From: Kelliher, Joseph
Sent: Friday, April 06, 2001 10:31 AM
To: Anderson, Margot
Subject: Wyden bill

I am sending you a draft Wyden bill and an explanation of the rationale behind the bill, which apparently was inspired by Enron. Let me know your thoughts by next Friday if possible. Thanks.
Stevenson, Beverley

From: Kelliher, Joseph
Sent: Tuesday, March 20, 2001 6:04 PM
To: Stevenson, Beverley
Subject: FW: Recommendations on National Energy Policy

Importance: High


Bev, please print

-----Original Message-----
From: Jim Ford [mailto:Fordj@api.org]
Sent: Tuesday, March 20, 2001 2:51 PM
To: Kelliher, Joseph
Subject: Recommendations on National Energy Policy
Importance: High

Hi, Joe. As we discussed, attached are a set of papers on national energy policy recommendations. Much of it is designed to be self-explanatory. The last document is a suggested executive order to ensure that energy implications are considered and acted on in rulemakings and other executive actions. This draft has DOE as the coordinator. Probably also need to make energy a major portfolio item for a senior White House aide.

Let me know if you have questions or additional info needs. Thanks.

Jim Ford
dfj@api.org <mailto:fordj@api.org>

Obtained and made public by the Natural Resources Defense Council, March/April 2002
RECOMMENDATIONS FOR A NATIONAL ENERGY POLICY

The United States is approaching the end of a year in which consumers have experienced a heating oil price spike followed by a gasoline price spike and higher prices for all petroleum products due to significantly higher crude oil prices, and, most recently, escalating prices for natural gas. These fuel supply challenges facing the United States over this past year are only the most recent reminders that our nation has fallen far short of addressing our energy needs in a sustainable, strategic fashion.

At the same time that energy usage continues to rise, the industry’s capability to meet energy demands faces increased limitations that make supplying the marketplace ever more difficult. U.S. crude oil production peaked in 1970 at 9.6 million barrels per day (B/D). Over the first six months of 2000 it has averaged 5.9 million B/D – 39% less than 30 years ago. In the face of tremendous demand, U.S. production of natural gas declined 14 percent between 1973 and 1999. The recent natural gas study by the National Petroleum Council projects that producers will have to invest about $650 billion in upstream capital between 1999 to 2015 to meet the growth in natural gas demand. U.S. refinery utilization is at historically high levels, nearly 95% percent for the third quarter of this year, while refinery capacity has declined from a high of 18.6 million barrels per day in 1981 to 16.5 million barrels per day in 2000, leaving no room for continued economic growth.

If we are to continue America’s economic growth and continue creating jobs and wealth across the country, we must have the affordable, reliable energy that fuels our economy and supports our way of life. Congress must develop cost-effective mechanisms for increasing domestic supply. At the same time, environmental concerns must be addressed, and these can be best dealt with through free-market-based incentives, which provide the best foundation for cost-effective solutions. While the U.S. has a strong strategic and economic interest in a vibrant domestic oil and gas industry, we also need a wide diversity of international supplies. Recognizing that 90 percent of the world’s proven oil reserves are in the hands of national oil companies, and more than two-thirds of those are in the volatile Middle East, U.S. energy security is best served by U.S. companies being competitive participants in the international energy arena. The recommendations that follow address each stage of oil and gas supply – both domestic and foreign: exploration and production, processing and refining, transportation and distribution. If adopted, they will enhance a strong, productive U.S. energy infrastructure that can supply abundant, affordable energy in an environmentally responsible manner.
UPSTREAM ISSUES

- COASTAL ZONE MANAGEMENT ACT AND OFFSHORE E&P
  16 U.S.C. § 1452 states that in administering their coastal zone programs, states shall give priority consideration to the siting of energy facilities associated with the exploration, development, and production of the mineral resources of the Outer Continental Shelf. Yet, U.S. Department of Commerce administration of consistency determinations under the Coastal Zone Management Act has made the law a tool for unnecessary delay and duplicative regulation of offshore exploration and production. For example, the regulations impose consistency determinations on the Interior Department’s Minerals Management Service’s five-year OCS plans and other pre-leasing activities that have no direct impact on a state’s coastal zone.

