

Public Law 95-372

95th Congress

An Act

To establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes.

Sept. 18, 1978

[S. 9]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Outer Continental Shelf Lands Act Amendments of 1978".

Outer
Continental Shelf
Lands Act
Amendments of
1978.

43 USC 1801
note.

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TITLE I—FINDINGS AND PURPOSES WITH RESPECT TO MANAGING THE RESOURCES OF THE OUTER CONTINENTAL SHELF

FINDINGS

43 USC 1801.

SEC. 101. The Congress finds and declares that—

- (1) the demand for energy in the United States is increasing and will continue to increase for the foreseeable future;
- (2) domestic production of oil and gas has declined in recent years;
- (3) the United States has become increasingly dependent upon imports of oil from foreign nations to meet domestic energy demand;
- (4) increasing reliance on imported oil is not inevitable, but is rather subject to significant reduction by increasing the development of domestic sources of energy supply;
- (5) consumption of natural gas in the United States has greatly exceeded additions to domestic reserves in recent years;
- (6) technology is or can be made available which will allow significantly increased domestic production of oil and gas without undue harm or damage to the environment;
- (7) the Outer Continental Shelf contains significant quantities of oil and natural gas and is a vital national resource reserve which must be carefully managed so as to realize fair value, to preserve and maintain competition, and to reflect the public interest;
- (8) there presently exists a variety of technological, economic, environmental, administrative, and legal problems which tend to retard the development of the oil and natural gas reserves of the Outer Continental Shelf;
- (9) environmental and safety regulations relating to activities on the Outer Continental Shelf should be reviewed in light of current technology and information;

(10) the development, processing, and distribution of the oil and gas resources of the Outer Continental Shelf, and the siting of related energy facilities, may cause adverse impacts on various States and local governments;

(11) policies, plans, and programs developed by States and local governments in response to activities on the Outer Continental Shelf cannot anticipate and ameliorate such adverse impacts unless such States, working in close cooperation with affected local governments, are provided with timely access to information regarding activities on the Outer Continental Shelf and an opportunity to review and comment on decisions relating to such activities;

(12) funds must be made available to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges;

(13) because of the possible conflicts between exploitation of the oil and gas resources in the Outer Continental Shelf and other uses of the marine environment, including fish and shellfish growth and recovery, and recreational activity, the Federal Government must assume responsibility for the minimization or elimination of any conflict associated with such exploitation;

(14) the oil and gas resources of the Outer Continental Shelf are limited, nonrenewable resources which must be developed in a manner which takes into consideration the Nation's long-range energy needs and also assures adequate protection of the renewable resources of the Outer Continental Shelf which are a continuing and increasingly important source of food and protein to the Nation and the world; and

(15) funds must be made available to pay for damage to commercial fishing vessels and gear resulting from activities involving oil and gas exploration, development, and production on the Outer Continental Shelf.

PURPOSES

SEC. 102. The purposes of this Act are to—

43 USC 1802.

(1) establish policies and procedures for managing the oil and natural gas resources of the Outer Continental Shelf which are intended to result in expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade;

(2) preserve, protect, and develop oil and natural gas resources in the Outer Continental Shelf in a manner which is consistent with the need (A) to make such resources available to meet the Nation's energy needs as rapidly as possible, (B) to balance orderly energy resource development with protection of the human, marine, and coastal environments, (C) to insure the public a fair and equitable return on the resources of the Outer Continental Shelf, and (D) to preserve and maintain free enterprise competition;

(3) encourage development of new and improved technology for energy resource production which will eliminate or minimize risk of damage to the human, marine, and coastal environments;

(4) provide States, and through States, local governments, which are impacted by Outer Continental Shelf oil and gas explo-

ration, development, and production with comprehensive assistance in order to anticipate and plan for such impact, and thereby to assure adequate protection of the human environment;

(5) assure that States, and through States, local governments, have timely access to information regarding activities on the Outer Continental Shelf, and opportunity to review and comment on decisions relating to such activities, in order to anticipate, ameliorate, and plan for the impacts of such activities;

(6) assure that States, and through States, local governments, which are directly affected by exploration, development, and production of oil and natural gas are provided an opportunity to participate in policy and planning decisions relating to management of the resources of the Outer Continental Shelf;

(7) minimize or eliminate conflicts between the exploration, development, and production of oil and natural gas, and the recovery of other resources such as fish and shellfish;

(8) establish an oilspill liability fund to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges;

(9) insure that the extent of oil and natural gas resources of the Outer Continental Shelf is assessed at the earliest practicable time; and

(10) establish a fishermen's contingency fund to pay for damages to commercial fishing vessels and gear due to Outer Continental Shelf activities.

TITLE II—AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT

DEFINITIONS

SEC. 201. (a) Paragraphs (b) and (c) of section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 (b) and (c)) are amended to read as follows:

“(b) The term ‘Secretary’ means the Secretary of the Interior, except that with respect to functions under this Act transferred to, or vested in, the Secretary of Energy or the Federal Energy Regulatory Commission by or pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the term ‘Secretary’ means the Secretary of Energy, or the Federal Energy Regulatory Commission, as the case may be;

“(c) The term ‘lease’ means any form of authorization which is issued under section 8 or maintained under section 6 of this Act and which authorizes exploration for, and development and production of, minerals;”

(b) Such section is further amended—

(1) in paragraph (d), by striking out the period and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following new paragraphs:

“(e) The term ‘coastal zone’ means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shore-

lines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));

“(f) The term ‘affected State’ means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, any State—

“(1) the laws of which are declared, pursuant to section 4(a)(2) of this Act, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

“(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of this Act;

“(3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

“(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the outer Continental Shelf; or

“(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

“(g) The term ‘marine environment’ means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf;

“(h) The term ‘coastal environment’ means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

“(i) The term ‘human environment’ means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf;

“(j) The term ‘Governor’ means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this Act;

“(k) The term ‘exploration’ means the process of searching for minerals, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and (2) any drilling, whether on or off known geologi-

43 USC 1333.

cal structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

"(l) The term 'development' means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered;

"(m) The term 'production' means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and work-over drilling;

"(n) The term 'antitrust law' means—

"(1) the Sherman Act (15 U.S.C. 1 et seq.);

"(2) the Clayton Act (15 U.S.C. 12 et seq.);

"(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

"(4) the Wilson Tariff Act (15 U.S.C. 8 et seq.); or

"(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a);

"(o) The term 'fair market value' means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary;

"(p) The term 'major Federal action' means any action or proposal by the Secretary which is subject to the provisions of section 102(2) (C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2) (C)); and

"(q) The term 'minerals' includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from 'public lands' as defined in section 103 of the Federal Land Policy and Management Act of 1976."

43 USC 1702.

NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF

SEC. 202. Section 3 of the Outer Continental Shelf Lands Act (43 U.S.C. 1332) is amended to read as follows:

"SEC. 3. NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF.—It is hereby declared to be the policy of the United States that—

"(1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act;

"(2) this Act shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas

and the right to navigation and fishing therein shall not be affected;

“(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

“(4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments—

“(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts; and

“(B) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf;

“(5) the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

“(6) operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.”.

LAWS APPLICABLE TO THE OUTER CONTINENTAL SHELF

SEC. 203. (a) Section 4(a) (1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333 (a) (1)) is amended—

(1) by striking out “and fixed structures” and inserting in lieu thereof “, and all installations and other devices permanently or temporarily attached to the seabed,”; and

(2) by striking out “removing, and transporting resources therefrom” and inserting in lieu thereof “or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources”.

(b) Section 4(a) (2) of such Act is amended by redesigning paragraph (2) as (2) (A) and by adding at the end thereof the following new subparagraph:

“(B) Within one year after the date of enactment of this subparagraph, the President shall establish procedures for setting any outstanding international boundary dispute respecting the outer Continental Shelf.”.

43 USC 1333.

(c) Section 4(c) of such Act is amended by striking out "described in subsection (b)" and inserting in lieu thereof "conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf".

29 USC 167.

(d) Section 4(d) of such Act is amended to read as follows:

"(d) For the purposes of the National Labor Relations Act, as amended, any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device."

43 USC 1333.

(e) Section 4 of such Act is amended—

(1) in paragraph (1) of subsection (e), by striking out "the islands and structures referred to in subsection (a)", and inserting in lieu thereof "the artificial islands, installations, and other devices referred to in subsection (a)";

(2) in subsection (f), by striking out "artificial islands and fixed structures located on the outer Continental Shelf" and inserting in lieu thereof "the artificial islands, installations, and other devices referred to in subsection (a)"; and

(3) in subsection (g), by striking out "the artificial islands and fixed structures referred to in subsection (a)" and inserting in lieu thereof "the artificial islands, installations, and other devices referred to in subsection (a)".

(f) Section 4(e)(1) of such Act is amended by striking out "head" and inserting in lieu thereof "Secretary".

(g) Section 4(e)(2) of such Act is amended to read as follows:

"(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this Act, and the owner shall pay the cost of such marking."

(h) Section 4 of such Act is further amended by striking out subsection (b) and relettering subsections (c), (d), (e), (f), and (g) as subsections (b), (c), (d), (e), and (f), respectively.

OUTER CONTINENTAL SHELF EXPLORATION AND DEVELOPMENT ADMINISTRATION

Rules and
regulations.

SEC. 204. Section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334) is amended to read as follows:

"SEC. 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—(a) The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of

the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this Act. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States. In the formulation and promulgation of regulations, the Secretary shall request and give due consideration to the views of the Attorney General with respect to matters which may affect competition. In considering any regulations and in preparing any such views, the Attorney General shall consult with the Federal Trade Commission. The regulations prescribed by the Secretary under this subsection shall include, but not be limited to, provisions—

Federal Trade
Commission,
consultation.

“(1) for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit (A) at the request of a lessee, in the national interest, to facilitate proper development of a lease or to allow for the construction or negotiation for use of transportation facilities, or (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment, and for the extension of any permit or lease affected by suspension or prohibition under clause (A) or (B) by a period equivalent to the period of such suspension or prohibition, except that no permit or lease shall be so extended when such suspension or prohibition is the result of gross negligence or willful violation of such lease or permit, or of regulations issued with respect to such lease or permit;

“(2) with respect to cancellation of any lease or permit—

“(A) that such cancellation may occur at any time, if the Secretary determines, after a hearing, that—

“(i) continued activity pursuant to such lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

“(ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

“(iii) the advantages of cancellation outweigh the advantages of continuing such lease or permit in force;

“(B) that such cancellation shall not occur unless and until operations under such lease or permit shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any lease or permit term continuously for a period of five years, or for a lesser period upon request of the lessee;

“(C) that such cancellation shall entitle the lessee to receive such compensation as he shows to the Secretary as being equal to the lesser of (i) the fair value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs

of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oilspill, and all other costs reasonably anticipated on the lease, or (ii) the excess, if any, over the lessee's revenues, from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that (I) with respect to leases issued before the date of enactment of this subparagraph, such compensation shall be equal to the amount specified in clause (i) of this subparagraph; and (II) in the case of joint leases which are canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question;

"(3) for the assignment or relinquishment of a lease;

"(4) for unitization, pooling, and drilling agreements;

"(5) for the subsurface storage of oil and gas other than by the Federal Government;

"(6) for drilling or easements necessary for exploration, development, and production;

"(7) for the prompt and efficient exploration and development of a lease area; and

"(8) for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), to the extent that activities authorized under this Act significantly affect the air quality of any State.

"(b) The issuance and continuance in effect of any lease, or of any assignment or other transfer of any lease, under the provisions of this Act shall be conditioned upon compliance with regulations issued under this Act.

Judicial review.

"(c) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in this Act, if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

"(d) Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, of the lease, or of the regulations issued under this Act, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of this Act.

Pipeline rights-of-way.
Secretary of Energy,
consultation.
Notice and hearing.

"(e) Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this Act, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, or where appropriate the Secretary of Transportation, including (as provided in

section 21(b) of this Act) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial and upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed under this section shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of this Act.

Post, p. 654.

Forfeiture of grant.

“(f) (1) Except as provided in paragraph (2), every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles:

“(A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.

“(B) Upon the specific request of one or more owner or non-owner shippers able to provide a guaranteed level of throughput, and on the condition that the shipper or shippers requesting such expansion shall be responsible for bearing their proportionate share of the costs and risks related thereto, the Federal Energy Regulatory Commission may, upon finding, after a full hearing with due notice thereof to the interested parties, that such expansion is within technological limits and economic feasibility, order a subsequent expansion of throughput capacity of any pipeline for which the permit, license, easement, right-of-way, or other grant of authority is approved or issued after the date of enactment of this subparagraph. This subparagraph shall not apply to any such grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

Notice and hearing.

“(2) The Federal Energy Regulatory Commission may, by order or regulation, exempt from any or all of the requirements of paragraph (1) of this subsection any pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed.

Regulations.

“(3) The Secretary of Energy and the Federal Energy Regulatory Commission shall consult with and give due consideration to the views of the Attorney General on specific conditions to be included in any permit, license, easement, right-of-way, or grant of authority in order to ensure that pipelines are operated in accordance with the competitive principles set forth in paragraph (1) of this subsection. In preparing any such views, the Attorney General shall consult with the Federal Trade Commission.

Attorney General, consultation.

Federal Trade Commission, consultation.

“(4) Nothing in this subsection shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines on or across the outer Continental Shelf.

“(g) (1) The leasee shall produce any oil or gas, or both, obtained pursuant to an approved development and production plan, at rates

Presidential rule or order.

consistent with any rule or order issued by the President in accordance with any provision of law.

Regulations.

"(2) If no rule or order referred to in paragraph (1) has been issued, the lessee shall produce such oil or gas, or both, at rates consistent with any regulation promulgated by the Secretary of Energy which is to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan. The Secretary may permit the lessee to vary such rates if he finds that such variance is necessary.

Department of Energy, notification.

"(h) The head of any Federal department or agency who takes any action which has a direct and significant effect on the outer Continental Shelf or its development shall promptly notify the Secretary of such action and the Secretary shall thereafter notify the Governor of any affected State and the Secretary may thereafter recommend such changes in such action as are considered appropriate.

"(i) After the date of enactment of this section, no holder of any oil and gas lease issued or maintained pursuant to this Act shall be permitted to flare natural gas from any well unless the Secretary finds that there is no practicable way to complete production of such gas, or that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations."

REVISION OF BIDDING AND LEASE ADMINISTRATION

SEC. 205. (a) Subsections (a) and (b) of section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337 (a) and (b)) are amended to read as follows:

Regulations.

"(a) (1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. Such regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary announces his decision on whether to accept the bids, with the interest earned thereon to be paid to the Treasury as to bids that are accepted and to the unsuccessful bidders as to bids that are rejected. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—

43 USC 1335.

"(A) cash bonus bid with a royalty at not less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;

"(B) variable royalty bid based on a per centum in amount or value of the production saved, removed, or sold, with either a fixed work commitment based on dollar amount for exploration or a fixed cash bonus as determined by the Secretary, or both;

"(C) cash bonus bid, or work commitment bid based on a dollar amount for exploration with a fixed cash bonus, and a diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than 12½ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;

"(D) cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

“(E) fixed cash bonus with the net profit share reserved as the bid variable;

“(F) cash bonus bid with a royalty at no less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a fixed per centum share of net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

“(G) work commitment bid based on a dollar amount for exploration with a fixed cash bonus and a fixed royalty in amount or value of the production saved, removed, or sold; or

“(H) subject to the requirements of paragraph (4) of this subsection, any modification of bidding systems authorized in subparagraphs (A) through (G), or any other systems of bid variables, terms, and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this Act, except that no such bidding system or modification shall have more than one bid variable.

