June 1990 proposed rule, MMS is publishing this revised proposed rule in the *Federal Register* for public review and comment.

The MMS received comments from one industry respondent on the June 1990 proposed rulemaking. Those comments were considered in this revised proposed rulemaking; they are discussed in paragraph III below. The revised proposed rule is summarized and discussed in paragraph IV below.

III. Comments Received on June 1990 Proposed Rule

The June 1990 proposed rule provided for a 30-day public comment period ending July 9, 1990. We received comments from one industry source.

(a) The commenter felt a period longer than 30 days should be allowed for comments on the proposed rulemaking. They felt MMS had ample time since FOGRMA's enactment to make the proposed amendment, and to allow only a 30-day comment period was not justified.

MMS Response: The MMS received comments from only one source, and no one else asked for more time. Thus, MMS believes the 30-day comment period was long enough for all interested parties to reply to the proposed rule.

(b) The commenter said the amendments must be prospective from the effective date of the final rule.

MMS Response: Section 305 of FOGRMA states that the provisions of this Act shall apply to oil and gas leases issued before, on, or after the date of the enactment of this Act, except that in the case of a lease issued before such date, no provision of this Act or any rule or regulation prescribed under this Act shall alter the express and specific provisions of such a lease.

Since NPSL lease terms do not include time periods for keeping records, NPSL's have been subject to FOGRMA's requirements as a matter of law since its enactment in 1983. Thus, the proposed changes would not be "retroactive."

(c) The commenter said there were a number of leases issued under the initial regulations—i.e., 10 CFR 390.030, 390.033, and 390.034, now unchanged at 30 CFR 220.030, 220.033, and 220.034—but after enactment of FOGRMA section 103, and these leases must be grandfathered.

MMS Response: As discussed above, section 103 of FOGRMA applies to all NPSL's; section 305 is clear on this point. The fact that some NPSL's were issued while the initial regulations were in effect, but after FOGRMA's enactment, has no bearing on the applicability of section 305 or the section 103 recordkeeping requirements. Statutory requirements always supersede inconsistent regulatory obligations.

(d) The commenter did not agree that § 220.033, Audits, should be removed in favor of § 217.50. The commenter gave no reasons for this objection.

MMS Response: The MMS proposed to delete § 220.033 to clarify that NPSL audits will be subject to procedures already described in 30 CFR part 217. The MMS is preparing a proposed rulemaking to revise 30 CFR part 217; it will address NPSL audits. There is no need to duplicate the NPSL audit requirements in § 220.033.

IV. Summary of Revised Proposed Rule

(a) Need for Rule

This revised proposed rulemaking amends § 220.030 to clarify that the minimum period for maintaining records on NPSL's, like all other lease subject to FOGRMA, is 6 years after record creation. In some cases lessees create NPSL cost records, but production may not start for several more years; thus an MMS audit logically may not start for more than 6 years past first record creation. Although the audit may not begin before production starts or before long cost accrual periods pass, all costs accumulated in the NPSL capital account after lease issuance affect the account balance in later periods. Thus, unlike leases where production costs do not affect royalties, NPSL records need long-term maintenance so MMS can properly verify the capital account balance at the start of any period.

(b) MMS Proposal

To preserve the required records until an audit begins, MMS proposes that the current NPSL operator furnish all records on the NPSL capital account to the Deputy Associate Director for Audit as they are created, on an annual basis. Or, the operator could sign an agreement to maintain the records for 6

years after cessation of operations and provide them for audit as needed. Then the operator would keep the records until notified by MMS that they are no longer needed. The MMS already has signed such agreements with a majority of the current NPSL operators.

The proposed rule would require the operator to provide MMS all NPSL capital account records the operator now holds that are older than 6 years—unless the operator agrees, in writing, to maintain them and furnish them to MMS on request. Also, § 220.031(c) would be changed to clarify NPSL reporting and payment requirements. Lastly, the existing § 220.033 would be removed and § 220.034 revised and redesignated as a new § 220.033.

(c) Public Comment

The MMS's policy is to give the public a chance to take part in the rulemaking process whenever possible. So, you may send written comments or suggestions about this notice to the location shown in the ADDRESSES section of this preamble. Comments must be received by the date identified in the DATES section of this preamble.

V. Procedural Matters

The Regulatory Flexibility Act

The rule is needed to conform regulations to existing statutory requirements. The Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action requiring review by the Office of Management and Budget.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 220

Coal, Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: February 25, 1994.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, it is proposed to amend 30 CFR part 220 as follows:

PART 200—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OCS OIL AND GAS LEASES

1. The authority citation for part 220 continues to read as follows:

Authority: Sec. 205, Pub. L. 95-372, 92 Stat. 643 (43 U.S.C. 1337).