  Recommendation: Amend the Coastal Zone Management Act to ensure that valid offshore natural gas and oil lease rights are protected in the CZMA process and direct the Department of Commerce to administer state consistency programs to ensure priority consideration is given to responsible oil and natural gas development in state consistency determinations.

  Reaffirm the primary authority of the Minerals Management Service under the Outer Continental Shelf Lands Act and the National Environmental Policy Act for regulating offshore oil and gas leasing, exploration, development, and production activities and assure that other federal agencies and state agencies do not impose duplicative requirements.

- ARCTIC NATIONAL WILDLIFE REFUGE
  Open the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) to oil and natural gas exploration and development. ANWR is America’s most promising area for the discovery of giant oil and gas resources in North America.

  Recommendation: The Alaska National Interest Lands and Conservation Act 16 USC Sec. 3101 et seq. provides for development of oil and natural gas resources from ANWR upon an affirmative vote of both the House of Representatives and the Senate.

- DEEPWATER ROYALTY RELIEF
  To encourage investment in domestic oil and gas resources on the Outer Continental Shelf, Congress enacted the Deepwater Royalty Relief Act of 1995 to suspended the payment of royalties for specific initial quantities of oil and gas produced from the OCS in water depths greater than 200 meters. This incentive was very successful and resulted in billions of
dollars in additional revenue to the United States and a significant increase in oil and natural gas production of from OCS waters.

**Recommendation:** Amend Title III of Public Law 104-58, "Alaska Power Administration Sale Act," Section 304, to permanently adopt the deepwater royalty relief automatic suspension volume provisions that expired November 2000 for all deepwater production.

- **ROYALTY IN KIND**
  The Minerals Management Service's recent RIK pilot projects in Wyoming, Gulf of Mexico and in Texas state waters have successfully demonstrated the Agency's ability to take royalties in kind, rather than value. RIK saves the taxpayer money through reduction in administrative costs and reduction of the uncertainty inherent in paying royalties in value that often results in costly agency and court disputes.

**Recommendation:** Amend the Outer Continental Lands Act, 43 USC Sec. 1331 et seq. and the Mineral Leasing Act of 1920, 30 USC Section 181 et seq. to promote RIK wherever practicable and clarify that the MMS' existing authority to use RIK includes the authority to pay transportation and other post-production costs.

- **SAFE DRINKING WATER ACT**
  Hydraulic fracturing is a vital technology that is used in over half of the natural gas wells in the country. Current litigation over the regulation of this activity could dramatically increase the cost of this technology and limit natural gas production in some areas of the country. Clarification is needed for the Safe Drinking Water Act's underground injection control provisions to exclude coverage of hydraulic fracturing. This would allow states to continue to regulate hydraulic fracturing under their oil and gas regulatory programs.

**Recommendation:** Amend Section 1421(d)(1) of the Safe Drinking Water Act (42 U.S.C. 300h(d)) to clarify that the term underground injection does not include hydraulic fracturing similar to S. 724 in the 106th Congress.

- **STRATEGIC PETROLEUM RESERVE**
  The Strategic Petroleum Reserve was created by Congress to provide for limited supplies of oil in time of supply disruptions, thereby enhancing national security. In 1998, when oil prices were low, the Secretary of Energy used federal royalty oil taken in kind by the Minerals Management Service and transferred to DOE for filling the SPR. This is a practice that should be strongly encouraged.

**Recommendation:** Amend Part B of Title I of the Energy Policy and Conservation Act (42 U.S.C. § 6232 et seq.) to strongly encourage the
Secretary of Energy to fill the Strategic Petroleum Reserve during periods of stable oil prices to the equivalent of 90 days of imports for use in national emergencies only, using federal royalty oil, taken in-kind.

UPSTREAM ISSUES REQUIRING CONGRESSIONAL OVERSIGHT

• ACCESS TO GOVERNMENT LANDS FOR NATURAL GAS AND OIL DEVELOPMENT

In developing a National Energy Policy, Congress should direct the Administration, perhaps in oversight hearings, to adhere to existing congressional mandates under the Federal Land Policy Management Act and related Acts requiring agencies to give balanced consideration to multiple competing uses of federal land. Oil and natural gas development is an important use of federal lands and experience has shown that it does not have to be excluded for environmental or aesthetic purposes.