“(2) The Secretary may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (1) of this subsection, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years after the date of the lease sale.

“(3) The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area.

“(4) (A) The Secretary of Energy shall submit any bidding system authorized in subparagraph (H) of paragraph (1) to the Senate and House of Representatives. The Secretary may institute such bidding system unless either the Senate or the House of Representatives passes a resolution of disapproval within thirty days after receipt of the bidding system.

Report to
Congress.
Resolution of
disapproval.

“(B) Subparagraphs (C) through (J) of this paragraph are enacted by Congress—

“(i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but they are applicable only with respect to the procedures to be followed in that House in the case of resolutions described by this paragraph, and they supersede other rules only to the extent that they are inconsistent therewith; and

“(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

“(C) A resolution disapproving a bidding system submitted pursuant to this paragraph shall immediately be referred to a committee (and all resolutions with respect to the same request shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

“(D) If the committee to which has been referred any resolution disapproving the bidding system of the Secretary has not reported the resolution at the end of ten calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further

consideration of any other resolution with respect to the same bidding system which has been referred to the committee.

“(E) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

“(F) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same bidding system.

“(G) When the committee has reported, or has been discharged from further consideration of, a resolution as provided in this paragraph, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

“(H) Debate on the resolution is limited to not more than two hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

“(I) Motions to postpone, made with respect to the discharge from the committee, or the consideration of a resolution with respect to a bidding system, and motions to proceed to the consideration of other business, shall be decided without debate.

“(J) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a bidding system shall be decided without debate.

“(5) (A) During the five-year period commencing on the date of enactment of this subsection, the Secretary may, in order to obtain statistical information to determine which bidding alternatives will best accomplish the purposes and policies of this Act, require, as to no more than 10 per centum of the tracts offered each year, each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding systems set forth in paragraph (1) of this subsection. For such statistical purposes, leases may be awarded using a bidding alternative selected at random for the acquisition of valid statistical data if such bidding alternative is otherwise consistent with the provisions of this Act.

“(B) The bidding systems authorized by paragraph (1) of this subsection, other than the system authorized by subparagraph (A), shall be applied to not less than 20 per centum and not more than 60 per centum of the total area offered for leasing each year during the five-year period beginning on the date of enactment of this subsection, unless the Secretary determines that the requirements set forth in this subparagraph are inconsistent with the purposes and policies of this Act.

"(6) At least ninety days prior to notice of any lease sale under subparagraph (D), (E), (F), or, if appropriate, (H) of paragraph (1), the Secretary shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the United States and a lessee concerning the calculation of the net profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee. Rules.

"(7) After an oil and gas lease is granted pursuant to any of the work commitment options of paragraph (1) of this subsection—

"(A) the lessee, at its option, shall deliver to the Secretary upon issuance of the lease either (i) a cash deposit for the full amount of the exploration work commitment, or (ii) a performance bond in form and substance and with a surety satisfactory to the Secretary, in the principal amount of such exploration work commitment assuring the Secretary that such commitment shall be faithfully discharged in accordance with this section, regulations, and the lease; and for purposes of this subparagraph, the principal amount of such cash deposit or bond may, in accordance with regulations, be periodically reduced upon proof, satisfactory to the Secretary, that a portion of the exploration work commitment has been satisfied;

"(B) 50 per centum of all exploration expenditures on, or directly related to, the lease, including, but not limited to (i) geological investigations and related activities, (ii) geophysical investigations including seismic, geomagnetic, and gravity surveys, data processing and interpretation, and (iii) exploratory drilling, core drilling, redrilling, and well completion or abandonment, including the drilling of wells sufficient to determine the size and areal extent of any newly discovered field, and including the cost of mobilization and demobilization of drilling equipment, shall be included in satisfaction of the commitment, except that the lessee's general overhead cost shall not be so included against the work commitment, but its cost (including employee benefits) of employees directly assigned to such exploration work shall be so included; and

"(C) if at the end of the primary term of the lease, including any extension thereof, the full dollar amount of the exploration work commitment has not been satisfied, the balance shall then be paid in cash to the Secretary.

"(8) Not later than thirty days before any lease sale, the Secretary shall submit to the Congress and publish in the Federal Register a notice—

Notice, submittal to Congress.

"(A) identifying any bidding system which will be utilized for such lease sale and the reasons for the utilization of such bidding system; and

Publication in Federal Register.

"(B) designating the lease tracts selected which are to be offered in such sale under the bidding system authorized by subparagraph (A) of paragraph (1) and the lease tracts selected which are to be offered under any one or more of the bidding systems authorized by subparagraphs (B) through (H) of paragraph (1), and the reasons such lease tracts are to be offered under a particular bidding system.

"(9) Within six months after the end of each fiscal year, the Secretary of Energy, in consultation with the Secretary of the Interior,

Report to Congress.

shall report to the Congress with respect to the use of various bidding options provided for in this subsection. Such report shall include—

“(A) the schedule of all lease sales held during such year and the bidding system or systems utilized;

“(B) the schedule of all lease sales to be held the following year and the bidding system or systems to be utilized;

“(C) the benefits and costs associated with conducting lease sales using the various bidding systems;

“(D) if applicable, the reasons why a particular bidding system has not been or will not be utilized; and

“(E) if applicable, the reasons why more than 60 per centum or less than 20 per centum of the area leased in the past year, or to be offered for lease in the upcoming year, was or is to be leased under the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection.

“(b) An oil and gas lease issued pursuant to this section shall—

“(1) be for a tract consisting of a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, unless the Secretary finds that a larger area is necessary to comprise a reasonable economic production unit;

“(2) be for an initial period of—

“(A) five years; or

“(B) not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions,

and as long after such initial period as oil or gas is produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon;

“(3) require the payment of amount or value as determined by one of the bidding systems set forth in subsection (a) of this section;

“(4) entitle the lessee to explore, develop, and produce the oil and gas contained within the lease area, conditioned upon due diligence requirements and the approval of the development and production plan required by this Act;

“(5) provide for suspension or cancellation of the lease during the initial lease term or thereafter pursuant to section 5 of this Act;

“(6) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

“(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.”

(b) Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is further amended by striking out subsection (j), by relettering subsections (c) through (i), and all references thereto, as subsections (i) through (o), respectively, and by inserting immediately after subsection (b) the following new subsections:

“(c) (1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation

43 USC 1334.

15 USC 751 note.

Review.

with the Federal Trade Commission, may agree to a shorter review period.

"(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to conduct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection. Antitrust review.

"(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease may create or maintain a situation inconsistent with the antitrust laws, the Secretary may—

"(A) refuse (i) to accept an otherwise qualified bid for such lease, or (ii) to issue such lease, notwithstanding subsection (a) of this section; or

"(B) issue such lease, and notify the lessee and the Attorney General of the reason for such decision.

"(4) (A) Nothing in this subsection shall restrict the power under any other Act or the common law of the Attorney General, the Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendations, or seek appropriate relief.

"(B) Neither the issuance of a lease nor anything in this subsection shall modify or abridge any private right of action under the antitrust laws.

"(d) No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other leases. Notice and hearing.

"(e) No lease issued under this Act may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with and give due consideration to the views of the Attorney General.

"(f) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

"(g) (1) At the time of soliciting nominations for the leasing of lands within three miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of such State—

"(A) an identification and schedule of the areas and regions proposed to be offered for leasing;

"(B) all information concerning the geographical, geological, and ecological characteristics of such regions;

"(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

"(D) an identification of any field, geological structure, or trap located within three miles of the seaward boundary of such coastal State.

"(2) After receipt of nominations for any area of the outer Continental Shelf within three miles of the seaward boundary of any coastal State, the Secretary shall inform the Governor of such coastal State of any such area which the Secretary believes should be given further consideration for leasing. The Secretary, in consultation with the Governor of the coastal State, shall then, determine whether any such area may contain one or more oil or gas pools or fields underlying both the outer Continental Shelf and lands subject to the jurisdiction of such State. If, with respect to such area, the Secretary selects a tract or tracts which may contain one or more oil or gas pools or fields underlying both the outer Continental Shelf and lands subject to the jurisdiction of such State, the Secretary shall offer the Governor of such coastal State the opportunity to enter into an agreement concerning the disposition of revenues which may be generated by a Federal lease within such area in order to permit their fair and equitable division between the State and Federal Government.

"(3) Within ninety days after the offer by the Secretary pursuant to paragraph (2) of this subsection, the Governor shall elect whether to enter into such agreement and shall notify the Secretary of his decision. If the Governor accepts the offer, the terms of any lease issued shall be consistent with the provisions of this Act, with applicable regulations, and, to the maximum extent practicable, with the applicable laws of the coastal State. If the Governor declines the offer, or if the parties cannot agree to terms concerning the disposition of revenues from such lease (by the time the Secretary determines to offer the area for lease), the Secretary may nevertheless proceed with the leasing of the area.

"(4) Notwithstanding any other provision of this Act, the Secretary shall deposit in a separate account in the Treasury of the United States all bonuses, royalties, and other revenues attributable to oil and gas pools underlying both the outer Continental Shelf and submerged lands subject to the jurisdiction of any coastal State until such time as the Secretary and the Governor of such coastal State agree on, or if the Secretary and the Governor of such coastal State cannot agree, as a district court of the United States determines, the fair and equitable disposition of such revenues and any interest which has accrued and the proper rate of payments to be deposited in the treasuries of the Federal Government and such coastal State.

"(h) Nothing contained in this section shall be construed to alter, limit, or modify any claim of any State to any jurisdiction over, or any right, title, or interest in, any submerged lands."

(c) Subsection (c) of section 105 of the Energy Policy and Conservation Act (42 U.S.C. 6213(c)) is amended to read as follows:

Exemptions.

"(c) The Secretary may, in his discretion, consider a request from any person described in subsection (a) of this section for an exemption from the prohibition of this section. In considering any such request, the Secretary may exempt bidding for leases for lands in any area only if the Secretary finds, on the record after opportunity for an agency hearing, that—

"(1) such lands have extremely high cost exploration or development problems; and

"(2) exploration and development will not occur on such lands unless such exemption is granted.

Findings of the Secretary under this subsection shall be final, and shall not be invalidated unless found to be arbitrary or capricious."

OUTER CONTINENTAL SHELF OIL AND GAS EXPLORATION

Sec. 206. Section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340) is amended—

- (1) by inserting “(a) (1)” immediately before “Any”; and
- (2) by adding at the end thereof the following:

“(2) The provisions of paragraph (1) of this subsection shall not apply to any person conducting explorations pursuant to an approved exploration plan on any area under lease to such person pursuant to the provisions of this Act.

“(b) Except as provided in subsection (f) of this section, beginning ninety days after the date of enactment of this subsection, no exploration pursuant to any oil and gas lease issued or maintained under this Act may be undertaken by the holder of such lease, except in accordance with the provisions of this section.

“(c) (1) Except as otherwise provided in the Act, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this Act, regulations prescribed under this Act, including regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act, and the provisions of such lease. The Secretary shall require such modifications of such plan as are necessary to achieve such consistency. The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission, except that the Secretary shall disapprove such plan if he determines that (A) any proposed activity under such plan would result in any condition described in section 5(a) (2) (A) (i) of this Act, and (B) such proposed activity cannot be modified to avoid such condition. If the Secretary disapproves a plan under the preceding sentence, he may, subject to section 5(a) (2) (B) of this Act, cancel such lease and the lessee shall be entitled to compensation in accordance with the regulations prescribed under section 5(a) (2) (C) (i) or (ii) of this Act.

Exploration plan.

43 USC 1334.

“(2) The Secretary shall not grant any license or permit for any activity described in detail in an exploration plan and affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 307(c) (3) (B) (i) or (ii) of such Act, or the Secretary of Commerce makes the finding authorized by section 307(c) (3) (B) (iii) of such Act.

16 USC 1456.

“(3) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

Regulations.

“(A) a schedule of anticipated exploration activities to be undertaken;

“(B) a description of equipment to be used for such activities;

“(C) the general location of each well to be drilled; and

“(D) such other information deemed pertinent by the Secretary.

Regulations.

"(4) The Secretary may, by regulation, require that such plan be accompanied by a general statement of development and production intentions which shall be for planning purposes only and which shall not be binding on any party.

"(d) The Secretary may, by regulation, require any lessee operating under an approved exploration plan to obtain a permit prior to drilling any well in accordance with such plan.

"(e) (1) If a significant revision of an exploration plan approved under this subsection is submitted to the Secretary, the process to be used for the approval of such revision shall be the same as set forth in subsection (c) of this section.

"(2) All exploration activities pursuant to any lease shall be conducted in accordance with an approved exploration plan or an approved revision of such plan.

"(f) (1) Exploration activities pursuant to any lease for which a drilling permit has been issued or for which an exploration plan has been approved, prior to ninety days after the date of enactment of this subsection, shall be considered in compliance with this section, except that the Secretary may, in accordance with section 5(a)(1)(B) of this Act, order a suspension or temporary prohibition of any exploration activities and require a revised exploration plan.

43 USC 1334.

"(2) The Secretary may require the holder of a lease described in paragraph (1) of this subsection to supply a general statement in accordance with subsection (c)(4) of this section, or to submit other information.

"(3) Nothing in this subsection shall be construed to amend the terms of any permit or plan to which this subsection applies.

Regulations.

"(g) Any permit for geological explorations authorized by this section shall be issued only if the Secretary determines, in accordance with regulations issued by the Secretary, that—

"(1) the applicant for such permit is qualified;

"(2) the exploration will not interfere with or endanger operations under any lease issued or maintained pursuant to this Act; and

"(3) such exploration will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archeological significance.

"(h) The Secretary shall not issue a lease or permit for, or otherwise allow, exploration, development, or production activities within fifteen miles of the boundaries of the Point Reyes Wilderness as depicted on a map entitled 'Wilderness Plan, Point Reyes National Seashore', numbered 612-90,000-B and dated September 1976, unless the State of California issues a lease or permit for, or otherwise allows, exploration, development, or production activities on lands beneath navigable waters (as such term is defined in section 2 of the Submerged Lands Act) of such State which are adjacent to such Wilderness."

43 USC 1301.

ANNUAL REPORT

43 USC 1343.

SEC. 207. (a) Section 15 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344) is amended to read as follows:

"SEC. 15. ANNUAL REPORT BY SECRETARY TO CONGRESS.—Within six months after the end of each fiscal year, the Secretary shall submit

to the President of the Senate and the Speaker of the House of Representatives the following reports:

"(1) A report on the leasing and production program in the outer Continental Shelf during such fiscal year, which shall include—

"(A) a detailed accounting of all moneys received and expended;

"(B) a detailed accounting of all exploration, exploratory drilling, leasing, development, and production activities;

"(C) a summary of management, supervision, and enforcement activities;

"(D) a list of all shut-in and flaring wells; and

"(E) recommendations to the Congress (i) for improvements in management, safety, and amount of production from leasing and operations in the outer Continental Shelf, and (ii) for resolution of jurisdictional conflicts or ambiguities.

