## § 256.53 Additional bonds.

- (a) Activities under an Exploration Plan (EP).
- (1) When submitting a proposed EP, when submitting a proposed assignment of a lease with an approved EP, or 2 years after publication of a final rule, whichever is earliest, a lessee must submit a \$200,000 surety bond issued by a qualified surety and conditioned on compliance with all the terms and conditions of the lease shall be furnished to the Regional Director. Approval of the EP or assignment shall be conditioned upon receipt of a \$200,000 lease surety bond, unless the Regional Director authorizes the submission of the \$200,000 lease exploration bond after the submission of the EP but before approval of drilling activities under the EP. This bond coverage may be provided by increasing the bond coverage provided in § 256.52(a) of this part.

(2) \* \* \* \*

- (b) Operations under a Development and Production Plan (DPP) or a Development Operations Coordination Document (DOCD).
- (1) When submitting a proposed DPP or DOCD, when submitting a proposed assignment of a lease with an approved DPP or DOCD, or 2 years after publication of a final rule, whichever is earliest, a lessee must submit a \$500,000 surety issued by a qualified surety and conditioned on compliance with all the terms and conditions of the lease shall be furnished to the Regional Director. Approval of a DPP, a DOCD, or an assignment of a lease with an approved DPP or DOCD shall be conditioned on receipt of a \$500,000 lease surety bond, unless the Regional Director authorizes the submission of the \$500,000 lease development bond after the submission of the DPP or DOCD, but prior to the approval of platform installation or drilling activities under the approved DPP or DOCD. The lessee may provide this additional bond by submission of a new bond or by increasing the lease bond coverage provided under paragraph (a) of this section.

(2)

(d) The Regional Director may require additional security (i.e., security over and above the amounts prescribed in §§ 256.52(a) and 256.53 (a) and (b) of this part) in the form of a supplemental bond or bonds or increased amount of coverage of an existing surety bond when he/she determines that additional security is necessary to cover royalty due the Government, penalties and interest assessed against the lessee, and/or costs and liabilities of the lessee for

regulatory compliance. The Regional Director shall base the decision on an evaluation of the ability of the lessee to carry out its present and future financial obligations as demonstrated by factors such as:

- (1) Financial capacity substantially in excess of existing and anticipated lease and other obligations (e.g., costs of well abandonment and platform removal, amount of underpaid royalties, and penalties and interest assessed by the Government), as evidenced by audited financial statements (including auditor's certificate, balance sheet, and profit and loss sheet);
- (2) Projected financial strength as evidenced by existing OCS production and proven reserves of future production valued significantly in excess of existing and future lease obligations;
- (3) Business stability as evidenced by 5 years of continuous operation and production of oil and gas or sulphur in the OCS or in the onshore oil and gas industry:
- (4) Reliability in meeting obligations as evidenced by:

(i) Credit rating; or

(ii) Trade references including names and addresses of other lessees, drilling contractors, and suppliers with whom lessee has dealt; and

(5) Record of compliance with laws, regulations, and lease terms.

- (e) The amount of the bond shall be sufficient to ensure the compliance with all lease terms and conditions, including any outstanding underpayment of royalty and cumulative end-of-lease obligations to abandon wells, remove platforms and facilities, and clear the seafloor in the event of default. The Regional Director will determine the amount of supplemental bond required based on an analysis conducted by MMS. The lessee may submit data for consideration by MMS.
- (f) The Regional Director may adjust the amount of supplemental bond or deposit required and the terms for the acceptance of the lessee's bond if the liability for outstanding underpaid royalties and end-of-lease abandonment and clearance either increases or decreases. The Regional Director shall:
- (1) Notify the lessee and the surety of any proposed adjustment to the amount of bond required; and
- (2) Give the lessee an opportunity to submit written or oral comment on the adjustment.
- (g) A lessee may request a reduction of the amount of supplemental bond required by submitting to the Regional Director evidence demonstrating that the projected royalties and costs of end-

of-lease abandonment and clearance of the seafloor are less than the specified bond coverage.

10. Section 256.59 is redesignated as § 256.54 and revised to read as follows:

## § 256.54 Bond form.

- (a) All bonds must be on a form or in a form approved by the Director. Bonds submitted after November 26, 1993, must be issued by a qualified surety certified by the U.S. Treasury as an acceptable surety on Federal bonds and listed in the current U.S. Treasury Circular No. 570 which is available from the Surety Bond Branch, Financial Management Service, Department of the Treasury, 401 14th Street SW., Washington, D.C. 20227.
- (b) A surety bond must be executed by the lessee and a qualified surety.
- (c) Surety bonds must be noncancellable.
  - (d) Lease bonds must be:

(1) A surety bond;

- (2) A lease-specific abandonment account in accordance with § 256.56;
- (3) United States Treasury securities negotiable for an amount equal to the amount of bond required, accompanied by a conveyance of full authority to the Secretary to sell the securities in case of default;
- (4) A combination of these security methods; or
- (5) Another form of security approved by the Regional Director.
- 11. Sections 256.55, 256.56, 256.57, 256.58, and 256.59 are added to read as follows:

## § 256.55 General terms and conditions of bond.

- (a) The Regional Director shall determine the amount of the lease bond as provided in §§ 256.52 and 256.53 of this part.
- (b) A lease bond must be payable to MMS.
- (c) A lease bond shall be conditioned upon compliance with all the terms and conditions of the lease and governing regulations.
- (d) Lessees must notify the Regional Director of any action filed alleging the insolvency or bankruptcy of the lessee, a surety company, or a third-party guarantor. The lessee shall notify the Regional Director within 72 hours of any such action filed or within 72 hours of learning of an action that involves a company other than the lessee. Lease bonds must require the surety to provide this information to the lessee and directly to MMS.
- (e) Upon the incapacity of a surety company by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the lessee is deemed to be without bond coverage