Direct the U.S. Forest Service and the Bureau of Land Management to revise their planning regulations to make natural gas and oil leasing a priority. For example:

Recommendation: Direct the Administration to conduct a thorough and comprehensive review of offshore leasing moratoria, allowing leasing and production of natural gas and oil in all but the most sensitive environmental areas.

Recommendation: Direct the U.S. Forest Service and the Bureau of Land Management to revise their resource planning regulations to make natural gas and oil leasing a priority in order to meet the Nation’s critical energy needs.

12/20/2000

Obtained and made public by the Natural Resources Defense Council, March/April 2002
DOWNSTREAM ISSUES

• FEDERAL OXYGEN MANDATE AND MTBE

The Clean Air Act mandates a minimum amount of oxygen in federal reformulated gasoline. This requirement indirectly requires the use of oxygenates such as MTBE and ethanol. The oxygen mandate is becoming environmentally obsolete and should be repealed so refiners can reduce the use of oxygenates in the most cost-effective manner. Consumers are best served when refiners have the flexibility to blend gasolines that meet federal and state environmental requirements and vehicle needs. Mandates that prescribe a recipe for gasolines constrain the nation’s fuel production and usually result in increased refiner and consumer costs, as demonstrated by the outcry over the price and supply problems caused by the required introduction of a new reformulated gasoline in the Midwest this past summer.

Recommendation: Legislation is needed for a waiver of the oxygen content requirement for reformulated gasoline as follows:

Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended—

1. by striking "Within 1 year after the enactment of the Clean Air Act Amendments of 1990," and inserting the following:

   "(A) IN GENERAL- Not later than November 15, 1991;"; and

2. by adding at the end the following:

   "(B) WAIVER OF OXYGEN CONTENT REQUIREMENT-

   "(i) IN GENERAL- Notwithstanding any other provision of this subsection, upon notification by the Governor of a State to the Administrator, a Governor may waive paragraphs (2)(B) and (3)(A)(v) with respect to gasoline sold or dispensed in the State.

   "(ii) TREATMENT AS REFORMULATED GASOLINE - In the case of a State for which the Governor invokes the waiver described in clause (i), gasoline that complies with all provisions of this subsection other than paragraphs (2)(B) and (3)(A)(v) shall be considered to be reformulated gasoline for the purposes of this subsection."
DOWNSTREAM REGULATORY ENVIRONMENT
Oil and natural gas will continue to be the most versatile, affordable and abundant fuels for the foreseeable future. Their use is critical to sustaining U.S. economic prosperity and is compatible with environmental goals. At the same time, the nation's energy infrastructure is near capacity and significant expansion will be needed over the next twenty years. The energy impacts of administrative actions must be considered in order to create a climate that encourages capacity expansion and provides the necessary certainty enabling capacity expansion to occur in a sensible and cost-effective manner.

Recommendations: The following items need to be incorporated into energy legislation:

- Administrative actions impacting energy supply and conservation must rely on sound science and the application of full cost-benefit and risk analyses and should be performance-based.

- Certainty in scope, timing, requirements and interpretation are needed so that necessary capital improvements can be made with the knowledge that further changes will not result in wasted investment.

- The permitting process must be streamlined where possible to ensure that capacity expansions are not delayed, and state and local agencies should provide the necessary resources to process permits expeditiously.

- Refiners must have a minimum of 4 years lead time for finalization of requirements for implementation of a significant refinery investment.

- Administrative actions should be consistent with sound business practices, and deadlines for meeting new requirements should be based on costs, benefits and practicality.

- Measures should be coordinated to avoid overlap or conflict and companies should be provided adequate time to recover capital costs before additional controls are imposed.

- Requirements should be better defined and consistently applied. Increasing capacity to produce more fuel to satisfy growing demand is impeded by the uncertainty introduced by complexity, lack of clarity and retroactive reinterpretation. Punitive, selective and unpredictable enforcement policies discourage and unfairly penalize sound
compliance efforts (e.g., EPA New Source Review enforcement initiative).

- The energy implications of all federal government actions should be explicitly identified and considered before a law or regulation is enacted. These actions should be carefully reviewed in light of their energy implications and rejected if their adverse impact on energy supplies is not justified by the other benefits.