"(2) A report prepared after consultation with the Attorney General, with recommendations for promoting competition in the leasing of outer Continental Shelf lands, which shall include any recommendations or findings by the Attorney General and any plans for implementing recommended administrative changes and drafts of any proposed legislation, and which shall contain—

Attorney
General,
consultation.

"(A) an evaluation of the competitive bidding systems permitted under the provisions of section 8 of this Act, and, if applicable, the reasons why a particular bidding system has not been utilized;

43 USC 1337.

"(B) an evaluation of alternative bidding systems not permitted under section 8 of this Act, and why such system or systems should or should not be utilized;

"(C) an evaluation of the effectiveness of restrictions on joint bidding in promoting competition and, if applicable, any suggested administrative or legislative action on joint bidding;

"(D) an evaluation of present measures and a description of any additional measures to encourage entry of new competitors; and

"(E) an evaluation of present measures and a description of additional measures dealing with supplies of oil and gas to independent refiners and distributors."

NEW SECTIONS OF THE OUTER CONTINENTAL SHELF LANDS ACT

SEC. 208. The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by adding at the end thereof the following new sections:

"SEC. 18. OUTER CONTINENTAL SHELF LEASING PROGRAM.—(a) The Secretary, pursuant to procedures set forth in subsections (c) and (d) of this section, shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of this Act. The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or reapproval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:

43 USC 1344.

"(1) Management of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.

"(2) Timing and location of exploration, development, and production of oil and gas among the oil- and gas-bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of—

"(A) existing information concerning the geographical, geological, and ecological characteristics of such regions;

"(B) an equitable sharing of developmental benefits and environmental risks among the various regions;

"(C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

"(D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf;

"(E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

"(F) laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;

"(G) the relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf; and

"(H) relevant environmental and predictive information for different areas of the outer Continental Shelf.

"(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

"(4) Leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.

"(b) The leasing program shall include estimates of the appropriations and staff required to—

"(1) obtain resource information and any other information needed to prepare the leasing program required by this section;

"(2) analyze and interpret the exploratory data and any other information which may be compiled under the authority of this Act;

"(3) conduct environmental studies and prepare any environmental impact statement required in accordance with this Act and with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

"(4) supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration and development of the lease area and compliance with the require-

Fair market
value.

Appropriations
and staff,
estimates.

Environmental
studies and
impact statement.

ments of applicable law and regulations, and with the terms of the lease.

“(c) (1) During the preparation of any proposed leasing program under this section, the Secretary shall invite and consider suggestions for such program from any interested Federal agency, including the Attorney General, in consultation with the Federal Trade Commission, and from the Governor of any State which may become an affected State under such proposed program. The Secretary may also invite or consider any suggestions from the executive of any affected local government in such an affected State, which have been previously submitted to the Governor of such State, and from any other person.

“(2) After such preparation and at least sixty days prior to publication of a proposed leasing program in the Federal Register pursuant to paragraph (3) of this subsection, the Secretary shall submit a copy of such proposed program to the Governor of each affected State for review and comment. The Governor may solicit comments from those executives of local governments in his State which he, in his discretion, determines will be affected by the proposed program. If any comment by such Governor is received by the Secretary at least fifteen days prior to submission to the Congress pursuant to such paragraph (3) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate, and stating his reasons therefor. All such correspondence between the Secretary and the Governor of any affected State, together with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.

“(3) Within nine months after the date of enactment of this section, the Secretary shall submit a proposed leasing program to the Congress, the Attorney General, and the Governors of affected States, and shall publish such proposed program in the Federal Register. Each Governor shall, upon request, submit a copy of the proposed leasing program to the executive of any local government affected by the proposed program.

“(d) (1) Within ninety days after the date of publication of a proposed leasing program, the Attorney General may, after consultation with the Federal Trade Commission, submit comments on the anticipated effects of such proposed program upon competition. Any State, local government, or other person may submit comments and recommendations as to any aspect of such proposed program.

“(2) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State or local government was not accepted.

“(3) After the leasing program has been approved by the Secretary, or after eighteen months following the date of enactment of this section, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this Act.

Publication in
Federal Register.

Leasing program,
submittal to
Congress.
Publication in
Federal Register.

Leasing program,
submittal to
President and
Congress.

- Review.** “(e) The Secretary shall review the leasing program approved under this section at least once each year. He may revise and reapprove such program, at any time, and such revision and reapproval, except in the case of a revision which is not significant, shall be in the same manner as originally developed.
- Regulations.** “(f) The Secretary shall, by regulation, establish procedures for—
- “ (1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;
- Public notice.** “ (2) public notice of and participation in development of the leasing program;
- “ (3) review by State and local governments which may be impacted by the proposed leasing;
- State and local governments, consultation.** “ (4) periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and
- “ (5) consideration of the coastal zone management program being developed or administered by an affected coastal State pursuant to section 305 or section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454, 1455).
- Such procedures shall be applicable to any significant revision or reapproval of the leasing program.
- Information, availability to Secretary.** “(g) The Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information (including interpretations of such data, survey, report, or other information) which may be necessary to assist him in preparing any environmental impact statement and in making other evaluations required by this Act. Data of a classified nature provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. The Secretary shall maintain the confidentiality of all privileged or proprietary data or information for such period of time as is provided for in this Act, established by regulation, or agreed to by the parties.
- “ (h) The heads of all Federal departments and agencies shall provide the Secretary with any nonprivileged or nonproprietary information he requests to assist him in preparing the leasing program and may provide the Secretary with any privileged or proprietary information he requests to assist him in preparing the leasing program. Privileged or proprietary information provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary shall utilize the existing capabilities and resources of such Federal departments and agencies by appropriate agreement.
- 43 USC 1345.** “SEC. 19. COORDINATION AND CONSULTATION WITH AFFECTED STATES AND LOCAL GOVERNMENTS.—(a) Any Governor of any affected State or the executive of any affected local government in such State may submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan. Prior to submitting recommendations to the Secretary, the executive of any affected local government in any affected State must forward his recommendations to the Governor of such State.

"(b) Such recommendations shall be submitted within sixty days after notice of such proposed lease sale or after receipt of such development and production plan.

"(c) The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes, and policies of this Act. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

"(d) The Secretary's determination that recommendations provide, or do not provide, for a reasonable balance between the national interest and the well-being of the citizens of the affected State shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 23 of this Act, unless found to be arbitrary or capricious.

Post, p. 657.

"(e) The Secretary is authorized to enter into cooperative agreements with affected States for purposes which are consistent with this Act and other applicable Federal law. Such agreements may include, but need not be limited to, the sharing of information (in accordance with the provisions of section 26 of this Act), the joint utilization of available expertise, the facilitating of permitting procedures, joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations, and stipulations relevant to outer Continental Shelf operations both onshore and offshore.

Post, p. 664.

"SEC. 20. ENVIRONMENTAL STUDIES.—(a) (1) The Secretary shall conduct a study of any area or region included in any oil and gas lease sale in order to establish information needed for assessment and management of environmental impacts on the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas development in such area or region.

43 USC 1346.

"(2) Each study required by paragraph (1) of this subsection shall be commenced not later than six months after the date of enactment of this section with respect to any area or region where a lease sale has been held or announced by publication of a notice of proposed lease sale before such date of enactment, and not later than six months prior to the holding of a lease sale with respect to any area or region where no lease sale has been held or scheduled before such date of enactment. The Secretary may utilize information collected in any study prior to such date of enactment.

Effective date.

Notice,

publication.

"(3) In addition to developing environmental information, any study of an area or region, to the extent practicable, shall be designed to predict impacts on the marine biota which may result from chronic low level pollution or large spills associated with outer Continental Shelf production, from the introduction of drill cuttings and drilling

muds in the area, and from the laying of pipe to serve the offshore production area, and the impacts of development offshore on the affected and coastal areas.

“(b) Subsequent to the leasing and developing of any area or region, the Secretary shall conduct such additional studies to establish environmental information as he deems necessary and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes.

Regulations.

“(c) The Secretary shall, by regulation, establish procedures for carrying out his duties under this section, and shall plan and carry out such duties in full cooperation with affected States. To the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may utilize the information derived therefrom in lieu of directly conducting such activities. The Secretary may also utilize information obtained from any State or local government, or from any person, for the purposes of this section. For the purpose of carrying out his responsibilities under this section, the Secretary may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal, State, or local government agency.

“(d) The Secretary shall consider available relevant environmental information in making decisions (including those relating to exploration plans, drilling permits, and development and production plans), in developing appropriate regulations and lease conditions, and in issuing operating orders.

**Information,
submittal to
Congress and
availability to
public.**

**Contracts or
grants.**

“(e) As soon as practicable after the end of each fiscal year, the Secretary shall submit to the Congress and make available to the general public an assessment of the cumulative effect of activities conducted under this Act on the human, marine, and coastal environments.

“(f) In executing his responsibilities under this section, the Secretary shall, to the maximum extent practicable, enter into appropriate arrangements to utilize on a reimbursable basis the capabilities of the Department of Commerce. In carrying out such arrangements, the Secretary of Commerce is authorized to enter into contracts or grants with any person, organization, or entity with funds appropriated to the Secretary of the Interior pursuant to this Act.

Study.

43 USC 1347.

“SEC. 21. SAFETY REGULATIONS.—(a) Upon the date of enactment of this section, the Secretary and the Secretary of the Department in which the Coast Guard is operating shall, in consultation with each other and, as appropriate, with the heads of other Federal departments and agencies, promptly commence a joint study of the adequacy of existing safety and health regulations and of the technology, equipment, and techniques available for the exploration, development, and production of the minerals of the outer Continental Shelf. The results of such study shall be submitted to the President who shall submit a plan to the Congress of his proposals to promote safety and health in the exploration, development, and production of the minerals of the outer Continental Shelf.

**Submittal to
President and
Congress.**

“(b) In exercising their respective responsibilities for the artificial islands, installations, and other devices referred to in section 4(a) (1) of this Act, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technologies which the Secretary determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

43 USC 1333.

“(c) The Secretary of the Department in which the Coast Guard is operating shall promulgate regulations or standards applying to unregulated hazardous working conditions related to activities on the outer Continental Shelf when he determines such regulations or standards are necessary. The Secretary of the Department in which the Coast Guard is operating may from time to time modify any regulations, interim or final, dealing with hazardous working conditions on the outer Continental Shelf.

“(d) Nothing in this Act shall affect the authority provided by law to the Secretary of Labor for the protection of occupational safety and health, the authority provided by law to the Administrator of the Environmental Protection Agency for the protection of the environment, or the authority provided by law to the Secretary of Transportation with respect to pipeline safety.

“(e) The Secretary of Commerce, in cooperation with the Secretary of the Department in which the Coast Guard is operating, and the Director of the National Institute of Occupational Safety and Health, shall conduct studies of underwater diving techniques and equipment suitable for protection of human safety and improvement of diver performance. Such studies shall include, but need not be limited to, decompression and excursion table development and improvement and all aspects of diver physiological restraints and protective gear for exposure to hostile environments.

Studies.

“(f) (1) In administering the provisions of this section, the Secretary shall consult and coordinate with the heads of other appropriate Federal departments and agencies for purposes of assuring that, to the maximum extent practicable, inconsistent or duplicative requirements are not imposed.

“(2) The Secretary shall make available to any interested person a compilation of all safety and other regulations which are prepared and promulgated by any Federal department or agency and applicable to activities on the outer Continental Shelf. Such compilation shall be revised and updated annually.

Information,
availability to
public.

“SEC. 22. ENFORCEMENT.—(a) The Secretary, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of the Army shall enforce safety and environmental regulations promulgated pursuant to this Act. Each such Federal department may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of other Federal departments and agencies for the enforcement of their respective regulations.

43 USC 1348.

“(b) It shall be the duty of any holder of a lease or permit under this Act to—

“(1) maintain all places of employment within the lease area or within the area covered by such permit in compliance with

occupational safety and health standards and, in addition, free from recognized hazards to employees of the lease holder or permit holder or of any contractor or subcontractor operating within such lease area or within the area covered by such permit on the outer Continental Shelf;

"(2) maintain all operations within such lease area or within the area covered by such permit in compliance with regulations intended to protect persons, property, and the environment on the outer Continental Shelf; and

"(3) allow prompt access, at the site of any operation subject to safety regulations, to any inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

Regulations.

"(c) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall individually, or jointly if they so agree, promulgate regulations to provide for—

"(1) scheduled onsite inspection, at least once a year, of each facility on the outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this Act, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

"(2) periodic onsite inspection without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations.

Investigation and report.

"(d) (1) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on each major fire and each major oil spillage occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of lesser oil spillages. For purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil during a period of thirty days. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

"(2) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on any death or serious injury occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of any injury. For purposes of this subsection, a serious injury is one resulting in substantial impairment of any bodily unit or function. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

Review.

"(e) The Secretary, or, in the case of occupational safety and health, the Secretary of the Department in which the Coast Guard is operating, may review any allegation from any person of the existence of a violation of a safety regulation issued under this Act.

Witnesses and other evidence.

"(f) In any investigation conducted pursuant to this section, the Secretary or the Secretary of the Department in which the Coast Guard is operating shall have power to summon witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process, as in the district courts of the United States. Such Secretary, or his

designee, shall administer all necessary oaths to any witnesses summoned before such investigation.

"(g) The Secretary shall, after consultation with the Secretary of the Department in which the Coast Guard is operating, include in his annual report to the Congress required by section 15 of this Act the number of violations of safety regulations reported or alleged, any investigations undertaken, the results of such investigations, and any administrative or judicial action taken as a result of such investigations, and the results of the diving studies conducted under section 21(e) of this Act.

Report to Congress.

43 USC 1343.

Ante, p. 654.

43 USC 1349.

"SEC. 23. CITIZEN SUITS, COURT JURISDICTION, AND JUDICIAL REVIEW.—(a) (1) Except as provided in this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this Act against any person, including the United States, and any other government instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution) for any alleged violation of any provision of this Act or any regulation promulgated under this Act, or of the terms of any permit or lease issued by the Secretary under this Act.

USC prec. title 1.

"(2) Except as provided in paragraph (3) of this subsection, no action may be commenced under subsection (a) (1) of this section—

"(A) prior to sixty days after the plaintiff has given notice of the alleged violation, in writing under oath, to the Secretary and any other appropriate Federal official, to the State in which the violation allegedly occurred or is occurring, and to any alleged violator; or

"(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States or a State with respect to such matter, but in any such action in a court of the United States any person having a legal interest which is or may be adversely affected may intervene as a matter of right.

"(3) An action may be brought under this subsection immediately after notification of the alleged violation in any case in which the alleged violation constitutes an imminent threat to the public health or safety or would immediately affect a legal interest of the plaintiff.

"(4) In any action commenced pursuant to this section, the Attorney General, upon the request of the Secretary or any other appropriate Federal official, may intervene as a matter of right.

