

**§ 40.6302(c)-3 Special rules for use of Government depositories under chapter 33.**

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*

(ii) *Separate account.* The account required under paragraph (b)(2)(i)(A) of this section (the separate account)—

(A) Must reflect for each month all items of tax that are included in amounts billed or tickets sold to customers during the month;

(B) May not reflect an item of adjustment for any month during a quarter if the adjustment results from a refusal to pay or inability to collect the tax and the uncollected tax has not been reported under § 49.4291-1 of this chapter on or before the due date of the return for that quarter; and

(C) Must reflect for each month items of adjustment (including bad debts and errors) relating to the tax for prior months within the period of limitations on credits or refunds.

\* \* \* \* \*

**§ 40.6302(c)-3T [Removed]**

<sup>n</sup> **Par. 3.** Section 40.6302(c)-3T is removed.

**PART 49—FACILITIES AND SERVICES EXCISE TAXES**

<sup>n</sup> **Par. 4.** The authority citation for part 49 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

<sup>n</sup> **Par. 5.** Section 49.4291-1 is amended as follows:

- <sup>n</sup> 1. The fourth sentence is revised.
- <sup>n</sup> 2. The fifth sentence is amended by removing the language “this information” and adding the language “this report” in its place.
- <sup>n</sup> 3. A new sentence is added at the end of the paragraph.
- <sup>n</sup> 4. Paragraphs (a) and (b) are added.

The revisions and addition read as follows:

**§ 49.4291-1 Persons receiving payment must collect tax.**

\* \* \* Applicable October 1, 2004, this report must be made on or before the report due date. \* \* \* For purposes of this section, the report due date is—

(a) In the case of a person using the alternative method of making deposits described in § 40.6302(c)-3 of this chapter, the due date of the return on which the item of adjustment relating to the uncollected tax would be reflected if items of adjustment were determined without regard to the limitation in § 40.6302(c)-3 of this chapter; and

(b) In any other case, the due date of the return on which the tax would have been reported but for the refusal to pay or inability to collect.

**§ 49.4291-1T [Removed]**

<sup>n</sup> **Par. 6.** Section 49.4291-1T is removed.

**Mark E. Matthews,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: July 20, 2005.

**Eric Solomon,**  
*Acting Deputy Secretary of the Treasury (Tax Policy).*

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**DEPARTMENT OF JUSTICE**

**28 CFR Part 16**

[AAG/A Order No. 007-2005]

**Privacy Act of 1974; Implementation**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is exempting the Privacy Act system of records entitled, “Department of Justice Regional Data Exchange System (RDEX), DOJ-012,” from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). The information in this system of records relates to matters of criminal law enforcement, and the exemption is necessary in order to avoid interference with law enforcement responsibilities and functions and to protect criminal law enforcement information. The system of records document was published in the **Federal Register** on July 11, 2005 at 70 FR 39790. The proposed rule was published in the **Federal Register** on July 11, 2005 at 39696.

**DATES: Effective Date:** This final rule is effective August 25, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mary E. Cahill, (202) 307-1823.

**SUPPLEMENTARY INFORMATION:** On July 11, 2005 at 70 FR 39696 a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

**Regulatory Flexibility Act**

This rule relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that this rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 28 CFR Part 16**

Administrative Practices and Procedures, Courts, Freedom of

Information Act, Privacy Act, and Government in Sunshine Act.

<sup>n</sup> Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, amend 28 CFR part 16 as follows:

**PART 16—[AMENDED]**

**Subpart E—Exemption of Records Systems under the Privacy Act**

<sup>n</sup> 1. The authority for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

<sup>n</sup> 2. Section 16.133 is added to read as follows:

**§ 16.133 Exemption of Department of Justice Regional Data Exchange System (RDEX), DOJ-012.**

(a) The Department of Justice Regional Data Exchange System (RDEX), DOJ-012, is exempted from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) This system is exempted from the following subsections for the reasons set forth below:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures of criminal law enforcement records concerning him or her could inform that individual of the existence, nature, or scope of an investigation, or could otherwise seriously impede law enforcement efforts.

(2) From subsection (c)(4) because this system is exempt from subsections (d)(1), (2), (3), and (4).

(3) From subsection (d)(1) because disclosure of criminal law enforcement information could interfere with an investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others.

(4) From subsection (d)(2) because amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent that exemption is claimed from subsections (d)(1) and (2).

(6) From subsection (e)(1) because it is often impossible to determine in advance if criminal law enforcement records contained in this system are relevant and necessary, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) From subsection (e)(2) because collecting information from the subject individual could serve notice that he or she is the subject of a criminal law enforcement matter and thereby present a serious impediment to law enforcement efforts. Further, because of the nature of criminal law enforcement matters, vital information about an individual frequently can be obtained only from other persons who are familiar with the individual and his or her activities and it often is not practicable to rely on information provided directly by the individual.