- **ASSURING ADEQUATE AND AFFORDABLE FUELS**

The National Petroleum Council published a study in June 2000 entitled "U.S. Petroleum Refining – Assuring the Adequacy and Affordability of Cleaner Fuels." The study assessed government policies and actions that would affect product supply and refinery viability. The study concludes that the refining and distribution industry will be significantly challenged to meet the increasing domestic light petroleum product demand with the substantial changes in fuel quality specifications recently promulgated and currently being considered.

The NPC study contains specific recommendations and finding related to petroleum product supply and future refinery viability. The Secretary of Energy, in consultation with the governmental departments and federal agencies, shall report to the applicable committees in the houses of Congress on the findings and conclusions of the NPC study and on the adjustments to federal policy required to implement those findings and conclusions. This report shall include but not be limited to the following:

- Policy changes needed within federal departments and agencies to implement the findings and conclusions of the NPC study
- Identification of needed changes that cannot be accomplished through Executive Branch action alone; and recommendations that, if passed and signed into law, would accomplish the changes needed.

- **RESTRICTIVE PETROLEUM MARKETING LEGISLATION**

Congress should refrain from introducing any petroleum marketing legislation that interferes in the contractual arrangements between suppliers and their customers. This type of legislation injects inappropriate and unwarranted governmental controls on the marketplace and often has unintended consequences.

**Recommendation:** Reject any proposals that comprehensive NEP legislation include marketing restrictions.
MARINE TRANSPORTATION ISSUES

- Support increased marine-related funding for the Army Corps of Engineers (dredging), and NOAA (nautical charting). Congress should direct NOAA to develop a plan to eliminate the backlog of hydrographic survey data within five years.

The safe and efficient movement of goods through the United States' port system, including crude oil and petroleum products, requires that channels be dredged and maintained at safe depths on a consistent basis.

Recommendation: Among all the marine infrastructure activities, dredging programs which facilitate commerce must be given a priority for funding, and such funding must continue even while the harbor maintenance tax issue is discussed and debated.

Safe navigation also requires accurate and current navigational charts for U.S. waterways. To date, however, these programs have been and continue to be so severely underfunded that it will take the National Oceanic and Atmospheric Administration (NOAA) 20 years to eliminate the survey backlog. Hydrographic survey data, which is the basis for nautical charts, should be collected using the latest hydrographic survey equipment. Some hydrographic data still being used is over 40 years old. All available resources, both public and private, should be fully utilized, without limits placed on the sources of certifiable survey data.

Recommendation: Funding for this effort should be increased so that the survey backlog can be eliminated in the shortest possible timeframe consistent with sound resource allocation and management principles.

- Take the Harbor Maintenance Fund off budget and earmark it exclusively for harbor services.

An off budget trust fund, which is not subject to annual appropriation, is critical to ensure that funds are consistently available for meeting marine infrastructure needs and that funds collected for that purpose are not diverted to any other program. The Harbor Maintenance Trust Fund should be taken off budget and used exclusively for harbor services. This would guarantee resources are available to meet the growing needs of maritime commerce.

Revenue earmarked for the Harbor Maintenance Trust Fund should be obtained from a variety of sources. Because of the broad benefits provided by the United States' waterways, general revenues should contribute to the trust fund in large measure. A user fee covering a portion of harbor maintenance costs is also acceptable if: the fees are paid by all beneficiaries, the size of fees are commensurate with the cost or value of the service rendered, and the beneficiaries have input into prioritization and fund allocation.
**Recommendation:** Enact H.R. 111 of the 106th Congress to accomplish these purposes.

- Provide the U.S. Coast Guard with adequate funding to preserve its leadership role within the International Maritime Organization (IMO). Congress should clarify that the Coast Guard has the authority to develop US positions and represent the US before the IMO.

A national energy policy needs to recognize the international nature of oil transportation. Accordingly, the US government should look to and support broad-based international solutions to marine regulatory issues. The International Maritime Organization (IMO) is the appropriate forum for discussions of such issues as vessel operations, ballast water management, marine air emissions, and vessel scrapping.

**Recommendation:** As the U.S. representative to IMO, the US Coast Guard should be provided the resources necessary to fulfill its role and to provide leadership within IMO as a prominent national maritime authority.