"(5) A court, in issuing any final order in any action brought pursuant to subsection (a) (1) or subsection (c) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in a sufficient amount to compensate for any loss or damage suffered, in accordance with the Federal Rules of Civil Procedure.

"(6) Except as provided in subsection (c) of this section, all suits challenging actions or decisions allegedly in violation of, or seeking enforcement of, the provisions of this Act, or any regulation promulgated under this Act, or the terms of any permit or lease issued by the Secretary under this Act, shall be undertaken in accordance with the procedures described in this subsection. Nothing in this section shall restrict any right which any person or class of persons may have under any other Act or common law to seek appropriate relief.

"(b) (1) Except as provided in subsection (c) of this section, the district courts of the United States shall have jurisdiction of cases and

controversies arising out of, or in connection with (A) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such minerals, or (B) the cancellation, suspension, or termination of a lease or permit under this Act. Proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place the cause of action arose.

"(2) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this Act may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district having jurisdiction under paragraph (1) of this subsection.

Ante, p. 649.

"(c) (1) Any action of the Secretary to approve a leasing program pursuant to section 18 of this Act shall be subject to judicial review only in the United States Court of Appeal for the District of Columbia.

"(2) Any action of the Secretary to approve, require modification of, or disapprove any exploration plan or any development and production plan under this Act shall be subject to judicial review only in a United States court of appeals for a circuit in which an affected State is located.

"(3) The judicial review specified in paragraphs (1) and (2) of this subsection shall be available only to a person who (A) participated in the administrative proceedings related to the actions specified in such paragraphs, (B) is adversely affected or aggrieved by such action, (C) files a petition for review of the Secretary's action within sixty days after the date of such action, and (D) promptly transmits copies of the petition to the Secretary and to the Attorney General.

"(4) Any action of the Secretary specified in paragraph (1) or (2) shall only be subject to review pursuant to the provisions of this subsection, and shall be specifically excluded from citizen suits which are permitted pursuant to subsection (a) of this section.

"(5) The Secretary shall file in the appropriate court the record of any public hearings required by this Act and any additional information upon which the Secretary based his decision, as required by section 2112 of title 28, United States Code. Specific objections to the action of the Secretary shall be considered by the court only if the issues upon which such objections are based have been submitted to the Secretary during the administrative proceedings related to the actions involved.

"(6) The court of appeals conducting a proceeding pursuant to this subsection shall consider the matter under review solely on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

"(7) Upon the filing of the record with the court, pursuant to paragraph (5), the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari.

"(d) Except as to causes of action which the court considers of greater importance, any action under this section shall take precedence on the docket over all other causes of action and shall be set for hearing at the earliest practical date and expedited in every way.

"SEC. 24. REMEDIES AND PENALTIES.—(a) At the request of the Secretary, the Secretary of the Army, or the Secretary of the Department in which the Coast Guard is operating, the Attorney General or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act, any regulation or order issued under this Act, or any term of a lease, license, or permit issued pursuant to this Act.

43 USC 1350.

"(b) If any person fails to comply with any provision of this Act, or any term of a lease, license, or permit issued pursuant to this Act, or any regulation or order issued under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$10,000 for each day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

Hearing.

"(c) Any person who knowingly and willfully (1) violates any provision of this Act, any term of a lease, license, or permit issued pursuant to this Act, or any regulation or order issued under the authority of this Act designed to protect health, safety, or the environment or conserve natural resources, (2) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this Act, (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act, or (4) reveals any data or information required to be kept confidential by this Act shall, upon conviction, be punished by a fine of not more than \$100,000, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

"(d) Whenever a corporation or other entity is subject to prosecution under subsection (c) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (c) of this section.

"(e) The remedies and penalties prescribed in this Act shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this Act shall be in addition to any other remedies and penalties afforded by any other law or regulation.

"SEC. 25. OIL AND GAS DEVELOPMENT AND PRODUCTION.—(a) (1) Prior to development and production pursuant to an oil and gas lease issued after the date of enactment of this section in any area of the outer Continental Shelf, other than the Gulf of Mexico, or issued or maintained prior to such date of enactment in any area of the outer Continental Shelf, other than the Gulf of Mexico, with respect to which no

Plan, submittal to Secretary.

43 USC 1351.

oil or gas has been discovered in paying quantities prior to such date of enactment, the lessee shall submit a development and production plan (hereinafter in this section referred to as a 'plan') to the Secretary, for approval pursuant to this section.

"(2) A plan shall be accompanied by a statement describing all facilities and operations, other than those on the outer Continental Shelf, proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development and production of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

Plan, availability
to public.

"(3) Except for any privileged or proprietary information (as such term is defined in regulations issued by the Secretary), the Secretary, within ten days after receipt of a plan and statement, shall (A) submit such plan and statement to the Governor of any affected State, and, upon request, to the executive of any affected local government, and (B) make such plan and statement available to any appropriate interstate regional entity and the public.

"(b) After the date of enactment of this section, no oil and gas lease may be issued pursuant to this Act in any region of the outer Continental Shelf, other than the Gulf of Mexico, unless such lease requires that development and production activities be carried out in accordance with a plan which complies with the requirements of this section.

"(c) A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

"(1) the specific work to be performed;

"(2) a description of all facilities and operations located on the outer Continental Shelf which are proposed by the lessee or known by him (whether or not owned or operated by such lessee) to be directly related to the proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;

"(3) the environmental safeguards to be implemented on the outer Continental Shelf and how such safeguards are to be implemented;

"(4) all safety standards to be met and how such standards are to be met;

"(5) an expected rate of development and production and a time schedule for performance; and

"(6) such other relevant information as the Secretary may by regulation require.

"(d) The Secretary shall not grant any license or permit for any activity described in detail in a plan and affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 307(c)(3)(B)(i) or (ii) of such Act, or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act.

"(e) (1) At least once the Secretary shall declare the approval of a development and production plan in any area or region (as defined by the Secretary) of the outer Continental Shelf, other than the Gulf of Mexico, to be a major Federal action.

"(2) The Secretary may require lessees of tracts for which development and production plans have not been approved, to submit preliminary or final plans for their leases, prior to or immediately after a determination by the Secretary that the procedures under the National Environmental Policy Act of 1969 shall commence.

"(f) If approval of a development and production plan is found to be a major Federal action, the Secretary shall transmit the draft environmental impact statement to the Governor of any affected State, and upon request, to the executive of any local government, and shall make such draft available to any appropriate interstate regional entity and the public.

"(g) If approval of a development and production plan is not found to be a major Federal action, the Governor of any affected State and the executive of any affected local government shall have sixty days from the date of receipt of the plan from the Secretary to submit comments and recommendations. Prior to submitting recommendations to the Secretary, the executive of any affected local government must forward his recommendations to the Governor of his State. Such comments and recommendations shall be made available to the public upon request. In addition, any interested person may submit comments and recommendations.

"(h) (1) After reviewing the record of any public hearing held with respect to the approval of a plan pursuant to the National Environmental Policy Act of 1969 or the comments and recommendations submitted under subsection (g) of this section, the Secretary shall, within sixty days after the release of the final environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 in accordance with subsection (e) of this section, or sixty days after the period provided for comment under subsection (g) of this section, approve, disapprove, or require modifications of the plan. The Secretary shall require modification of a plan if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the human, marine, or coastal environment, including compliance with the regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act. Any modification required by the Secretary which involves activities for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) must receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c) (3) (B) (i) or (ii) of such Act unless the Secretary of Commerce makes the finding authorized by section 307(c) (3) (B) (iii) of such Act. The Secretary shall disapprove a plan—

"(A) if the lessee fails to demonstrate that he can comply with the requirements of this Act or other applicable Federal law, including the regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act;

"(B) if any of the activities described in detail in the plan for which a Federal license or permit is required and which affects

42 USC 4321

note.

Environmental
impact statement
draft, availability
to public.

Public hearing.

42 USC 4321

note.

16 USC 1456.

Disapproval of
plan.

16 USC 1456.

any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) do not receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c)(3)(B)(i) or (ii) of such Act and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of such Act;

“(C) if operations threaten national security or national defense; or

“(D) if the Secretary determines, because of exceptional geological conditions in the lease areas, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, that (i) implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal or human environments, (ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and (iii) the advantages of disapproving the plan outweigh the advantages of development and production.

“(2)(A) If a plan is disapproved—

“(i) under subparagraph (A) of paragraph (1); or

“(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued after approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1455),

the lessee shall not be entitled to compensation because of such disapproval.

“(B) If a plan is disapproved—

“(i) under subparagraph (C) or (D) of paragraph (1); or

“(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued before approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972, and such approval occurs after the lessee has submitted a plan to the Secretary,

16 USC 1451
note.

the term of the lease shall be duly extended, and at any time within five years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Secretary shall approve, disapprove, or require modifications of such plan in accordance with this subsection.

“(C) Upon expiration of the five-year period described in subparagraph (B) of this paragraph, or, in the Secretary's discretion, at an earlier time upon request of a lessee, if the Secretary has not approved a plan, the Secretary shall cancel the lease and the lessee shall be entitled to receive compensation in accordance with section 5(a)(2)(C) of this Act. The Secretary may, at any time within the five-year period described in subparagraph (B) of this paragraph, require the lessee to submit a development and production plan for approval, disapproval, or modification. If the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been duly diligent in pursuing his obligations under the lease, and shall immediately initiate procedures to cancel such lease, without compensation, under the provisions of section 5(c) of this Act.

43 USC 1334.

"(3) The Secretary shall, from time to time, review each plan approved under this section. Such review shall be based upon changes in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan. If the review indicates that the plan should be revised to meet the requirements of this subsection, the Secretary shall require such revision.

Review.

"(i) The Secretary may approve any revision of an approved plan proposed by the lessee if he determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety, and environmental protection of the recovery operation, is the only means available to avoid substantial economic hardship to the lessee, or is otherwise not inconsistent with the provisions of this Act, to the extent such revision is consistent with protection of the human, marine, and coastal environments. Any revision of an approved plan which the Secretary determines is significant shall be reviewed in accordance with subsections (d) through (f) of this section.

"(j) Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with an approved plan, the lease may be canceled in accordance with sections 5 (c) and (d). Termination of a lease because of failure to comply with an approved plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

43 USC 1334.

"(k) If any development and production plan submitted to the Secretary pursuant to this section provides for the production and transportation of natural gas, the lessee shall contemporaneously submit to the Federal Energy Regulatory Commission that portion of such plan which relates to production of natural gas and the facilities for transportation of natural gas. The Secretary and the Federal Energy Regulatory Commission shall agree as to which of them shall prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 applicable to such portion of such plan, or conduct studies as to the effect on the environment of implementing it. Thereafter, the findings and recommendations by the agency preparing such environmental impact statement or conducting such studies pursuant to such agreement shall be adopted by the other agency, and such other agency shall not independently prepare another environmental impact statement or duplicate such studies with respect to such portion of such plan, but the Federal Energy Regulatory Commission, in connection with its review of an application for a certificate of public convenience and necessity applicable to such transportation facilities pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717), may prepare such environmental studies or statement relevant to certification of such transportation facilities as have not been covered by an environmental impact statement or studies prepared by the Secretary. The Secretary, in consultation with the Federal Energy Regulatory Commission, shall promulgate rules to implement this subsection, but the Federal Energy Regulatory Commission shall retain sole authority with respect to rules and procedures applicable to the filing of any application with the Commission and to all aspects of the Commission's review of, and action on, any such application.

Plan, transmittal to Federal Energy Regulatory Commission.

42 USC 4321 note.

Rules.

"(l) The Secretary may require the provisions of this section to apply to an oil and gas lease issued or maintained under this Act, which is located in that area of the Gulf of Mexico which is adjacent

43 USC 1333. to the State of Florida, as determined pursuant to section 4(a) (2) of
 43 USC 1352. this Act.

Regulations.

"SEC. 26. OUTER CONTINENTAL SHELF OIL AND GAS INFORMATION PROGRAM.—(a) (1) (A) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this Act shall provide the Secretary access to all data and information (including processed, analyzed, and interpreted information) obtained from such activity and shall provide copies of such data and information as the Secretary may request. Such data and information shall be provided in accordance with regulations which the Secretary shall prescribe.

"(B) If an interpretation provided pursuant to subparagraph (A) of this paragraph is made in good faith by the lessee or permittee, such lessee or permittee shall not be held responsible for any consequence of the use of or reliance upon such interpretation.

"(C) Whenever any data and information is provided to the Secretary, pursuant to subparagraph (A) of this paragraph—

"(i) by a lessee, in the form and manner of processing which is utilized by such lessee in the normal conduct of his business, the Secretary shall pay the reasonable cost of reproducing such data and information;

"(ii) by a lessee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay the reasonable cost of processing and reproducing such data and information;

"(iii) by a permittee, in the form and manner of processing which is utilized by such permittee in the normal conduct of his business, the Secretary shall pay such permittee the reasonable cost of reproducing such data and information for the Secretary and shall pay at the lowest rate available to any purchaser for processing such data and information the costs attributable to such processing; and

"(iv) by a permittee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay such permittee the reasonable cost of processing and reproducing such data and information for the Secretary, pursuant to such regulations as he may prescribe.

43 USC 1340.

"(2) Each Federal department and agency shall provide the Secretary with any data obtained by such Federal department or agency pursuant to section 11 of this Act, and any other information which may be necessary or useful to assist him in carrying out the provisions of this Act.

"(b) (1) Data and information provided to the Secretary pursuant to subsection (a) of this section shall be processed, analyzed, and interpreted by the Secretary for purposes of carrying out his duties under this Act.

Data, submittal to State and local governments.

"(2) As soon as practicable after information provided to the Secretary pursuant to subsection (a) of this section is processed, analyzed, and interpreted, the Secretary shall make available to the affected States, and upon request, to any affected local government, a summary of data designed to assist them in planning for the onshore impacts of possible oil and gas development and production. Such summary shall include estimates of (A) the oil and gas reserves in areas leased or to be leased, (B) the size and timing of development if and when oil or

gas, or both, is found, (C) the location of pipelines, and (D) the general location and nature of onshore facilities.

"(c) The Secretary shall prescribe regulations to (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained, and (2) set forth the time periods and conditions which shall be applicable to the release of such information. Such regulations shall include a provision that no such information will be transmitted to any affected State unless the lessee, or the permittee and all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.

Regulations.

"(d) (1) The Secretary shall transmit to any affected State—

Privileged information, transmittal to affected State.