2. Paragraph (b) of § 220.030 is revised to read as follows:

§ 220.030 Maintenance of records.

* * * * *

(b) The Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1713, requires that NPSL records be maintained for 6 years after they are generated unless the Secretary or designee notifies the record holder that an audit or investigation involving such records has begun, and that they must be kept longer. Because NPSL audits or investigations may not start within 6 years of lease record creation, the NPSL operator must provide records under either paragraph (b)(1) or (b)(2):

(1) The current NPSL operator must provide MMS all the NPSL capital account records annually through the end of lease operations. The first records must be supplied within 60 days following the final rule's effective date, or, for new operators, within 60 days of the date they become the new operator; all NPSL records created up to that time.

except any provided earlier, must be included. Following the initial submission the operator must submit records each calendar year through cessation of operations by January 31 of the year following the end of the calendar year. The records must be mailed to the Minerals Management Service, Royalty Management Program, Deputy Associate Director for Audit, P.O. Box 25165, Denver, Colorado 80225-0165; or

(2) The current NPSL operator may sign an agreement with MMS to maintain records on the NPSL capital account for 6 years after cessation of operations and make them available to MMS for audit or investigation on request. This signed agreement must be received by MMS on or before the date the initial records must be supplied under paragraph (b)(1) of this section, and submitted to MMS at the address under paragraph (b)(1). Under the agreement, records must be kept until an audit or investigation is completed and the Director releases the recordholder from maintaining the records. But, if other sources later show evidence of possible fraud, collusion, or underpayments, MMS may further examine records and transactions of earlier audit periods.

3. Paragraph (c) of § 220.031 is revised to read as follows:

§ 220.031 Reporting and payment requirements.

(c) Each lessee subject to this part shall submit with the required Form MMS-2014, which shall be due at the same time as the report required in paragraph (b) of this section, any net profit share payment due the United States for the period covered by the report.

220.032 [Amended]

4. Paragraph (d) of § 220.032 is amended by revising the reference to "§ 220.033" in the first sentence to read "30 CFR part 217."

§ 220.033 [Removed]

5. Section 220.033 is removed.

§ 220.034 [Redesignated as § 220.033]

6. Section 220.034 is redesignated as § 220.033.

7. Paragraph (a) of redesignated § 220.033 is revised to read as follows:

§ 220.033 Redetermination and appeals.

(a) If an inspection of records or an audit causes the Director to find an error in the NPSL capital account or the net profit share payment—whether in favor of the Government or the lessee—the

Director will redetermine the net profit share base, recalculate the net profit share payment due the United States, and notify the lessee of the recalculation.

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[FR Doc. 94-8810 Filed 4-12-94; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Baltimore 94-003]

Safety Zone Regulation: Hammerman Area of Gunpowder Falls State Park, Baltimore County, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is considering a proposal to establish a safety zone for the purpose of the third annual Maryland "Swim For Life", at the request of the Maryland "Swim For Life" Committee of Baltimore, Maryland. The "Swim For Life" event will consist of a two and a one half mile swim to be held at the Hammerman area of Gunpowder Falls State Park, Gunpowder River, Maryland. The Swim will start at Hammerman area beach number five, to the Maxwell Point buoy, thence to Oliver Point buoy and thence to Hammerman area beach numbers one and two. The safety zone is necessary to control small craft and recreational vessel traffic, and to provide for the safety of life and property on U.S. navigable waters from the hazards associated with this swimming event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: Comments must be received on or before May 13, 1994.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Marine Safety Office Baltimore, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022. Comments and other materials referenced in this notice will be available for inspection and copying at the above address in room 343. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Timothy P. Ryan, (410) 962-2651.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data and arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP Baltimore 94-003) and the specific section of the proposal to which their comments apply, as well as give reasons for each comment. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposed regulation may be changed in light of comments received. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Background and Purpose

In November, 1993, an application was received by U.S. Coast Guard Group Baltimore from the Maryland Swim For Life Committee, requesting a safety zone for the "Swim For Life" event. This event is to be held in the Hammerman area of Gunpowder Falls State Park, Gunpowder River, Maryland, on June 18, 1994. As part of their application, the "Swim For Life" Committee requested the Coast Guard provide control of spectator and commercial traffic during the swimming event.