- Reform the Jones Act and permit ships built in foreign countries to engage in coastwise trade transporting crude oil and petroleum products.

The US needs to remove barriers to the timely replacement of aging domestic tonnage and stimulate a robust domestic fleet.

**Recommendation:** This can be accomplished by S. 1032 of the 106th Congress to reform the build America-only provisions of the Jones Act for large, ocean going, self-propelled tankers.
Deep Water Royalty Relief Should be Extended

The recently expired program was a great success
The Deepwater Royalty Relief Act of 1995 was extremely successful in promoting exploration in water depths greater than 200 meters in the Gulf of Mexico. Annual deepwater oil production has increased from some 60,000 barrels per day to close to 450,000 barrels per day under the Act.

MMS is proposing sharp curtailments in that program
With the expiration of the Act in 2000, MMS has great latitude in deciding administratively what royalty relief, if any, to grant in future lease sales. Under this authority, MMS is proposing to sharply reduce the automatic suspension volumes at all depths, and to completely eliminate them in the 200 to 800 meter range. In lieu of automatic suspensions, MMS proposes to expand the scope of its discretionary relief program, allowing any marginal post-2000 lease to apply for discretionary royalty relief. It justifies this reduction in the program on several grounds, including: (a) that the installation of infrastructure already in place and learning from past development have so improved the economics of prospective projects that less relief is justified, and (b) that oil and gas prices are now far higher than they were in the past, and likely to remain so, further reducing the need for such relief.

The premises of these cutbacks are unfounded
Neither of these premises is justified. For example, movements into ultradepth waters will require new “pioneering” efforts, and new sources of development risk, from those faced in projects to date. There is no reason to presume these risks to be smaller than those faced to date. Furthermore, while it is true that the establishment of infrastructure at properties developed to date improves the economics of new leases in their vicinity, the adequacy of that existing infrastructure hinges largely on the size and distribution of the remaining undiscovered resource base, which is currently in the process of very significant reassessment by both industry and MMS itself. Finally, while it is true that current prices are at recent highs, it is only two years since they were at historic lows. Price volatility is the mark of this industry, and there is no basis for presuming that recent price increases are permanent. Moreover, there is no reason for government concern that high prices will generate a windfall to industry since both the previous and proposed programs provide price thresholds above which royalty suspension does not apply.

Any discretionary relief program will be heavily discounted
MMS offers an expanded discretionary relief program as a substitute for the automatic volumes which had been provided by the Act. While industry anticipates improvements in the administration of the current system, which has been so cumbersome as to produce only 7 applications and 4 approvals since 1995, until an acceptable track record is established, the promise of discretionary relief will tend to be heavily discounted by prospective bidders.

Cutbacks in royalty relief are poorly timed
Deepwater oil and gas are becoming an increasingly important share of our domestic energy prospects. An industry sponsored study by Advanced Resources International indicates that continuation of the system of royalty relief provided by the Act would stimulate development of an incremental one million barrels of oil equivalent per day of domestic oil and gas supply within the next decade. This new supply is desperately needed. It is a poor time to begin reducing the incentives to realization of that potential.
DOE Review of Agency Actions Affecting Energy

Statutory Language – Title I – General Provisions to Enhance Domestic Production

The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.) is amended as follows:

"All federal agencies shall include in any proposed major federal actions that could significantly affect energy supplies, distribution, or use, a statement on:

(i) the energy impact of the proposed action,
(ii) any adverse energy effects which cannot be avoided should the proposal be implemented, and
(iii) alternatives to the proposed action.

Prior to taking final action on any such major federal action, the agency shall consult with, and obtain the concurrence of, the Secretary of Energy. The Department of Energy is directed to establish an office within the Department to review agency actions for energy impacts, and make recommendations to the Secretary. The Secretary shall finalize all Department review decision within a reasonable time certain, but in no case more than 180 days."

Notes

1. The draft language is modeled on NEPA. But other models could be used; provisions contemplating consultation between lead agency and another agency appear in CZMA, CAA, etc. Depending on the sought after result, would an executive order be sufficient (e.g., old executive order on regulatory taking)?