"(A) an index, and upon request copies of, all relevant actual or proposed programs, plans, reports, environmental impact statements, tract nominations (including negative nominations) and other lease sale information, any similar type of relevant information, and all modifications and revisions thereof and comments thereon, prepared or obtained by the Secretary pursuant to this Act, but no information transmitted by the Secretary under this subsection shall identify any particular tract with the name or names of any particular party so as not to compromise the competitive position of any party or parties participating in the nominations;

"(B) (i) the summary of data prepared by the Secretary pursuant to subsection (b)(2) of this section, and (ii) any other processed, analyzed, or interpreted data prepared by the Secretary pursuant to subsection (b)(1) of this section, unless the Secretary determines that transmittal of such data prepared pursuant to such subsection (b)(1) would unduly damage the competitive position of the lessee or permittee who provided the Secretary with the information which the Secretary had processed, analyzed, or interpreted; and

"(C) any relevant information received by the Secretary pursuant to subsection (a) of this section, subject to any applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

"(2) Notwithstanding the provisions of any regulation required pursuant to the second sentence of subsection (c) of this section, the Governor of any affected State may designate an appropriate State official to inspect, at a regional location which the Secretary shall designate, any privileged information received by the Secretary regarding any activity adjacent to such State, except that no such inspection shall take place prior to the sale of a lease covering the area in which such activity was conducted. Knowledge obtained by such State during such inspection shall be subject to applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

"(e) Prior to transmitting any privileged information to any State, or granting such State access to such information, the Secretary shall enter into a written agreement with the Governor of such State in which such State agrees, as a condition precedent to receiving or being granted access to such information, to waive the defenses set forth in subsection (f)(2) of this section, and to hold the United States harmless from any violations of the regulations prescribed pursuant to subsection (c) that the State or its employees may commit.

Civil action.

"(f) (1) Whenever any employee of the Federal Government or of any State reveals information in violation of the regulations prescribed pursuant to subsection (c) of this section, the lessee or permittee who supplied such information to the Secretary or to any other Federal official, and any person to whom such lessee or permittee has sold such information under promise of confidentiality, may commence a civil action for damages in the appropriate district court of the United States against the Federal Government or such State, as the case may be.

"(2) In any action commenced against the Federal Government or a State pursuant to paragraph (1) of this subsection, the Federal Government or such State, as the case may be, may not raise as a defense (A) any claim of sovereign immunity, or (B) any claim that the employee who revealed the privileged information which is the basis of such suit was acting outside the scope of his employment in revealing such information.

"(g) Any provision of State or local law which provides for public access to any privileged information received or obtained by any person pursuant to this Act is expressly preempted by the provisions of this section, to the extent that it applies to such information.

"(h) If the Secretary finds that any State cannot or does not comply with the regulations issued under subsection (c) of this section, he shall thereafter withhold transmittal and deny inspection of privileged information to such State until he finds that such State can and will comply with such regulations.

43 USC 1353.

43 USC 1335,
1336.

"SEC. 27. FEDERAL PURCHASE AND DISPOSITION OF OIL AND GAS.—
(a) (1) Except as may be necessary to comply with the provisions of sections 6 and 7 of this Act, all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease issued or maintained in accordance with this Act, shall, on demand of the Secretary, be paid in oil or gas.

"(2) The United States shall have the right to purchase not to exceed 16 $\frac{2}{3}$ per centum by volume of the oil and gas produced pursuant to a lease issued or maintained in accordance with this Act, at the regulated price, or, if no regulated price applies, at the fair market value at the well head of the oil and gas saved, removed, or sold, except that any oil or gas obtained by the United States as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

"(3) Title to any royalty, net profit share, or purchased oil or gas may be transferred, upon request, by the Secretary to the Secretary of Defense, to the Administrator of the General Services Administration, or to the Secretary of Energy, for disposal within the Federal Government.

"(b) (1) The Secretary, except as provided in this subsection, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value, any part of the oil (A) obtained by the United States pursuant to any lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a) (2) of this section.

Allocation or
lottery sale.

"(2) Whenever, after consultation with the Secretary of Energy, the Secretary determines that small refiners do not have access to adequate supplies of oil at equitable prices, the Secretary may dispose of any oil which is taken as a royalty or net profit share accruing or

reserved to the United States pursuant to any lease issued or maintained under this Act, or purchased by the United States pursuant to subsection (a) (2) of this section, by conducting a lottery for the sale of such oil, or may equitably allocate such oil among the competitors for the purchase of such oil, at the regulated price, or if no regulated price applies, at its fair market value. The Secretary shall limit participation in any allocation or lottery sale to assure such access and shall publish notice of such allocation or sale, and the terms thereof, at least thirty days in advance. Such notice shall include qualifications for participation, the amount of oil to be sold, and any limitation in the amount of oil which any participant may be entitled to purchase.

Notice.

“(3) The Secretary may only sell or otherwise dispose of oil described in paragraph (1) of this subsection in accordance with any provision of law, or regulations issued in accordance with such provisions, which provide for the Secretary of Energy to allocate, transfer, exchange, or sell oil in amounts or at prices determined by such provision of law or regulations.

Regulations.

“(c) (1) Except as provided in paragraph (2) of this subsection, the Secretary, pursuant to such terms as he determines, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the gas (A) obtained by the United States pursuant to a lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a) (2) of this section.

“(2) Whenever, after consultation with and advice from the Secretary of Energy, the Federal Energy Regulatory Commission determines that an emergency shortage of natural gas is threatening to cause severe economic or social dislocation in any region of the United States and that such region can be serviced in a practical, feasible, and efficient manner by royalty, net profit share, or purchased gas obtained pursuant to the provisions of this section, the Secretary of the Interior may allocate or conduct a lottery for the sale of such gas, and shall limit participation in any allocation or lottery sale of such gas to any person servicing such region, but he shall not sell any such gas for more than its regulated price, or, if no regulated price applies, less than its fair market value. Prior to selling or allocating any gas pursuant to this subsection, the Secretary shall consult with the Federal Energy Regulatory Commission.

Natural gas emergency. Allocation or lottery sale.

“(d) The lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Secretary, and which is not transferred pursuant to subsection (a) (3) of this section, and shall pay to the United States a cash amount equal to the regulated price, or, if no regulated price applies, the fair market value of the oil or gas so obtained.

Federal Energy Regulatory Commission, consultation.

“(e) As used in this section—

“(1) the term ‘regulated price’ means the highest price—

“Regulated price.”

“(A) at which oil may be sold pursuant to the Emergency Petroleum Allocation Act of 1973 and any rule or order issued under such Act;

15 USC 751 note.

“(B) at which natural gas may be sold to natural-gas companies pursuant to the Natural Gas Act, any other Act, regulations governing natural gas pricing, or any rule or order issued under any such Act or any such regulations; or

15 USC 717w.

“(C) at which either Federal oil or gas may be sold under any other provision of law or rule or order thereunder which

sets a price (or manner for determining a price) for oil or gas; and

“(2) the term ‘small refiner’ has the meaning given such term by Small Business Administration Standards 128.3-8 (d) and (g), as in effect on the date of enactment of this section or as thereafter revised or amended.

“(f) Nothing in this section shall prohibit the right of the United States to purchase any oil or gas produced on the outer Continental Shelf as provided by section 12(b) of this Act.

43 USC 1341.

43 USC 1354.

“SEC. 28. LIMITATION ON EXPORT.—(a) Except as provided in subsection (d) of this section, any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969 (50 App. U.S.C. 2401 et seq.).

Presidential
findings,
publication.

“(b) Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

Presidential
report to
Congress.

“(c) The President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

Resolution of
disapproval.

“(d) The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or which is exchanged or exported pursuant to an existing international agreement.

43 USC 1355.

“SEC. 29. RESTRICTIONS ON EMPLOYMENT.—No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under this Act, and who was at any time during the twelve months preceding the termination of his employment with the Department compensated under the Executive Schedule or compensated at or above the annual rate of basic pay for grade GS-16 of the General Schedule shall—

3 CFR, 1977

Comp., p. 142.

5 USC 5332 note.

“(1) within two years after his employment with the Department has ceased—

“(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;

“(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or

“(C) knowingly aid or assist in representing any other person (except the United States) in any formal or informal appearance before,

any department, agency, or court of the United States, or any officer or employee thereof, in connection with any judicial or

other proceeding, application, request for a ruling or other determination, regulation, order, lease, permit, rulemaking, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility or in which he participated personally and substantially as an officer or employee; or

“(2) within one year after his employment with the Department has ceased—

“(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before; or

“(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to,

the Department of the Interior, or any officer or employee thereof, in connection with any judicial, rulemaking, regulation, order, lease, permit, regulation, or other particular matter which is pending before the Department of the Interior or in which the Department has a direct and substantial interest.

“SEC. 30. DOCUMENTATION, REGISTRY, AND MANNING REQUIREMENTS.—(a) Within six months after the date of enactment of this section, the Secretary of the Department in which the Coast Guard is operating shall issue regulations which require that any vessel, rig, platform, or other vehicle or structure—

43 USC 1356.
Regulations.

“(1) which is used at any time after the one-year period beginning on the effective date of such regulations for activities pursuant to this Act and which is built or rebuilt at any time after such one-year period, when required to be documented by the laws of the United States, be documented under the laws of the United States;

“(2) which is used for activities pursuant to this Act, comply, except as provided in subsection (b), with such minimum standards of design, construction, alteration, and repair as the Secretary or the Secretary of the Department in which the Coast Guard is operating establishes; and

“(3) which is used at any time after the one-year period beginning on the effective date of such regulations for activities pursuant to this Act, be manned or crewed, except as provided in subsection (c), by citizens of the United States or aliens lawfully admitted to the United States for permanent residence.

“(b) The regulations issued under subsection (a) (2) of this section shall not apply to any vessel, rig, platform, or other vehicle or structure built prior to the date of enactment of this section, until such time after such date as such vehicle or structure is rebuilt.

“(c) The regulations issued under subsection (a) (3) of this section shall not apply—

“(1) to any vessel, rig, platform, or other vehicle or structure if—

“(A) specific contractual provisions or national registry manning requirements in effect on the date of enactment of this section provide to the contrary;

“(B) there are not a sufficient number of citizens of the United States, or aliens lawfully admitted to the United

States for permanent residence, qualified and available for such work; or

“(C) the President makes a specific finding, with respect to the particular vessel, rig, platform, or other vehicle or structure, that application would not be consistent with the national interest; and

“(2) to any vessel, rig, platform, or other vehicle or structure, over 50 percent of which is owned by citizens of a foreign nation or with respect to which the citizens of a foreign nation have the right effectively to control, except to the extent and to the degree that the President determines that the government of such foreign nation or any of its political subdivisions has implemented, by statute, regulation, policy, or practice, a national manning requirement for equipment engaged in the exploration, development, or production of oil and gas in its offshore areas.”

TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

DEFINITIONS

43 USC 1811.

SEC. 301. For the purposes of this title, the term—

(1) “Secretary” means the Secretary of Transportation;

(2) “Fund” means the Offshore Oil Pollution Compensation Fund established under section 302 of this title;

(3) “person” means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity;

(4) “incident” means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, or any combination thereof, which causes or poses an imminent threat of oil pollution;

(5) “vessel” means every description of watercraft or other contrivance, whether or not self-propelled, which is operating in the waters above the Outer Continental Shelf (as the term “outer Continental Shelf” is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 (a))), or which is operating in the waters above submerged lands seaward from the coastline of a State (as the term “submerged lands” is described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301 (a) (2))), and which is transporting oil directly from an offshore facility;

(6) “public vessel” means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and

(B) is not engaged in commercial service;

(7) “facility” means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, drilling for, producing, processing, storing, transferring, or otherwise handling oil;

(8) “offshore facility” includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf (as the term “outer Continental Shelf” is defined in section 2(a) of the Outer Continental Shelf

Lands Act (43 U.S.C. 1331(a))), and is located on the Outer Continental Shelf, except that such term does not include (A) a vessel, or (B) a deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502));

(9) "oil pollution" means—

(A) the presence of oil either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State (as the term "submerged lands" is described in section 2(a)(2) of the Submerged Lands Act (43 U.S.C. 1301(a)(2))), or on the adjacent shoreline of such a State, or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(B) the presence of oil in or on the waters of the high seas outside the territorial limits of the United States—

(i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); or

(ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(C) the presence of oil in or on the territorial sea, navigable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under this title;

(10) "United States claimant" means any person residing in the United States, the Government of the United States or an agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim under this title;

(11) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim under this title;

(12) "United States" includes and "State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(13) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(14) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident;

(15) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include cleanup costs;

(16) "person in charge" means the individual immediately responsible for the operation of a vessel or offshore facility;

(17) "claim" means a demand in writing for a sum certain;

(18) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(19) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, a vessel or offshore facility, whether by lease, permit, contract, license, or other form of agreement, or with respect to any offshore facility abandoned without prior approval of the Secretary of the Interior, the person who owned such offshore facility immediately prior to such abandonment, except that such term does not include a person who, without participating in the management or operation of a vessel or offshore facility, holds indicia of ownership primarily to protect his security interest in the vessel or offshore facility;

(20) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of an offshore facility, any person, except the owner, who is responsible for the operation of such facility by agreement with the owner;

(21) "property" means littoral, riparian, or marine property;

(22) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, and section 5 of the Intervention on the High Seas Act; and

(B) cleanup costs, other than the costs described in subparagraph (A);

(23) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator;

(24) "gross ton" means a unit of 100 cubic feet for the purpose of measuring the total unit capacity of a vessel; and

(25) "barrel" means 42 United States gallons at 60 degrees Fahrenheit.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

Offshore Oil
Pollution
Compensation
Fund.
43 USC 1812.

SEC. 302. (a) There is hereby established in the Treasury of the United States an Offshore Oil Pollution Compensation Fund in an amount not to exceed \$200,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b) (2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary and the Secretary of the Treasury as specified in this title. The Fund may sue and be sued in its own name.

(b) The Fund shall be composed of—

(1) all fees collected pursuant to subsection (d) of this section; and

(2) all other moneys recovered or collected on behalf of the Fund under section 308 or any other provision of this title.

(c) The Fund shall be immediately available for—

(1) removal costs described in section 301 (22);

(2) the processing and settlement of claims under section 307 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

(3) subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Gov-

ernment incident to the administration of this title, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 308 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

Regulations.

(d) (1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such modification, but no earlier than the ninetieth day following the date such regulation is published in the Federal Register. Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than \$100,000,000 and not more than \$200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

Regulations.

Publication in
Federal Register.

(3) (A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed \$10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e) (2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

Civil penalty.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

Violation,
prosecution.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

Regulations.
Audit and
examination.

(e) (1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

(2) The Secretary of the Treasury may invest any excess in the Fund, above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

Regulations.

31 USC 774.

(f) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

DAMAGES AND CLAIMANTS

43 USC 1813.

SEC. 303. (a) Claims for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—

- (1) removal costs; and
- (2) damages, including—
 - (A) injury to, or destruction of, real or personal property;
 - (B) loss of use of real or personal property;
 - (C) injury to, or destruction of, natural resources;
 - (D) loss of use of natural resources;
 - (E) loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; and
 - (F) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) A claim authorized by subsection (a) of this section may be asserted—

- (1) under paragraph (1), by any claimant, except that the owner or operator of a vessel or offshore facility involved in an incident may assert such a claim only if he can show—

- (A) that he is entitled to a defense to liability under section 304(c) (1) or 304(c) (2) of this title; or

- (B) if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 304(b), except that if he is not entitled to such a defense to liability but is entitled to such a limitation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;

- (2) under paragraphs (2) (A), (B), and (D), by any United States claimant if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

- (3) under paragraph (2) (C), by the President, as trustees for natural resources over which the Federal Government has sovereign rights or exercises exclusive management authority, or by

any State for natural resources within the boundary of the State belonging to, managed by, controlled by, or appertaining to the State, and sums recovered under paragraph (2)(C) shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources;

(4) under paragraph (2)(E), by any United States claimant if the claimant derives at least 25 per centum of his earnings from activities which utilize the property or natural resource;

(5) under paragraph (2)(F), by the Federal Government and any State or political subdivision thereof;

(6) under paragraphs (2)(A) through (E), by a foreign claimant to the same extent that a United States claimant may assert a claim if—

(A) the oil pollution occurred in or on the territorial sea, navigable waters or internal waters, or adjacent shoreline of a foreign country of which the claimant is a resident;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from an offshore facility or from a vessel in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants;

(7) under paragraph (1) or (2), by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claimants would be more adequately represented as a class in asserting their claims.