Discussion of Regulations

This regulation is necessary to ensure the safety of spectator craft, recreational vessels as well as swimmers participating in the event, and to provide for the safety of life and property on U.S. navigable waters during the event. Since the Gunpowder Falls river will not be closed for an extended period, vessel traffic should not be severely disrupted.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Drafting Information

The drafters of this regulation are Chief Warrant Officer Timothy P. Ryan, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Monica Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44

[Federal Register: April 13, 1994]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 220

RIN 1010-AB46

Extension of Time Period for Maintaining Records on Outer
Continental Shelf Net Profit Share Oil and Gas Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) previously published a
Notice of Proposed Rulemaking to amend its offshore Net Profit Share
Lease (NPSL) regulations relating to record maintenance requirements
and certain audit requirements. The MMS now is issuing a further notice
of proposed rulemaking on this proposed change.

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David S. Guzy.

FOR FURTHER INFORMATION CONTACT:
David S. Guzy, Chief, Rules and Procedures Staff at (303) 231-3432.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rule
is David A. Hubbard of the MMS Royalty Management Program, Valuation
and Standards Division, Lakewood, Colorado.

I. Background

(a) History of NPSL Accounting Rules

A chronology of the NPSL rules follows:

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Other than minor administrative changes, MMS' version of the NPSL
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<bullet> Ledger cards showing charges and credits to the NPSL capital account must be maintained for 36 months after the lessee ceases NPSL operations;

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Thus, part 212 specifically requires that NPSL records be maintained at least 6 years after generation. Under Sec. 212.50, this period may be longer if the recordholder is notified in writing.

(e) Who Is Responsible for NPSL Reporting?

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Further, the **MMS** Oil and Gas Payor Handbook, vol. II, section 3.3.8, states that NPSL operators must file a Report of Sales and Royalty Remittance (Form **MMS**-2014) monthly.

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The **MMS** received comments from one industry respondent on the June 1990 proposed rulemaking. Those comments were considered in this revised proposed rulemaking; they are discussed in paragraph III below. The revised proposed rule is summarized and discussed in paragraph IV below.

III. Comments Received on June 1990 Proposed Rule

The June 1990 proposed rule provided for a 30-day public comment period ending July 9, 1990. We received comments from one industry source.

(a) The commenter felt a period longer than 30 days should be allowed for comments on the proposed rulemaking. They felt **MMS** had ample time since FOGRMA's enactment to make the proposed amendment, and to allow only a 30-day comment period was not justified.

MMS Response: The **MMS** received comments from only one source, and no one else asked for more time. Thus, **MMS** believes the 30-day comment period was long enough for all interested parties to reply to the proposed rule.

(b) The commenter said the amendments must be prospective from the effective date of the final rule.

MMS Response: Section 305 of FOGRMA states that the provisions of this Act shall apply to oil and gas leases issued before, on, or after the date of the enactment of this Act, except that in the case of a lease issued before such date, no provision of this Act or any rule or regulation prescribed under this Act shall alter the express and specific provisions of such a lease.

Since NPSL lease terms do not include time periods for keeping records, NPSL's have been subject to FOGRMA's requirements as a matter of law since its enactment in 1983. Thus, the proposed changes would not be ``retroactive.''

(c) The commenter said there were a number of leases issued under the initial regulations--i.e., 10 CFR 390.030, 390.033, and 390.034, now unchanged at 30 CFR 220.030, 220.033, and 220.034--but after enactment of FOGRMA section 103, and these leases must be grandfathered.

MMS Response: As discussed above, section 103 of FOGRMA applies to all NPSL's; section 305 is clear on this point. The fact that some NPSL's were issued while the initial regulations were in effect, but after FOGRMA's enactment, has no bearing on the applicability of section 305 or the section 103 recordkeeping requirements. Statutory requirements always supersede inconsistent regulatory obligations.

(d) The commenter did not agree that Sec. 220.033, Audits, should be removed in favor of Sec. 217.50. The commenter gave no reasons for this objection.

MMS Response: The **MMS** proposed to delete Sec. 220.033 to clarify that NPSL audits will be subject to procedures already described in 30 CFR part 217. The **MMS** is preparing a proposed rulemaking to revise 30 CFR part 217; it will address NPSL audits. There is no need to duplicate the NPSL audit requirements in Sec. 220.033.

IV. Summary of Revised Proposed Rule

(a) Need for Rule

This revised proposed rulemaking amends Sec. 220.030 to clarify that the minimum period for maintaining records on NPSL's, like all other lease subject to FOGRMA, is 6 years after record creation. In some cases lessees create NPSL cost records, but production may not start for several more years; thus an **MMS** audit logically may not start for more than 6 years past first record creation. Although the audit may not begin before production starts or before long cost accrual periods pass, all costs accumulated in the NPSL capital account after lease issuance affect the account balance in later periods. Thus, unlike leases where production costs do not affect royalties, NPSL records need long-term maintenance so **MMS** can properly verify the capital account balance at the start of any period.