2. One threshold question: What kinds of agency actions are covered? Under NEPA "major federal actions" embraces agency programmatic decisions (e.g., DOI 5-year OCS leasing program) as well as company specific decisions (e.g., leases, permits, etc.). Individual companies are likely to balk at another link in the decision making chain for their permit applications and the like, especially where they have market competitors. Industry more likely to embrace a process which creates a hurdle for agency policy initiatives that are not energy-related at their core (e.g., EPA environmental regulations affecting fuels, facility siting). Bottom line: any new legislation could define "major federal action" any way desired and need not adopt the NEPA definition as it has been construed so expansively by the courts.

3. Another threshold question: How much authority should DOE have? As drafted, the language above quietly requires DOE concurrence, in effect giving DOE veto power. A variation would be to create a presumption of concurrence, rebuttable only if the action initiating agency provides compelling reasons for rejecting any DOE recommendations in whole or in part. Yet another, even milder, variation would require only that the lead agency consult with DOE without requiring, even presumptively, any DOE recommendations.

4. Another threshold question: How much detail should be prescribed in the DOE review process? For example, should the process include time limits (perhaps with a default)? Require for DOE recommendations, which if satisfied would earn concurrence? Outline a
process by which the lead agency deals with DOE recommendations? Provide for judicial review?
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Deepwater oil and gas are becoming an increasingly important share of our domestic energy prospects. An industry sponsored study by Advanced Resources International indicates that continuation of the system of royalty relief provided by the Act would stimulate development of an incremental one million barrels of oil equivalent per day of domestic oil and gas supply within the next decade. This new supply is desperately needed. It is a poor time to begin reducing the incentives to realization of that potential.
The Strategic Petroleum Reserve (SPR) is the Nation's first line of defense against an interruption in petroleum supplies. It is an emergency supply of crude oil stored in huge underground salt caverns along the coastline of the Gulf of Mexico.

Decisions to withdraw crude oil from the SPR during an energy emergency are made by the President. In the event of an energy emergency, SPR oil would be distributed by competitive sale. Although used for emergency purposes only once to date (during Operation Desert Storm in 1991), the SPR's current size - nearly 565 million barrels - and the U.S. government's stated policy to withdraw oil early in a potential supply emergency make the SPR a significant deterrent to oil import cutoffs and a key tool of foreign policy.

Origins
The need for a national oil storage reserve has been recognized for at least five decades. Secretary of the Interior Harold Ickes advocated the stockpiling of emergency crude oil in 1944. President Truman's Minerals Policy Commission proposed a strategic oil supply in 1952. President Eisenhower suggested an oil reserve after the 1956 Suez Crisis. The Cabinet Task Force on Oil Import Control recommended a similar reserve in 1970. The 1973-74 oil embargo underscored the need for a strategic oil reserve. The cutoff of oil flowing into the United States from many Arab nations sent economic shockwaves throughout the Nation. In the aftermath of the oil crises, the United States established the SPR. Congress passed the Energy Policy and Conservation Act, 42 USC 6201 et seq. (EPCA), in 1975 to attempt to address numerous energy security issues. EPCA contained a provision to create and fill a Strategic Petroleum Reserve (SPR) “capable of reducing the impact of severe energy supply disruptions.” Congress set a goal to store a 90-day supply of crude oil (one billion barrels of crude oil in 1975).

President Ford signed EPCA on December 22, 1975. The Gulf of Mexico was a logical choice for oil storage sites since more than 500 salt domes are concentrated along the coast, and it is the location of many U.S. refineries and distribution points for tankers, barges and pipelines. In April 1977, the government acquired several existing salt caverns to serve as the first storage sites. Construction began in June 1977, and the first oil was soon delivered to the SPR.

Current Status
Today, the SPR holds more than 565 million barrels of crude oil, the largest emergency oil stockpile in the world. Together, the facilities and crude oil represent more than a $20 billion national investment.
Fill was suspended in FY 1995 to devote budget resources to refurbishing the SPR equipment and extending the life of the complex through at least the first quarter of the next century. In 1999, fill was resumed in a joint initiative between the Departments of Energy and the Interior to supply royalty oil from Federal offshore tracts to the Strategic Petroleum Reserve.

Proposal

Presidents have made findings that increasing oil imports can threaten the Nation’s national security. The history of the last 30 years demonstrates that energy price and supply volatility can result in significant, deleterious economic conditions.