(c) If the Attorney General fails to take action under paragraph (7) of subsection (b) within sixty days of the date on which the Secretary designates a source under section 306 of this title, any member of a group described in such paragraph may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant for damages authorized by this section.

LIABILITY

SEC. 304. (a) Subject to the provisions of subsections (b) and (c) of this section, the owner and operator of a vessel other than a public vessel, or of an offshore facility, which is the source of oil pollution, or poses a threat of oil pollution in circumstances which justify the incurrence of the type of costs described in section 301(22) of this title, shall be jointly, severally, and strictly liable for all loss for which a claim may be asserted under section 303 of this title.

43 USC 1814.

(b) Except when the incident is caused primarily by willful misconduct or gross negligence, within the privity or knowledge of the

owner or operator, or is caused primarily by a violation, within the privity or knowledge of the owner or operator, of applicable safety, construction, or operating standards or regulations of the Federal Government, the total of the liability under subsection (a) of this section incurred by, or on behalf of, the owner or operator shall be—

(1) in the case of a vessel, limited to \$250,000 or \$300 per gross ton, whichever is greater, except when the owner or operator of a vessel fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities; or

(2) in the case of an offshore facility, the total of removal and cleanup costs, and an amount limited to \$35,000,000 for all damages.

(c) There shall be no liability under subsection (a) of this section—

(1) if the incident is caused solely by any act of war, hostilities, civil war, or insurrection, or by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight; or

(2) if the incident is caused solely by the negligent or intentional act of the damaged party or any third party (including any government entity).

(d) Notwithstanding the limitations, exceptions, or defenses of subsection (b) or (c) of this section, all costs of removal incurred by the Federal Government or any State or local official or agency in connection with a discharge of oil from any offshore facility or vessel shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occurred.

(e) The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.

(f) (1) Subject to the provisions of paragraph (2) of this subsection, the Fund shall be liable, without any limitation, for all losses for which a claim may be asserted under section 303 of this title, to the extent that such losses are not otherwise compensated.

(2) Except for the removal costs specified in section 301(22), there shall be no liability under paragraph (1) of this subsection—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(g) (1) In addition to the losses for which claims may be asserted under section 303 of this title, and without regard to the limitation of liability provided in subsection (b) of this section, the owner, operator, or guarantor of an offshore facility or vessel shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim is presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which such owner, operator, or guarantor offers the claimant an amount equal to or greater than the amount finally paid in satisfaction of the claim to the date upon which the claimant accepts such amount, inclusive. However, if such owner, operator, or guarantor offers the claimant, within sixty days of the date

Report to
Congress.

upon which the claim is presented, or of the date upon which advertising is commenced pursuant to section 306 of this title, whichever is later, an amount equal to or greater than the amount finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer is accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) of this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) Nothing in this title shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(i) To the extent that they are in conflict or otherwise inconsistent with any other provision of law relating to liability or the limitation thereof, the provisions of this section shall supersede such other provision of law, including section 4283(a) of the Revised Statutes (46 U.S.C. 183(a)).

FINANCIAL RESPONSIBILITY

SEC. 305. (a) (1) The owner or operator of any vessel (except a non-self-propelled barge that does not carry oil as fuel or cargo) which uses an offshore facility shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such vessel would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title. Financial responsibility may be established by any one, or any combination, of the following methods, acceptable to the President: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In any case where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

Regulations.
43 USC 1815.

(2) The Secretary, in accordance with regulations promulgated by him, shall—

Regulations.

(A) deny entry to any port or place in the United States or to the navigable waters to; and

(B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States,

any vessel subject to this subsection which, upon request, does not produce certification furnished by the President that such vessel is in compliance with the financial responsibility provisions of paragraph (1) of this subsection.

(3) The Secretary, in accordance with regulations promulgated by him, shall have access to all offshore facilities and vessels conducting activities under the Outer Continental Shelf Lands Act, and such facilities and vessels shall, upon request, show certification of financial responsibility.

Regulations.
43 USC 1331
note.

Regulations.

(b) The owner or operator of an offshore facility which (1) is used for drilling for, producing, or processing oil, or (2) has the capacity to transport, store, transfer, or otherwise handle more than one thousand barrels of oil at any one time, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the owner or operator of such facility would be exposed in a case where he would be entitled to limit his liability in accordance with the provisions of section 304(b) of this title, or \$35,000,000, whichever is less.

(c) Any claim authorized by section 303(a) may be asserted directly against any guarantor providing evidence of financial responsibility for any owner or operator of an offshore facility or vessel as required under this section. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to such owner or operator under this title. Such guarantor shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of such owner or operator, but shall not be entitled to invoke any other defense which such guarantor might be entitled to invoke in proceedings brought by such owner or operator against such guarantor.

Study.

(d) The President shall conduct a study to determine—

(1) whether adequate private oil pollution insurance protection is available on reasonable terms and conditions to the owners and operators of vessels, onshore facilities, and offshore facilities; and

(2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions.

Report.

The President shall submit the results of his study, together with his recommendation, within one year after the date of enactment of this title, and shall submit an interim report on his study within three months after such date of enactment.

NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

43 USC 1816.

SEC. 306. (a) The person in charge of a vessel or offshore facility which is involved in an incident shall immediately notify the Secretary of the incident as soon as he has knowledge thereof. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against such person or his employer in any criminal case, other than a case involving prosecution for perjury or for giving a false statement.

(b) (1) When the Secretary receives information pursuant to subsection (a) of this section or otherwise of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source and the guarantor of such designation.

Regulations.

(2) When a source designated under paragraph (1) of this subsection is a vessel or offshore facility and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, as required by regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not made in accordance with this paragraph, the Secretary shall, as

he finds necessary, and at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to such owner, operator, or guarantor.

(c) In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b) of this section;

(2) the source of the discharge was a public vessel; or

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of such subsection (b), the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

(d) Advertisement under subsection (b) of this section shall commence no later than fifteen days after the date of the designation made under such subsection and shall continue for a period of no less than thirty days.

Effective date.

CLAIMS SETTLEMENT

SEC. 307. (a) Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator, or guarantor. 43 USC 1817.

(b) All claims shall be presented to the Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 306(c) of this title; or

(2) where the owner or operator may recover under the provisions of section 303(b)(1) of this title.

(c) In the case of a claim presented in accordance with subsection (a) of this section, and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason; or

(2) the claim is not settled by any person by payment to the claimant within sixty days from the date upon which (A) the claim is presented, or (B) advertising is commenced pursuant to section 306(b)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the Fund, that election to be irrevocable and exclusive.

(d) In the case of a claim presented in accordance with subsection (a) of this section, where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 304(b) of this title or because the owner, operator, and guarantor to whom the claim is presented are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

(e) In the case of a claim which is presented to any person, pursuant to subsection (a) of this section, and which is being presented to the Fund, pursuant to subsection (c) or (d) of this section, such person, at the request of the claimant, shall transmit the claim and supporting documents to the Fund. The Secretary may, by regulation, prescribe the documents to be transmitted and the terms under which they are to be transmitted.

Regulations.

(f) In the case of a claim presented to the Fund, pursuant to subsection (b), (c), or (d) of this section, and in which the Fund—

(1) denies all liability for the claim, for any reason; or

(2) does not settle the claim by payment to the claimant within sixty days after the date upon which (A) the claim is presented to the Fund, or (B) advertising is commenced pursuant to section 306(c) of this title, whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5, United States Code. However, a claimant who has presented a claim to the Fund pursuant to such subsection (b) may elect to commence an action in court against the Fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

Regulations.

(g) (1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

Contract.

(2) Except as provided in paragraph (3) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Fund and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) upon a showing by the Secretary that advertising is not reasonably practicable. The Secretary may make advance payments to a contractor for services and facilities, and the Secretary may advance to the contractor funds to be used for the payment of claims. The Secretary may review and audit claim payments made pursuant to this subsection. A payment to a claimant for a single claim in excess of \$100,000, or two or more claims aggregating in excess of \$200,000, shall be first approved by the Secretary. When the services of a State agency are used in processing and settling claims, no payment may be made on a claim asserted by or on behalf of such State or any of its agencies or subdivisions unless the payment has been approved by the Secretary.

Review and audit.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations or State agencies are inadequate, the Secretary may use Federal personnel to process claims against the Fund.

Panel.

(h) Notwithstanding subsection (b) of section 556 of title 5, United States Code, the Secretary is authorized to appoint, from time to time for a period of not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (f) of this section. At least one member of each panel shall be qualified to conduct adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the Fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222, as amended, regarding special Government employees, shall apply to panel members appointed from private life.

18 USC 201 et
seq.

18 USC 201 note.

(i) (1) Upon receipt of a request for a decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge appointed under section 3105 of title 5, United States Code, or (B) a panel appointed under subsection (h) of this section.

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection, the presiding officer may require by subpoena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpoena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

Subpena.

(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which, the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts, or if the damage occurred outside any district, in the nearest district.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with regulations which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the Fund.

Final order.
Regulations.

(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title 5, United States Code, in the district courts of the United States.

(j) (1) In any action brought pursuant to this title against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Fund at the same time such pleadings are served upon the opposing parties.

(2) The Fund may intervene in any action described in paragraph (1) of this subsection as a matter of right.

(3) In any action described in paragraph (1) of this subsection to which the Fund is a party, if the owner, operator, or guarantor admits liability under this title, the Fund upon its motion shall be dismissed therefrom to the extent of the admitted liability.

(4) If the Fund receives from either the plaintiff or the defendant notice of an action described in paragraph (1) of this subsection, the Fund shall be bound by any judgment entered therein, whether or not the Fund was a party to the action.

(5) If neither the plaintiff nor the defendant gives notice of an action described in paragraph (1) of this subsection to the Fund, the limitation of liability otherwise permitted by section 304(b) of this title shall not be available to the defendant, and the plaintiff shall not recover from the Fund any sums not paid by the defendant.

(k) In any action brought against the Fund under this title, the plaintiff may join any owner, operator, or guarantor, and the Fund may join any person who is or may be liable to the Fund under any provision of this title.

(l) No claim may be presented, nor may an action be commenced for economic losses recoverable under this title, unless such claim is presented to, or such action is commenced against, the owner, operator, or guarantor, or the Fund, as to their respective liabilities, within three years after the date of discovery of the economic loss for which a claim may be asserted under section 303(a) of this title, or within six years of the date of the incident which resulted in such loss, whichever is earlier.

SUBROGATION

43 USC 1818.

SEC. 308. (a) Any person or governmental entity, including the Fund, who pays compensation to any claimant for an economic loss, compensable under section 303 of this title, shall be subrogated to all rights, claims, and causes of action which such claimant has under this title.

(b) Upon request of the Secretary, the Attorney General may commence an action, on behalf of the Fund, for the compensation paid by the Fund to any claimant pursuant to this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the Fund, for economic losses for which the compensation was paid.

(c) In any claim or action by the Fund against any owner, operator, or guarantor, pursuant to the provisions of subsection (a) or (b), the Fund shall recover—

(1) for a claim presented to the Fund (where there has been a denial of source designation) pursuant to section 307(b)(1) of this title, or (where there has been a denial of liability) pursuant to section 307(c)(1) of this title—

(A) subject only to the limitation of liability to which the defendant is entitled under section 304(b) of this title, the amount the Fund has paid to the claimant, without reduction;

(B) interest on such amount, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant, inclusive, less the period, if any, from the date upon which the Fund offers to the claimant the amount finally paid by the Fund to the claimant in satisfaction of the claim against the Fund to the date upon which the claimant accepts that offer, inclusive; and

(C) all costs incurred by the Fund by reason of the claim, both of the claimant against the Fund and the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; and

(2) for a claim presented to the Fund pursuant to section 307(c)(2) of this title—

(A) in which the amount the Fund has paid to the claimant exceeds the largest amount, if any, the defendant offered

to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the Fund has paid to the claimant;

(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, for the period specified in paragraph (1)(B) of this subsection; and

(iii) all costs incurred by the Fund by reason of the claim of the Fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees; or

(B) in which the amount the Fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount which the Fund has paid to the claimant, without reduction;

(ii) interest, at the rate calculated in accordance with section 304(g)(2) of this title, from the date upon which the claim is presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subparagraph, except that if the defendant tenders the offer of the largest amount referred to in this subparagraph within sixty days after the date upon which the claim of the claimant is either presented to the defendant or advertising is commenced pursuant to section 306 of this title, the defendant shall not be liable for interest for that period; and

(iii) interest from the date upon which the claim of the Fund against the defendant is presented to the defendant to the date upon which the Fund is paid, inclusive, less the period, if any, from the date upon which the defendant offers to the Fund the amount finally paid to the Fund in satisfaction of the claim of the Fund to the date upon which the Fund accepts that offer, inclusive.

(d) The Fund shall pay over to the claimant that portion of any interest the Fund recovers, pursuant to subsection (c) (1) and (2) (A), for the period from the date upon which the claim of the claimant is presented to the defendant to the date upon which the claimant is paid by the Fund, inclusive, less the period from the date upon which the Fund offers to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant accepts such offer, inclusive.

(e) The Fund is entitled to recover for all interest and costs specified in subsection (c) of this section without regard to any limitation of liability to which the defendant may otherwise be entitled under this title.

JURISDICTION AND VENUE

SEC. 309. (a) The United States district courts shall have original and exclusive jurisdiction of all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

43 USC 1819.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

RELATIONSHIP TO OTHER LAW

43 USC 1820.

SEC. 310. (a) Any person who receives compensation for damages or removal costs pursuant to this title shall be precluded from recovering compensation for the same damages or removal costs pursuant to any other State or Federal law. Any person who receives compensation for damages or removal costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or removal costs under this title.

(b) No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

(c) Except as otherwise provided in this title, this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or removal costs within the jurisdiction of such State.

PROHIBITION

43 USC 1821.

SEC. 311. The discharge of oil from any offshore facility or vessel, in quantities which the President under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) determines to be harmful, is prohibited.

PENALTIES

43 USC 1822.

SEC. 312. (a) (1) Any person who fails to comply with the requirements of section 305 of this title, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not to exceed \$10,000.

(2) The civil penalty described in paragraph (1) of this subsection may be assessed and compromised by the President or his designee, in connection with section 305(a)(1) of this title, and by the Secretary, in connection with section 305(a)(3) and section 305(b) of this title. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken into consideration.

(3) At the request of the official assessing a penalty under this subsection, the Attorney General may bring an action in the name of the Fund to collect the penalty assessed.

