DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf; Notice of Interpretation of Section 8(b)(7) of the Outer Continental Shelf Lands Act Concerning the 20 Percent Small Refiner Offer Program

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of interpretation.

SUMMARY: Under Section 8(b)(7) of the Outer Continental Shelf Lands Act (OCSLA), the Secretary of the Interior is authorized to grant oil and gas leases on submerged lands of the Outer Continental Shelf (OCS). Among other requirements, a lease must provide that the lessee offer 20 percent of oil and gas produced on the lease to small or independent refiners. This Notice sets forth the policy of the Department of the Interior (DOI) concerning that requirement.

SUPPLEMENTARY INFORMATION: Questions have arisen as to the DOI's responsibilities under Section 8(b)(7) of the OCSLA, which reads:

(b) An oil and gas lease issued pursuant to this section shall--
* * * * *
(7) provide a requirement that the lessee offer 20 per centum of the crude oil, condensate, and natural gas liquids produced on such lease, at the market value and point of delivery applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973.

The questions have centered around what action the DOI must take to implement this section. This Notice sets forth the DOI's policy in relation to the requirement of section 8(b)(7).

Secretary's Duty To Regulate

While the Secretary is charged with enforcing the OCSLA, it is generally within his discretion as to the method of enforcement. In the exercise of his discretion, the Secretary has caused the following clause to be stated in every lease issued since the enactment of the 1978 Amendments.

As provided in Section 8(b)(7) of the Act, the Lessee shall offer 20 percent of the crude oil, condensate, and natural gas liquids produced on the lease, at the market value and point of delivery as provided by regulations applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973.

Certain members of the public have suggested that the Secretary must also promulgate specific regulations to implement Section 8(b)(7) of the OCSLA. We disagree. Congress specified in sections 5(a) and 8(a) the regulations that the Secretary is required to issue, and none of the specified regulations relate to the section 8(b)(7) set-aside program.

Neither the OCSLA nor the legislative history indicate that the Secretary is required to do more than put the clause in the lease. According to the House Report (H.R. Rep. No. 95-590, 95th Congress, First Session 14 (1977)), the procedures would be the same as those applied to Federal royalty oil. While the report talks about "procedures," the OCSLA refers solely to the "market value and point of delivery applicable to royalty oil." These are apparently the only "procedures" contemplated. Had Congress intended to mandate a specific scheme, it would have included more specific language as it did in section 27(b)(2) relative to royalty oil.

It is therefore the policy of the DOI to consider the clause in the lease form as self executing and its presence to be the necessary and sufficient implementation of Section 8(b)(7) of the OCSLA.

Secretary's Duty To Assure Equitable Allocation

Some commenters have suggested that the Secretary has a statutory duty to adopt rules directing lessees to offer their production for sale on a general "open-market" basis to eligible refiners. This obligation is said to arise under one of the stated purposes of the OCSLA Amendments, i.e., the need to "preserve and maintain free enterprise competition." 43 U.S.C. 1802(2). Section 1802(2) has been judicially interpreted as a statement of general principles which are commended to the Secretary's attention, not to require specific actions. *Watt v. Energy Action Educational Foundation*, 454 U.S. 151 (1981). The Secretary could lawfully find that the purposes of section 1802(2) are satisfied by letting lessees offer the production on the basis of first come, first serve. The OCSLA does not require further regulation.

Definitions

Some members of the public have asked that the Secretary fill in the gaps in the language of the statute. They request that the Secretary define terms involved in the procedure. We see no need at this time to provide definitions beyond those provided in the statute itself. Congress has specified that the production be offered "at the market value and point of delivery applicable to Federal royalty oil." 43 U.S.C. 1337(b)(7). The Department of Energy (DOE) has already issued regulations defining "fair market value" and "point of delivery." 10 CFR 391.102 (1981). (The DOI will propose the redesignation of those DOE regulations as DOI regulations in the near future.) While these definitions apply to sales of oil, they provide standards which could be applied to sales of condensate and natural gas liquids.

Relationship to Royalty Oil

Some commenters have questioned whether the 20 percent of production of oil and gas to be set aside for small or independent refiners is in addition to the amounts of oil and gas available to such refiners under the Federal royalty oil program.

We believe it is clear from the legislative history of section 8(b)(7) that the 20 percent set aside authorized by that section is in addition to the amounts available under the Federal royalty oil program.

Executive Order No. 12291

In keeping with the spirit of Executive Order 12291 (1981) and the DOI's policy to avoid the proliferation of new regulations where such avoidance is consistent with our statutory duties, regulations for the implementation of section 8(b)(7) are considered to be unnecessary and undesirable. We believe that the requirements of section 8(b)(7) can be achieved by OCS lessees and small and independent refiners without the intervention of Federal regulations.

Dated: January 3, 1983.

Harold Doley,
Director.

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