Under the Outer Continental Shelf Lands Act and the Mineral Leasing Act, the Secretary of the Interior is authorized to take the federal government share of oil and gas production extracted from federal lands as a percentage share of the commodity produced. Further, those statutes permit the Interior Secretary to transfer the federal government’s production share to the Secretary of Energy or Defense, as well as to other agencies.

In 1998, during a period of lethargic crude oil markets, the Secretaries of Energy and Interior entered into an agreement for the federal share of crude oil production to be deposited, directly or indirectly, into the Strategic Petroleum Reserve rather than being sold into the market, with the proceeds being deposited into the U.S. Treasury.

This program agreement successfully added to the volumes stored in the SPR. The program was suspended when the Secretary of Energy found that the federal share of oil production would be better utilized to be sold into domestic markets to augment supplies flowing to domestic refineries as world supplies tightened and upward price volatility pervaded energy markets.

Language

At the appropriate place insert the following:

The Secretary of the Interior shall enter into an agreement with the Secretary of Energy to transfer title to the federal share of crude oil production from federal lands for use at the discretion of the Secretary of Energy in filling the Strategic Petroleum Reserve during periods of crude oil market stability. The Secretary of Energy may also use the federal share of crude oil produced from federal lands for other disposal within the Federal Government, as he may determine, to carry out the energy policy of the United States.
Royalty In Kind

Description: Under the terms of federal oil and gas lease agreements and current statutes, the federal government can take its royalty share of oil and gas production "in value" (money) or "in kind" (production). In FY2000 federal royalties brought 5.2 billion dollars to the U.S. Treasury. Industry strongly supports the federal government taking its royalties in kind because of RIK's certainty, simplicity, administrative costs savings, avoidance of disputes and costly litigation and potential for increased revenues to the U.S. Treasury. Enabling legislation to provide the federal government the authority and flexibility to fully implement RIK will increase the probability of success of RIK and result in the benefits to the public as noted.

Background: Some federal royalty has been taken in kind by the Secretary since the early 1920's. The principal RIK program before 1996 was the Small Refiner RIK Oil Program. Since that time, the MMS has successfully managed RIK pilot programs for both oil and gas. Numerous hearings have been held in the House and Senate during the last four years on the benefits of RIK. The State of Texas testified before the House Resources Committee in 1997 that RIK was a successful solution to the problems associated with taking the State's gas royalties in value. Alberta Canada also testified that RIK was a successful way to manage the Crown's royalties. The state of Wyoming is building on its successful RIK pilot and is proactively expanding its RIK effort. The DOI has pursued RIK during the last six years and has initiated a number of significant Pilot programs to ascertain the feasibility of RIK. The agency states that it has achieved significant cost-savings and revenue enhancement through its RIK Pilot programs.

Status: Currently, in addition to the Small Refiner RIK program, MMS has four, multi-year RIK programs in place- (1) a Wyoming oil RIK Pilot, (2) a State of Texas 8(g) gas RIK Pilot, (3) an OCS gas RIK Pilot, (4) and an OCS oil RIK Pilot. A full evaluation of the Wyoming pilot is expected soon. RIK oil has been used extensively to fill the Strategic Petroleum Reserve and in two pilot programs, RIK gas has been successfully used in federal facilities. Currently, MMS takes over 40% of federal royalty oil in kind, and over 15% of royalty gas in kind.

Discussion: Enabling legislation is required to provide the federal government the authority to fully implement RIK and to pay for RIK services such as transportation and processing? RIK should be considered part of a comprehensive national energy strategy and a permanent tool for the Minerals Management Service to use in fulfilling its mission.

Enabling legislation will allow the department to pay for costs associated with RIK such as transportation and processing, provide certainty to the lessee, the States and the federal government, provide for cooperation with the states, and avoid valuation problems that arise when royalty is taken in value.