(b) Any person in charge who is subject to the jurisdiction of the United States and who fails to give the notification required by section 306(a) of this title shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

Notice and
hearing.

AUTHORIZATION OF APPROPRIATIONS

SEC. 313. (a) There is authorized to be appropriated for the administration of this title \$10,000,000 for the fiscal year ending September 30, 1979, \$5,000,000 for the fiscal year ending September 30, 1980, and \$5,000,000 for the fiscal year ending September 30, 1981.

43 USC 1823.

(b) There are also authorized to be appropriated to the Fund, from time to time, such amounts as may be necessary to carry out the purposes of the applicable provisions of this title, including the entering into contracts, any disbursements of funds, and the issuance of notes or other obligations pursuant to section 302(f) of this title.

(c) Notwithstanding any other provision of this title, the authority to make contracts, to make disbursements, to issue notes or other obligations pursuant to section 302(f) of this title, to charge and collect fees pursuant to section 302(d) of this title, or to exercise any other spending authority shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this title.

ANNUAL REPORT

SEC. 314. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress (1) a report on the administration of the Fund during such fiscal year, and (2) his recommendations for such legislative changes as he finds necessary or appropriate to improve the management of the Fund and the administration of the liability provisions of this title.

43 USC 1824.

EFFECTIVE DATES

SEC. 315. (a) This section, subsection (e) of section 304, subsection (d) of section 305, and all provisions of this title authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this title.

43 USC 1811
note.

(b) All other provisions of this title, and rules and regulations promulgated pursuant to such provisions, shall be effective on the one hundred and eightieth day after the date of enactment of this title.

TITLE IV—FISHERMEN'S CONTINGENCY FUND

DEFINITIONS

SEC. 401. As used in this title, the term—

43 USC 1841.

(1) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other chief executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth, or naturalization, and which has at least 75 per centum of the interest of therein owned by citizens of the United States. Seventy-five per centum of the interest in the corporation shall not be deemed to be owned by citizens of the United States—

(A) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States;

(B) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States;

(C) if through any contract or understanding it is so arranged that more than 25 per centum of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or

(D) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States;

(2) "commercial fisherman" means any citizen of the United States who owns, operates, or derives income from being employed on a commercial fishing vessel;

(3) "commercial fishing vessel" means any vessel, boat, ship, or other craft which is (A) documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and (B) used for, equipped to be used for, or of a type which is normally used for commercial purposes for the catching, taking, or harvesting of fish or the aiding or assisting at sea of any activity related to the catching, taking, or harvesting of fish, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing;

(4) "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species;

(5) "fishing gear" means (A) any commercial fishing vessel, and (B) any equipment of such vessel, whether or not attached to such a vessel;

(6) "Fund" means the Fishermen's Contingency Fund established under section 402 of this title; and

(7) "Secretary" means the Secretary of Commerce or the designee of such Secretary.

ESTABLISHMENT OF THE FISHERMEN'S CONTINGENCY FUND; FEE
COLLECTION

43 USC 1842.

SEC. 402. (a) There is hereby established in the Treasury of the United States a Fishermen's Contingency Fund. The Fund shall be available to the Secretary without fiscal year limitation as a revolving fund for the purpose of making payments pursuant to this section. The total amount in the Fund shall at no time exceed \$1,000,000. Amounts paid pursuant to the provisions of subsections (c) and (d) of this section shall be deposited in the Fund. The Fund may sue or be sued in its own name.

(b) The Secretary is authorized to establish and maintain an area account within the Fund for any area of the Outer Continental Shelf for purposes of providing reasonable compensation for damages to, or loss of, fishing gear and any resulting economic loss to commercial fishermen due to activities related to oil and gas exploration, development, and production in such area.

(c) Upon establishment of an area account for any area of the Outer Continental Shelf pursuant to subsection (b) of this section, any holder of a lease issued or maintained under the Outer Continental Shelf Lands Act for any tract in such area and any holder of an exploration permit, or of an easement or right-of-way for the con-

43 USC 1331
note.

struction of a pipeline in such area, shall pay an amount specified by the Secretary for the purpose of the establishment and maintenance of an area account for such area. The Secretary of the Interior shall collect such amount and deposit it to the credit of such area account within the Fund. In any calendar year, no holder of a lease, permit, easement, or right-of-way shall be required to pay an amount in excess of \$5,000 per lease, permit, easement, or right-of-way.

(d) Subject to subsection (a) of this section, each area account established pursuant to this section shall be maintained at a level not to exceed \$100,000 and, if depleted, shall be replenished by assessments of holders of leases, permits, easements, and rights-of-way in such area.

(e) Amounts in each such area account shall be available for disbursement and shall be disbursed, subject to such amounts as are provided in appropriations Acts, for only the following purposes:

(1) Administrative and personnel expenses of such area account and administrative and personnel expenses of the Fund which relate to such area account, except that amounts disbursed for such expenses in any fiscal year shall not exceed 15 per centum of the amounts deposited in such revolving account in such fiscal year.

(2) The payment of any claim in accordance with procedures established under this section for damages suffered as a result of activities in the area for which such area account was established.

(3) Reasonable attorney's fees awarded pursuant to section 405 (e) of this title.

DUTIES AND POWERS

SEC. 403. (a) In carrying out the provisions of this title, the Secretary shall— 43 USC 1843.

(1) prescribe, and from time to time amend, regulations for the filing, processing, and fair and expeditious settlement of claims pursuant to this title, including a time limitation on the filing of such claims; and Regulations.

(2) identify and classify all potential hazards to commercial fishing caused by Outer Continental Shelf oil and gas exploration, development, and production activities, including all obstructions on the bottom, throughout the water column, and on the surface.

(b) The Secretary of the Interior shall establish regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use. Regulations.

(c) (1) Payments shall be disbursed by the Secretary from the appropriate area account to compensate commercial fishermen for actual and consequential damages, including loss of profits, due to damages to, or loss of, fishing gear by materials, equipment, tools, containers, or other items associated with oil and gas exploration, development, or production activities in such area, whether or not such damage occurred in such area.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, no payment may be made by the Secretary from any area account established under this title—

(A) when the damage set forth in a claim was caused by materials, equipment, tools, containers, or other items attributable to a financially responsible party;

(B) to the extent that damages were caused by the negligence or fault of the commercial fisherman making the claim;

(C) if the damage set forth in the claim was sustained prior to the date of enactment of this title;

(D) in the case of a claim for damage to, or loss of, fishing gear, in an amount in excess of the replacement value of the fishing gear with respect to which the claim is filed;

(E) in the case of a claim for loss of profits (i) for any period in excess of 6 months, and (ii) unless such claim is supported by records with respect to the claimant's profits during the previous 12-month period; and

(F) for any portion of the damages claimed with respect to which the claimant has or will receive compensation from insurance.

BURDEN OF PROOF

43 USC 1844.

SEC. 404. With respect to any claim for damages filed pursuant to this title, there shall be a presumption that such claim is valid if the claimant establishes that—

(1) the commercial fishing vessel was being used for fishing and was located in an area affected by Outer Continental Shelf activities;

(2) a report on the location of the material, equipment, tool, container, or other item which caused such damages and the nature of such damages was made within five days after the date on which such damages were discovered;

(3) there was no record on nautical charts or the Notice to Mariners on the date such damages were sustained that such material, equipment, tool, container, or other item existed in such area; and

(4) there was no proper surface marker or lighted buoy which was attached or closely anchored to such material, equipment, tool, container, or other item.

CLAIM PROCEDURES AND SUBROGATION OF RIGHTS

43 USC 1845.

SEC. 405. (a) Any commercial fisherman suffering damages compensable under this title may file a claim for compensation with the Secretary, except that no such claim may be filed more than 60 days after the date of discovery of the damages with respect to which such claim is made.

(b) Upon receipt of any claim under this section, the Secretary shall—

(1) transmit a copy of the claim to the Secretary of the Interior; and

(2) refer such matter to a hearing examiner appointed under section 3105 of title 5, United States Code.

(c) The Secretary of the Interior shall make reasonable efforts to notify all persons known to have engaged in activities associated with Outer Continental Shelf energy activity in the vicinity. Each such person shall promptly notify the Secretary and the Secretary of the Interior as to whether he admits or denies responsibility for the damages claimed. Any such person, including lessees or permittees or their contractors or subcontractors, may submit evidence at any hearing conducted with respect to such claim.

Hearing.

(d) The hearing examiner shall, within 120 days after such matter is referred to him by the Secretary, adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code.

(e) If the decision of the hearing examiner is in favor of the commercial fisherman filing the claim, such hearing examiner shall include, as part of the amount certified to the Secretary under subsection (h) (1) of this section, reasonable attorneys' fees incurred by such commercial fisherman in pursuing such claim.

(f) (1) For purposes of any hearing conducted pursuant to this section, the hearing examiner shall have the power to administer oaths and subpoena the attendance or testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues being presented for determination.

(2) In any hearing conducted pursuant to this section with respect to a claim for damages resulting from activities on any area of the Outer Continental Shelf, the hearing examiner shall consider evidence of obstructions in such area which have been identified pursuant to the survey conducted under section 407 of this title.

(g) A hearing conducted under this section shall be conducted within the United States judicial district within which the matter giving rise to the claim occurred, or, if such matter occurred within two or more districts, in any of the affected districts, or, if such matter occurred outside of any district, in the nearest district.

(h) (1) Upon a decision by the hearing examiner and in the absence of a request for judicial review, any amount to be paid, subject to the limitations of this section, shall be certified to the Secretary, who shall promptly disburse the award. Such decision shall not be reviewable by the Secretary.

(2) Upon payment of a claim by the Secretary pursuant to this subsection, the Secretary shall acquire by subrogation all rights of the claimant against any person found to be responsible for the damages with respect to which such claim was made.

(3) Any person who denies responsibility for damages with respect to which a claim is made and who is subsequently found to be responsible for such damages, and any commercial fisherman who files a claim for damages and who is subsequently found to be responsible for such damages, shall pay the costs of the proceedings under this section with respect to such claim.

(i) Any person who suffers legal wrong or who is adversely affected or aggrieved by the decision of a hearing examiner under this section may, no later than 60 days after such decision is made, seek judicial review of such decision in the United States court of appeals for the circuit in which the damage occurred, or if such damage occurred outside of any circuit, in the United States court of appeals for the nearest circuit.

Judicial review.

ANNUAL REPORT

SEC. 406. (a) The Secretary shall submit an annual report to the Congress which shall set forth—

43 USC 1846.

(1) a description of the types of damages set forth in claims filed with the Secretary during the previous year for compensation from the Fund;

(2) the amount of compensation awarded to claimants during the previous year; and

(3) the number of cases during the previous year in which damages were determined to be the responsibility of a lessee or

permittee conducting operations on the Outer Continental Shelf, or the contractor or subcontractor of such a lessee or permittee.

(b) In addition to the material described in subsection (a) of this section, the Secretary shall, after consultation with the Secretary of the Interior, include in the first annual report an evaluation of the feasibility and comparative cost of preventing or reducing obstructions on the Outer Continental Shelf which pose potential hazards to commercial fishing or fishing gear by (1) imposing fines or penalties on lessees or permittees, or contractors or subcontractors of lessees or permittees, who are responsible for such obstructions, or (2) requiring the bonding of such lessees or permittees or such contractors or subcontractors.

SURVEY OF OBSTRUCTIONS ON THE OUTER CONTINENTAL SHELF

43 USC 1847.

SEC. 407. (a) The Secretary, in cooperation with the Secretary of the Interior, shall conduct a two-year survey of obstructions on the Outer Continental Shelf. Such survey shall be conducted for purposes of identifying (1) natural obstructions on the Outer Continental Shelf which pose potential hazards to commercial fishing or fishing gear, and (2) in addition, in the case of areas in which oil and gas exploration, development, or production is taking place, manmade obstructions relating to such activities which pose potential hazards to commercial fishing or fishing gear.

Regulations.

(b) The Secretary shall, on the basis of the survey conducted under this section, and regulations promulgated under section 403(a) of this title, develop charts for commercial fishermen identifying obstructions on the Outer Continental Shelf.

(c) During the first six months of the survey conducted under this section, the Secretary shall concentrate on areas of the Outer Continental Shelf where oil and gas production has commenced or is expected to commence prior to the expiration of the two-year period of such survey.

TITLE V—AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT OF 1972

COASTAL ENERGY IMPACT PROGRAM

Sec. 501. (a) Paragraph (2) of section 308(b) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(b)(2)) is amended—

(1) by striking out “The amounts granted” and inserting in lieu thereof “Subject to paragraph (3), the amounts payable”;

(2) by striking out “(A), (B), (C), and (D)” and inserting in lieu thereof “(A), (B), and (C)”;

(3) in subparagraph (A), by striking out “one-third” and inserting in lieu thereof “one-half”;

(4) in subparagraph (B), by striking out “one-sixth” and inserting in lieu thereof “one-quarter”;

(5) in subparagraph (C), by striking out “one-sixth” and inserting in lieu thereof “one-quarter”; and

(6) by striking and subparagraph (D).

(b) Such section 308(b) is amended—

(1) by renumbering paragraphs (3) through (5), and any references thereto, as paragraphs (4) through (6), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

“(3) (A) (i) After making the calculations required under paragraph (2) for any fiscal year, the Secretary shall—

Appropriation
adjustments.

“(I) with respect to any coastal state which, based on such calculations, would receive an amount which is less than 2 per centum of the amount appropriated for such fiscal year, increase the amount appropriated for such fiscal year, increase the amount payable to such coastal state to 2 per centum of such appropriated amount; and

“(II) with respect to any coastal state which, in such fiscal year, would not receive a grant under paragraph (2), make a grant to such coastal state in an amount equal to 2 per centum of the total amount appropriated for making grants to all states under paragraph (2) in such fiscal year if any other coastal state in the same region will receive a grant under such paragraph in such fiscal year, except that a coastal state shall not receive a grant under this subclause unless the Secretary determines that it is being or will be impacted by outer Continental Shelf energy activity and that it will be able to expend or commit the proceeds of such grant in accordance with the purposes set forth in paragraph (5).

“(ii) For purposes of this subparagraph—

“(I) the states of Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia, the Commonwealth of Puerto Rico, and the Virgin Islands (the Atlantic coastal states) shall constitute one ‘region’;

“(II) the states of Alabama, Florida, Louisiana, Mississippi, and Texas (the Gulf coastal states) shall constitute one ‘region’;

“(III) the states of California, Hawaii, Oregon, and Washington (the Pacific coastal states) shall constitute one ‘region’; and

“(IV) the state of Alaska shall constitute one ‘region’.

“(B) If, after the calculations required under subparagraph (A), the total amount of funds appropriated for making grants to coastal states in any fiscal year pursuant to this subsection is less than the total amount of grants payable to all coastal states in such fiscal year, there shall be deducted from the amount payable to each coastal state which will receive more than 2 per centum of the amount of funds so appropriated an amount equal to the product of—

“(i) the amount by which the total amount of grants payable to all coastal states in such fiscal year exceeds the total amount of funds appropriated for making such grants; multiplied by

“(ii) a fraction, the numerator of which is the amount of grants payable to such coastal state in such fiscal year reduced by an amount equal to 2 per centum of the total amount appropriated for such fiscal year and the denominator of which is the total amount of grants payable to coastal states which, in such fiscal year, will receive more than 2 per centum of the amount of funds so appropriated, reduced by an amount equal to the product of 2 per centum of the total amount appropriated for such fiscal year multiplied by the number of such coastal states.

