

and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1334. Administration of leasing

(a) Rules and regulations; amendment; cooperation with State agencies; subject matter and scope of regulations

The Secretary shall administer the provisions of this subchapter 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 subchapter. 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—

(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 seri-

ous 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 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 September 18, 1978, 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 from any source 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 subchapter significantly affect the air quality of any State.

(b) Compliance with regulations as condition for issuance, continuation, assignment, or other transfer of leases

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

(c) Cancellation of nonproducing lease

Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this subchapter, or of the lease, or of the regulations issued under this subchapter, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in this subchapter, 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) Cancellation of producing lease

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

(e) Pipeline rights-of-way; forfeiture of grant

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 subchapter, 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 1347(b) of this title) 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 grounds 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 subchapter.

(f) Competitive principles governing pipeline operation

(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 non-discriminatory access to both owner and non-owner shippers.

(B) Upon the specific request of one or more owner or nonowner 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 September 18, 1978. This subparagraph¹ shall not apply to any such grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

(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.

(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.

(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) Rates of production

(1) The lessee² shall produce any oil or gas, or both, obtained pursuant to an approved development and production plan, at rates consistent with any rule or order issued by the President in accordance with any provision of law.

(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.

¹ So in original. Probably should be "subparagraph".

² So in original. Probably should be "lessee".

(h) Federal action affecting outer Continental Shelf; notification; recommended changes

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) Flaring of natural gas

After September 18, 1978, no holder of any oil and gas lease issued or maintained pursuant to this subchapter 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.

(j) Cooperative development of common hydrocarbon-bearing areas

(1) Findings

(A)³ The Congress of the United States finds that the unrestrained competitive production of hydrocarbons from a common hydrocarbon-bearing geological area underlying the Federal and State boundary may result in a number of harmful national effects, including—

- (i) the drilling of unnecessary wells, the installation of unnecessary facilities and other imprudent operating practices that result in economic waste, environmental damage, and damage to life and property;
- (ii) the physical waste of hydrocarbons and an unnecessary reduction in the amounts of hydrocarbons that can be produced from certain hydrocarbon-bearing areas; and
- (iii) the loss of correlative rights which can result in the reduced value of national hydrocarbon resources and disorders in the leasing of Federal and State resources.

(2) Prevention of harmful effects

The Secretary shall prevent, through the cooperative development of an area, the harmful effects of unrestrained competitive production of hydrocarbons from a common hydrocarbon-bearing area underlying the Federal and State boundary.

(Aug. 7, 1953, ch. 345, § 5, 67 Stat. 464; Pub. L. 95-372, title II, § 204, Sept. 18, 1978, 92 Stat. 636; Pub. L. 101-380, title VI, § 6004(a), Aug. 18, 1990, 104 Stat. 558; Pub. L. 109-58, title III, § 321(a), Aug. 8, 2005, 119 Stat. 694.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(8), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2005—Subsec. (a)(5). Pub. L. 109-58 inserted “from any source” after “oil and gas”.

³ So in original. No subpar. (B) has been enacted.

1990—Subsec. (j). Pub. L. 101-380 added subsec. (j).

1978—Subsec. (a). Pub. L. 95-372 expanded provisions formerly contained in subsec. (a)(1) so as to include the enforcement of safety and environmental laws and regulations, consultation with the Attorney General and the Federal Trade Commission, and regulations for the suspension or temporary prohibition of any operation or activity including production, the cancellation of leases or permits, the prompt and efficient exploration and development of a lease area, and compliance with the national ambient air quality standards to the extent that activities authorized significantly affect the air quality of any State.

Subsec. (b). Pub. L. 95-372 redesignated as subsec. (b) provisions formerly contained in subsec. (a)(2) conditioning the issuance and continuation of leases or of assignments or other transfers of leases upon compliance with regulations, and struck out provisions that had set a penalty of a fine of not more than \$2,000 or imprisonment for not more than six months or both for the knowing and willful violation of rules or regulations promulgated by the Secretary. See section 1350 of this title.

Subsec. (c). Pub. L. 95-372 redesignated as subsec. (c) provisions formerly contained in subsec. (b)(1) covering the cancellation of nonproducing leases for failure of the owner to comply with any of the provisions of this subchapter, or of the lease, or of the regulations issued under this subchapter.

Subsec. (d). Pub. L. 95-372 redesignated as subsec. (d) provisions formerly contained in subsec. (b)(2) covering the cancellation and forfeiture of producing leases for failure of the owner to comply with any of the provisions of this subchapter, the lease, or regulations promulgated under this subchapter.

Subsec. (e). Pub. L. 95-372 redesignated as subsec. (e) provisions formerly contained in subsec. (c) relating to pipeline rights-of-way and inserted provisions relating to regulations prescribed by the Secretary of Transportation and assurances of maximum environmental protection through the use of the best available and safest technologies including the safest practices for pipeline burial, and substituted references to the Federal Energy Regulatory Commission and the Secretary of Energy for existing references to the Federal Power Commission and the Interstate Commerce Commission.

Subsecs. (f) to (i). Pub. L. 95-372 added subsecs. (f) to (i).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as an Effective Date note under section 2701 of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions vested in, or delegated to, Secretary of Energy and Department of Energy under or with respect to subsec. (g)(2) of this section, transferred to, and vested in, Secretary of the Interior, by section 100 of Pub. L. 97-257, 96 Stat. 841, set out as a note under section 7152 of Title 42, The Public Health and Welfare.