(b) **MMS** Proposal

To preserve the required records until an audit begins, **MMS** proposes that the current NPSL operator furnish all records on the NPSL capital account to the Deputy Associate Director for Audit as they are created, on an annual basis. Or, the operator could sign an agreement to maintain the records for 6 years after cessation of operations and provide them for audit as needed. Then the operator would keep the records until notified by **MMS** that they are no longer needed. The **MMS** already has signed such agreements with a majority of the current NPSL operators.

The proposed rule would require the operator to provide **MMS** all NPSL capital account records the operator now holds that are older than 6 years--unless the operator agrees, in writing, to maintain them and furnish them to **MMS** on request. Also, Sec. 220.031(c) would be changed to clarify NPSL reporting and payment requirements. Lastly, the existing Sec. 220.033 would be removed and Sec. 220.034 revised and redesignated as a new Sec. 220.033.

(c) Public Comment

The MMS's policy is to give the public a chance to take part in the rulemaking process whenever possible. So, you may send written comments or suggestions about this notice to the location shown in the ADDRESSES section of this preamble. Comments must be received by the date identified in the DATES section of this preamble.

V. Procedural Matters

The Regulatory Flexibility Act

The rule is needed to conform regulations to existing statutory requirements. The Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ``Government Action and Interference with Constitutionally Protected Property Rights.''

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action requiring review by the Office of Management and Budget.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 220

Coal, Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands--mineral resources, Reporting and recordkeeping requirements.

Dated: February 25, 1994.
Bob Armstrong,
Assistant Secretary--Land and Minerals Management.

For the reasons set out in the preamble, it is proposed to amend 30 CFR part 220 as follows:

PART 200--ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE

PAYMENT FOR OCS OIL AND GAS LEASES

1. The authority citation for part 220 continues to read as follows:

Authority: Sec. 205, Pub. L. 95-372, 92 Stat. 643 (43 U.S.C. 1337).

2. Paragraph (b) of Sec. 220.030 is revised to read as follows:

Sec. 220.030 Maintenance of records.

* * * * *

(b) The Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1713, requires that NPSL records be maintained for 6 years after they are generated unless the Secretary or designee notifies the record holder that an audit or investigation involving such records has begun, and that they must be kept longer. Because NPSL audits or investigations may not start within 6 years of lease record creation, the NPSL operator must provide records under either paragraph (b)(1) or (b)(2):

(1) The current NPSL operator must provide **MMS** all the NPSL capital account records annually through the end of lease operations. The first records must be supplied within [60 days following the final rule's effective date], or, for new operators, within 60 days of the date they become the new operator; all NPSL records created up to that time, except any provided earlier, must be included. Following the initial submission the operator must submit records each calendar year through cessation of operations by January 31 of the year following the end of the calendar year. The records must be mailed to the Minerals Management Service, Royalty Management Program, Deputy Associate Director for Audit, P.O. Box 25165, Denver, Colorado 80225-0165; or

(2) The current NPSL operator may sign an agreement with **MMS** to maintain records on the NPSL capital account for 6 years after cessation of operations and make them available to **MMS** for audit or investigation on request. This signed agreement must be received by **MMS** on or before the date the initial records must be supplied under paragraph (b)(1) of this section, and submitted to **MMS** at the address under paragraph (b)(1). Under the agreement, records must be kept until an audit or investigation is completed and the Director releases the recordholder from maintaining the records. But, if other sources later show evidence of possible fraud, collusion, or underpayments, **MMS** may further examine records and transactions of earlier audit periods.

3. Paragraph (c) of Sec. 220.031 is revised to read as follows:

Sec. 220.031 Reporting and payment requirements.

* * * * *

(c) Each lessee subject to this part shall submit with the required Form **MMS-2014**, which shall be due at the same time as the report required in paragraph (b) of this section, any net profit share payment due the United States for the period covered by the report.

* * * * *

220.032 [Amended]

4. Paragraph (d) of Sec. 220.032 is amended by revising the reference to ``Sec. 220.033'' in the first sentence to read ``30 CFR part 217.''

Sec. 220.033 [Removed]

5. Section 220.033 is removed.

Sec. 220.034 [Redesignated as Sec. 220.033]

6. Section 220.034 is redesignated as Sec. 220.033.

7. Paragraph (a) of redesignated Sec. 220.033 is revised to read as follows:

Sec. 220.033 Redetermination and appeals.

(a) If an inspection of records or an audit causes the Director to find an error in the NPSL capital account or the net profit share payment--whether in favor of the Government or the lessee--the Director will redetermine the net profit share base, recalculate the net profit share payment due the United States, and notify the lessee of the recalculation.

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