(8) From subsection (e)(3) because informing individuals as required by this subsection could reveal the existence of a criminal law enforcement matter and compromise criminal law enforcement efforts.

(9) From subsection (e)(5) because it is often impossible to determine in advance if criminal law enforcement records contained in this system are accurate, relevant, timely, and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and obtaining investigative leads.

(10) From subsection (e)(8) because serving notice could give persons sufficient warning to evade criminal law enforcement efforts.

(11) From subsection (g) to the extent that this system is exempt from other specific subsections of the Privacy Act.

Dated: August 19, 2005.

**Paul R. Corts,**

*Assistant Attorney General for Administration.*

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Parts 250 and 256

RIN 1010-AD16

#### Oil, Gas, and Sulphur Operations and Leasing in the Outer Continental Shelf (OCS)—Cost Recovery

AGENCY: Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** MMS is changing some existing fees and implementing several new fees to offset MMS's costs of performing certain services relating to its minerals programs.

**EFFECTIVE DATE:** This regulation is effective as of September 26, 2005.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

*Legal Authority and Policy Guidance:* The Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, is a general law applicable Government-wide, that provides authority to MMS to recover the costs of providing services to the non-federal sector. It requires implementation through rulemaking. There are several policy documents that provide guidance on the process of charging applicants for service costs.

These policy documents are found in the Office of Management and Budget (OMB) Circular A-25, "User Charges," and the Department of the Interior (DOI) Departmental Manual (DM), 330 DM 1.3A and 6.4, "Cost Recovery" and "User Charges." The general policy that governs charges for services provided states that a charge "will be assessed against each identifiable recipient for special benefits derived from federal activities beyond those received by the general public" (OMB Circular A-25). The DOI Manual mirrors this policy (330 DM 1.3 A.). Certain activities may be exempted from these fees under certain conditions set out at 330 DM 1.3A and 6.4.4.

*Cost Recovery Definition:* In this rulemaking, cost recovery means reimbursement to MMS for its costs of performing a service by charging a fee to the identifiable applicant/beneficiary of the service. Further guidance is provided by Solicitor's Opinion M-36987, "BLM's Authority to Recover Costs of Mineral Document Processing" (December 5, 1996). The DOI Office of Inspector General issued reports in 1988 and 1995 addressing BLM's cost recovery responsibilities.

##### Discussion of Comments Received

MMS published a proposed rule to revise some existing fees and implement several new fees in the **Federal Register** on March 15, 2005. The comment period for the proposed rule closed on April 14, 2005. MMS received 23 sets of comments on the proposed rulemaking on 14 different issues. Respondents included: Anadarko, BP, Beacon

Exploration & Production, Chevron Texaco, the Domestic Petroleum Council (DPC), EOG Resources, Exxon Mobil, the Independent Petroleum Association of America (IPAA), the International Association of Drilling Contractors (IADC), the International Association of Geophysical Contractors (IAGC), Marathon Oil, NCX Company, the National Ocean Industries Association (NOIA), the Natural Gas Supply Association (NGSA), Newfield Exploration Company, the Offshore Operators Committee (OOC), Shell Exploration & Production Company (Shell), Spinnaker Exploration, Success Energy, the U.S. Oil & Gas Association (USOGA), Waring & Associates, and WJP. These respondents raised a number of important issues that are addressed immediately below.

*Issue No. 1: The comment period should be extended.*

MMS received seven requests to extend the comment period beyond 30 days on the proposed rule. MMS considers this rule to be fairly straightforward and not exceptionally complex, and the fees are not significant in terms of potential economic impact. Therefore, MMS considers thirty days to be sufficient time for comment.

*Issue No. 2: The implementation of the fees in this rule will discourage exploration activity on the OCS, particularly by small businesses.*

MMS received five comments on this issue. MMS disagrees with the comments. The current classification of a small business by the Small Business Administration (SBA) is a company with fewer than 500 employees. Over 70 percent of companies operating on the OCS meet that criterion. Most of these companies are financially sound and payment of cost recovery fees will not affect plans for exploratory drilling. In addition, the proposed fees represent a small percentage increase in operating costs when compared to the cost of drilling a well. For example, the proposed fees range from \$150-\$10,700 while well drilling costs range from \$5 million-\$23 million.

*Issue No. 3: The fees being implemented are too high. Can more information be provided as to how the fees were calculated?*

MMS received seven comments on this issue. Because this rule is implementing cost recovery authority, the fees were set at what it currently costs MMS to perform these services. The following example provides greater detail of how the costs were calculated.

The Suspension of Operations/Suspension of Production (SOO/SOP) request was broken down into five sub-processes, also shown in the table below