Functions of Secretary of the Interior to promulgate regulations under this subchapter which relate to fostering of competition for Federal leases, implementation of alternative bidding systems authorized for award of Federal leases, establishment of diligence requirements for operations conducted on Federal leases, setting of rates for production of Federal leases, and specifying of procedures, terms, and conditions for acquisition and disposition of Federal royalty interests taken in kind, transferred to Secretary of Energy by section 7152(b) of Title 42. Section 7152(b) of Title 42 was repealed by Pub. L. 97-100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97-315, pp. 25, 26, Nov. 5, 1981.

WEST DELTA FIELD

Pub. L. 101-380, title VI, § 6004(b), Aug. 18, 1990, 104 Stat. 558, provided that: “Section 5(j) of the Outer Con-

tinental Shelf Lands Act [43 U.S.C. 1334(j)], as added by this section, shall not be applicable with respect to Blocks 17 and 18 of the West Delta Field offshore Louisiana.”

KEY LARGO CORAL REEF PRESERVE

Secretary of the Interior to prescribe rules and regulations governing the protection and conservation of the coral and other mineral resources in the area designated Key Largo Coral Reef Preserve, see Proc. No. 3339, Mar. 15, 1960, 25 F.R. 2352, set out as a note under section 320101 of Title 54, National Park Service and Related Programs.

§ 1335. Validation and maintenance of prior leases

(a) Requirements for validation

The provisions of this section shall apply to any mineral lease covering submerged lands of the outer Continental Shelf issued by any State (including any extension, renewal, or replacement thereof heretofore granted pursuant to such lease or under the laws of such State) if—

(1) such lease, or a true copy thereof, is filed with the Secretary by the lessee or his duly authorized agent within ninety days from August 7, 1953, or within such further period or periods as provided in section 1336 of this title or as may be fixed from time to time by the Secretary;

(2) such lease was issued prior to December 21, 1948, and would have been on June 5, 1950, in force and effect in accordance with its terms and provisions and the law of the State issuing it had the State had the authority to issue such lease;

(3) there is filed with the Secretary, within the period or periods specified in paragraph (1) of this subsection, (A) a certificate issued by the State official or agency having jurisdiction over such lease stating that it would have been in force and effect as required by the provisions of paragraph (2) of this subsection, or (B) in the absence of such certificate, evidence in the form of affidavits, receipts, canceled checks, or other documents that may be required by the Secretary, sufficient to prove that such lease would have been so in force and effect;

(4) except as otherwise provided in section 1336 of this title hereof, all rents, royalties, and other sums payable under such lease between June 5, 1950, and August 7, 1953, which have not been paid in accordance with the provisions thereof, or to the Secretary or to the Secretary of the Navy, are paid to the Secretary within the period or periods specified in paragraph (1) of this subsection, and all rents, royalties, and other sums payable under such lease after August 7, 1953, are paid to the Secretary, who shall deposit such payments in the Treasury in accordance with section 1338 of this title;

(5) the holder of such lease certifies that such lease shall continue to be subject to the overriding royalty obligations existing on August 7, 1953;

(6) such lease was not obtained by fraud or misrepresentation;

(7) such lease, if issued on or after June 23, 1947, was issued upon the basis of competitive bidding;

(8) such lease provides for a royalty to the lessor on oil and gas of not less than 12½ per centum and on sulphur of not less than 5 per centum in amount or value of the production saved, removed, or sold from the lease, or, in any case in which the lease provides for a lesser royalty, the holder thereof consents in writing, filed with the Secretary, to the increase of the royalty to the minimum herein specified;

(9) the holder thereof pays to the Secretary within the period or periods specified in paragraph (1) of this subsection an amount equivalent to any severance, gross production, or occupation taxes imposed by the State issuing the lease on the production from the lease, less the State's royalty interest in such production, between June 5, 1950, and August 7, 1953 and not heretofore paid to the State, and thereafter pays to the Secretary as an additional royalty on the production from the lease, less the United States' royalty interest in such production, a sum of money equal to the amount of the severance, gross production, or occupation taxes which would have been payable on such production to the State issuing the lease under its laws as they existed on August 7, 1953;

(10) such lease will terminate within a period of not more than five years from August 7, 1953 in the absence of production or operations for drilling, or, in any case in which the lease provides for a longer period, the holder thereof consents in writing, filed with the Secretary, to the reduction of such period so that it will not exceed the maximum period herein specified; and

(11) the holder of such lease furnishes such surety bond, if any, as the Secretary may require and complies with such other reasonable requirements as the Secretary may deem necessary to protect the interests of the United States.

(b) Conduct of operations under lease; sulphur rights

Any person holding a mineral lease, which as determined by the Secretary meets the requirements of subsection (a) of this section, may continue to maintain such lease, and may conduct operations thereunder, in accordance with (1) its provisions as to the area, the minerals covered, rentals and, subject to the provisions of paragraphs (8)–(10) of subsection (a) of this section, as to royalties and as to the term thereof and of any extensions, renewals, or replacements authorized therein or heretofore authorized by the laws of the State issuing such lease, or, if oil or gas was not being produced in paying quantities from such lease on or before December 11, 1950, or if production in paying quantities has ceased since June 5, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from August 7, 1953 equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of such State, and (2) such regulations as the Secretary may under section 1334 of this title prescribe within ninety days after making his determination