“(C) (i) If, after the calculations required under subparagraph (B) for any fiscal year, any coastal state would receive an amount which is greater than $37\frac{1}{2}$ per centum of the amount appropriated for such fiscal year, the Secretary shall reduce the amount payable to such coastal state to $37\frac{1}{2}$ per centum of such appropriated amount.

"(ii) Any amount not payable to a coastal state in a fiscal year due to a reduction under clause (i) shall be payable proportionately to all coastal states which are to receive more than 2 per centum and less than 37½ per centum of the amount appropriated for such fiscal year, except that in no event shall any coastal state receive more than 37½ per centum of such appropriated amount.

"Payable proportionately."

"(iii) For purposes of this subparagraph, the term 'payable proportionately' means payment in any fiscal year in accordance with the provisions of paragraph (2), except that in making calculations under such paragraph the Secretary shall only include those coastal states which are to receive more than 2 per centum and less than 37½ per centum of the amount appropriated for such fiscal year."

16 USC 1456a.

(c) (1) Paragraph (5) (B) (i) of such section 308(b) (as renumbered by subsection (b) of this section) is amended to read as follows:

"(i) necessary to provide new or improved public facilities and public services which are required as a result of outer Continental Shelf energy activity;"

(2) Paragraph (5) (B) of such section 308(b) (as so renumbered) is amended by adding at the end thereof the following new sentence:

Rules.

"The Secretary may, pursuant to criteria promulgated by rule, describe geographic areas in which public facilities and public services referred to in clause (i) shall be presumed to be required as a result of outer Continental Shelf energy activity for purposes of disbursing the proceeds of grants under this subsection."

AUTHORIZATION OF APPROPRIATIONS

SEC. 502. Paragraph (3) of section 318(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464(a)(3)), is amended to read as follows:

"(3) such sums, not to exceed \$50,000,000 for each of the fiscal years ending September 30, 1977, and September 30, 1978, and not to exceed \$130,000,000 per fiscal year for each of the fiscal years occurring during the period beginning on October 1, 1978, and ending September 30, 1988, as may be necessary for grants under section 308(b) ;".

OUTER CONTINENTAL SHELF GRANTS

SEC. 503. (a) Section 308(c) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(c)) is amended—

(1) by inserting "(1)" immediately after "(c)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) The Secretary shall make grants under this paragraph to any coastal state which the Secretary finds is likely to be affected by outer Continental Shelf energy activities. Such grants shall be used by such state to carry and its responsibilities under the Outer Continental Shelf Lands Act. The amount of any such grant shall not exceed 80 per centum of the cost of carrying out such responsibilities."

43 USC 1331
note.

(b) Section 308(a) (1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(a)(1)) is amended—

(1) in subparagraph (B) thereof, by striking out "subsection (c)" and inserting in lieu thereof "subsection (c)(1)"; and

(2) by redesignating subparagraphs (C) through (F), and any references thereto, as subparagraphs (D) through (G), respec-

tively, and inserting immediately after subparagraph (B) the following new subparagraph:

“(C) grants, under subsection (c) (2), to coastal states to carry out their responsibilities under the Outer Continental Shelf Lands Act;”.

(c) Section 308(h) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(h)) is amended by striking out “subsections (c)” each place it appears and inserting in lieu thereof “subsections (c) (1)”.

(d) Section 308(k) (1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a(k) (1)) is amended by striking out “and (c)” and inserting in lieu thereof “and (c) (1)”.

(e) Section 318(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464(a)) is amended—

(1) by redesignating paragraphs (4) through (8), and all references thereto, as paragraphs (5) through (9), respectively; and

(2) by inserting immediately after paragraph (3) the following new paragraph:

“(4) such sums, not to exceed \$5,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, and September 30, 1983, as may be necessary for grants under section 308(c) (2), to remain available until expended;”.

(f) Section 318(b) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464(b)) is amended—

(1) by striking out “subsection (b)” and inserting in lieu thereof “subsections (b) and (c) (2)”; and

(2) by striking out “subsections (c)” and inserting in lieu thereof “subsections (c) (1)”.

43 USC 1331
note.

Funds,
availability.

STATE MANAGEMENT PROGRAM

SEC. 504. Section 307(c) (3) (B) (ii) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c) (3) (B) (ii)) is amended to read as follows:

“(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed; or”.

TITLE VI—MISCELLANEOUS PROVISIONS

REVIEW OF SHUT-IN OR FLARING WELLS

SEC. 601. (a) In a report submitted within six months after the date of enactment of this Act, and his annual report thereafter, the Secretary of the Interior shall list all shut-in oil and gas wells and wells flaring natural gas on leases issued under the Outer Continental Shelf Lands Act. Each such report shall be submitted to the Comp-

43 USC 1861.

43 USC 1331
note.
Report to
Comptroller
General.

troller General and shall indicate why each well is shut-in or flaring natural gas, and whether the Secretary intends to require production on such a shut-in well or order cessation flaring.

Report to
Congress.

(b) Within six months after receipt of the Secretary's report, the Comptroller General shall review and evaluate the methodology used by the Secretary in allowing the wells to be shut-in or to flare natural gas and submit his findings and recommendations to the Congress.

REVIEW AND REVISION OF ROYALTY PAYMENTS

Report to
Congress.
30 USC 237.

SEC. 602. As soon as feasible and no later than ninety days after the date of enactment of this Act, and annually thereafter, the Secretary of the Interior shall submit a report or reports to the Congress describing the extent, during the two-year period preceding such report, of delinquent royalty accounts under leases issued under any Act which regulates the development of oil and gas on Federal lands, and what new auditing, post-auditing, and accounting procedures have been adopted to assure accurate and timely payment of royalties and net profit shares. Such report or reports shall include any recommendations for corrective action which the Secretary of the Interior determines to be appropriate.

NATURAL GAS DISTRIBUTION

43 USC 1862.

SEC. 603. (a) The purpose of this section is to encourage expanded participation by local distribution companies in acquisition of leases and development of natural gas resources on the Outer Continental Shelf by facilitating the transportation in interstate commerce of natural gas, which is produced from a lease located on the Outer Continental Shelf and owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company.

Publication in
Federal Register.

(b) The Federal Energy Regulatory Commission shall, after opportunity for presentation of written and oral views, promulgate and publish in the Federal Register a statement of Commission policy which carries out the purpose of this section and sets forth the standards under which the Commission will consider applications for, and, as appropriate, issue certificates of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, for the transportation in interstate commerce of natural gas, which is produced from a lease located on the Outer Continental Shelf and owned, in whole or in part, by a local distribution company, from such lease to the service area of such local distribution company. Such statement of policy shall specify the criteria, limitations, or requirements the Commission will apply in determining—

15 USC 717f.

(1) whether the application of any local distribution company qualifies for consideration under the statement of policy; and

(2) whether the public convenience and necessity will be served by the issuance of the requested certificate of transportation.

Such statement of policy shall also set forth the terms or limitations on which the Commission may condition, pursuant to section 7 of the Natural Gas Act, the issuance of a certificate of transportation under such statement of policy. To the maximum extent practicable, such statement shall be promulgated and published within one year after the date of enactment of this section.

(c) For purposes of this section, the term—

(1) “local distribution company” means any person—

(A) engaged in the distribution of natural gas at retail, including any subsidiary or affiliate thereof engaged in the exploration and production of natural gas; and

(B) regulated, or operated as a public utility, by a State or local government or agency thereof;

(2) “interstate commerce” shall have the same meaning as such term has under section 2(7) of the Natural Gas Act; and

(3) “Commission” means the Federal Energy Regulatory Commission.

Definitions.

15 USC 717a.

ANTIDISCRIMINATION PROVISIONS

SEC. 604. Each agency or department given responsibility for the promulgation or enforcement of regulations under this Act or the Outer Continental Shelf Lands Act shall take such affirmative action as deemed necessary to prohibit all unlawful employment practices and to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of this Act or the Outer Continental Shelf Lands Act. The agency or department shall promulgate such rules as it deems necessary to carry out the purposes of this section, and any rules promulgated under this section, whether through agency and department provisions or rules, shall be similar to those established and in effect under title VI and title VII of the Civil Rights Act of 1964.

43 USC 1863.

43 USC 1331 *et seq.*

Rules.

42 USC 2000d, 2000e.

SUNSHINE IN GOVERNMENT

SEC. 605. (a) Each officer or employee of the Department of the Interior who—

(1) performs any function or duty under this Act or the Outer Continental Shelf Lands Act, as amended by this Act; and

(2) has any known financial interest in any person who (A) applies for or receives any permit or lease under, or (B) is otherwise subject to the provisions of this Act or the Outer Continental Shelf Lands Act,

shall, beginning on February 1, 1979, annually file with the Secretary of the Interior a written statement concerning all such interests held by such officer or employee during the preceeding calendar year. Such statement shall be available to the public.

(b) The Secretary of the Interior shall—

(1) within ninety days after the date of enactment of this Act—

(A) define the term “known financial interest” for purposes of subsection (a) of this section; and

(B) establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

43 USC 1864.

43 USC 1331 note.

“Known financial interest.”

Report to Congress.

(c) In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within the Department of the Interior which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

Penalty.

(d) Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than \$2,500 or imprisoned not more than one year, or both.

INVESTIGATION OF AVAILABILITY OF OIL AND NATURAL GAS FROM THE
OUTER CONTINENTAL SHELF

43 USC 1865.

SEC. 606. (a) The Congress hereby finds that—

(1) there is a serious lack of adequate basic energy information available to the Congress and the Secretary of the Interior with respect to the availability of oil and natural gas from the Outer Continental Shelf;

(2) there is currently an urgent need for such information;

(3) the existing collection of information by Federal departments and agencies relevant to the determination of the availability of such oil and natural gas is uncoordinated, is jurisdictionally limited in scope, and relies too heavily on unverified information from industry sources;

(4) adequate, reliable, and comprehensive information with respect to the availability of such oil and natural gas is essential to the national security of the United States; and

(5) this lack of adequate reserve data requires a reexamination of past data as well as the acquisition of adequate current data.

(b) The purpose of this section is to enable the Secretary of the Interior and the Congress to gain the best possible knowledge of the status of Outer Continental Shelf oil and natural gas reserves, resources, productive capacity, and production available to meet current and future energy supply emergencies, to gain accurate knowledge of the potential quantity of oil and natural gas resources which could be made available to meet such emergencies, and to aid in establishing energy pricing and conservation policies.

(c) The Secretary of the Interior shall conduct a continuing investigation, based on data and information which he determines has been adequately and independently audited and verified, for the purpose of determining the availability of all oil and natural gas produced or located on the Outer Continental Shelf.

(d) The investigation conducted pursuant to this section shall include, among other items—

(1) (A) a determination of the maximum attainable rate of production (MAR) of crude oil and natural gas from significant fields on the Outer Continental Shelf; and

(B) an analysis of whether the actual production has been less than the MAR and, if so, the reasons for the differences;

(2) an estimate of the total discovered crude oil and natural gas reserves by fields (including proved and indicated reserves) and undiscovered crude oil and natural gas resources (including hypothetical and speculative resources) of the Outer Continental Shelf;

(3) the relationship of any and all such information to the requirements of conservation, industry, commerce, and the national defense; and

(4) an independent evaluation of trade association procedures for estimating Outer Continental Shelf reserves, ultimate recovery, and productive capacity for years in which trade associations made such estimates. In order to provide maximum opportunity for evaluation and continuity, the Secretary shall obtain all the available data and other records, including a description of the methodology and estimating procedures, which the trade associations used in compiling their data with respect to the reserves.

(e) The Secretary shall, not later than one year after the date of enactment of this section, submit an initial report to the Congress. The initial report shall include cost estimates for the separate components of the continuing investigation and a time schedule for meeting all of its specifications. The schedule shall provide for producing all the information required in subsections (d) (1) (A), (d) (2), and (d) (3) of this section on the day following the first complete calendar year after such date of enactment, and every two years thereafter. The Secretary shall make separate reports on the data acquired pursuant to subsection (d) (4) of this section as follows:

Report to Congress.

(1) Within six months after the date of enactment of this section, a report on the acquisition and details of trade association data and information.

(2) Within twelve months after submission of the report required by subsection (e) (1) of this section, an evaluation of the trade association materials.

(3) Within twelve months after submission of the report required by paragraph (2) of this subsection, a report on the relationship between trade association data and the new data collected under this section.

Effective dates.

(f) The Secretary of the Interior shall consult with the Federal Trade Commission regarding categories of information acquired pursuant to this section. Notwithstanding any other provision of law, the Secretary of the Interior shall, upon request of the Federal Trade Commission, make available to such Commission any information acquired under this section.

Federal Trade Commission, consultation.

(g) For purposes of this section, the term—

Definitions.

(1) "maximum attainable rate of production" or "MAR" means the maximum rate of production of crude oil and natural gas which may be produced under actual operating conditions without loss of ultimate recovery of crude oil and natural gas; and

(2) "Outer Continental Shelf" has the meaning given such term in section 2(a) of the Outer Continental Shelf Lands Act.

43 USC 1331.

RECOMMENDATIONS FOR TRAINING PROGRAM

SEC. 607. Not later than ninety days after the date of enactment of this Act, the Secretary of the Interior, in consultation with the Secretary of the Department in which the Coast Guard is operating, shall prepare and submit to the Congress a report which sets forth the recommendations of the Secretary for a program to assure that any individual—

Report to Congress.
43 USC 1348
note.

(1) who is employed on any artificial island, installation, or other device located on the Outer Continental Shelf; and

(2) who, as part of such employment, operates, or supervises the operation of pollution-prevention equipment, is properly trained to operate, or supervise the operation of, such equipment, as the case may be.

RELATIONSHIP TO EXISTING LAW

43 USC 1866.

16 USC 1451
note.42 USC 4321
note.

30 USC 21a note.

SEC. 608. (a) Except as otherwise expressly provided in this Act, nothing in this Act shall be construed to amend, modify, or repeal any provision of the Coastal Zone Management Act of 1972, the National Environmental Policy Act of 1969, the Mining and Mineral Policy Act of 1970, or any other Act.

(b) Nothing in this Act or any amendment made by this Act to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or any other Act shall be construed to affect or modify the provisions of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) which provide for the transferring and vesting of functions to and in the Secretary of Energy or any component of the Department of Energy.

Approved September 18, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS No. 95-590 accompanying H.R. 1614 (Ad Hoc Select Committee on the Outer Continental Shelf) and No. 95-1474 (Comm. of Conference).

SENATE REPORTS No. 95-284 (Comm. on Energy and Natural Resources) and No. 95-1091 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 123 (1977): July 14, 15, considered and passed Senate.

Vol. 124 (1978): Jan. 25, 26, 31, Feb. 1, 2, H.R. 1614 considered and passed House; proceedings vacated and S. 9, amended, passed in lieu.

Aug. 17, House agreed to conference report.

Aug. 22, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 14, No. 38 (1978): Sept. 18, Presidential statement.