Legislative action: Enact attached draft bill developed by Senate Energy Staff modifying the authorizing acts.
Transition Policy Issue Paper

Royalty in Value

Description: Under the terms of federal oil and gas lease agreements and current statutes, the federal government can take its royalty share of oil and gas production “in value” (money) or “in kind” (production). When royalty is taken in value, the point of valuation is the value at the well on the lease where the oil or gas was produced. On March 15, 2000, the MMS finalized new oil valuation regulations which became effective on September 1, 2000. The goals of the new rules as articulated by MMS were, certainty, simplicity and fairness. The final regulations were immediately challenged by the oil and gas industry in two cases filed in the D.C. District Court. Industry strongly opposes the new rules on a number of grounds, the most important being that they impose expanded obligations on oil and gas lessees which were not part of and are greater than their existing lease obligations with the government. Among other things, the new obligations impose valuation away from the lease, a “duty to market”, increased costs of transportation, and contain affiliate resale valuation issues. In a recent D.C. District Court case, Judge Royce Lamberth rejected MMS’ implied duty to market argument. In his opinion, Judge Lamberth stated, “as explained above, the court finds that an implied duty to market downstream is not consistent with the terms of the existing leases.” This decision has been appealed by the MMS to the Federal Circuit. If the District Court rules similarly in the challenges to the oil valuation rules, the MMS would then potentially be required to re-write the rules to conform to Judge Lamberth’s opinion. Further, the oil valuation rules are relevant to royalty taken in kind (RIK) as the benchmark for measuring the cost/benefit of RIK initiatives will be measured against royalty taken in value and thus, the bar for RIK will be raised by the new RIV regulations.

Status: The Senate and House held numerous hearings on MMS’ proposed oil valuation rules last year and imposed a multi-year moratorium prior to the rules going final in March. The MMS is in the process of implementing the new rules and training internal personnel. As discussed above, the industry has challenged the rules in D.C. District Court.

Key Issues/Decisions: Should the MMS obtain a legal opinion from the new DOI Solicitor regarding valuation away from the lease and specifically on the duty to market issue? Should the Department engage in a review of transportation issues? Should the MMS have further policy discussions regarding decisions using an indexing methodology to approximate lease value and the issuance of valuation determinations? Should DOI revisit the issue of comparable sales and tendering?

Options:
- Obtain a legal opinion from the new DOI solicitor regarding the Department’s position on the duty to market and the best methodologies to obtain value at the lease.
- After a review of Judge Lamberth’s decision obtain a legal opinion from the new DOI solicitor regarding oil and gas transportation issues and consider whether to prosecute the appeal.
- Consider rewriting the gas transportation rules on appeal to the Federal Circuit and the oil valuation rules being challenged in light of the D.C. District Court decision.

Timing/Milestones: First 100 days.
Transition Policy Issue Paper

Policy Considerations

Description: Since 1982, the Minerals Management Service of the Department of Interior has undergone numerous studies and initiatives on the agency's structure and organization. In 1992, the MMS instituted significant changes under the Vice-President's reinventing government initiatives. These initiatives have led to significant changes, including organizational restructuring currently under way as well as significant capital expenditures on information systems. Members of Congress in their oversight capacity, raised serious questions regarding the organizational restructuring initiatives contained in the FY 2001 budget. In particular, they questioned whether MMS had dedicated proper human resources to its team handling the government's RIK projects. Other initiatives to reinvent the department have fallen within the category of rewriting regulations into "plain English". Taken in total, the initiatives commenced in 1992 have and are effectuating significant changes within the Minerals Management Service of the Department of Interior.

Status: Many initiatives are currently underway and others are planned for the immediate future. The MMS is currently undergoing organizational restructuring and is implementing a new financial system. Other training and personnel reorganization initiatives are underway as well. These changes can and do impact oil and gas lessees on the burdens they impose in a myriad of ways including revising electronic reporting requirements, estimating paperwork reduction, implementation of oil valuation rules, or revising existing lease forms. All told there is significant change ongoing.

Key Issues/Decisions: Are the organizational structure/reinventing government initiatives of MMS fully and cost-effectively meeting the goals of timely collection of revenues, simplicity and certainty for the federal government, the states, tribes and lessees? Has MMS allocated adequate resources for management of the RIK programs?

Options:
- No change. This would permit the time necessary to perform a thorough review of the fundamental changes that are occurring and are planned within the core revenue collection and disbursement functions and their impact on policies of the Minerals Management Service.

Timing/Milestones: The reinventing government/plain English initiatives impact the core of all MMS initiatives and therefore must be reviewed within the first 100 days of the new administration.
By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, in order to help the Federal Government coordinate a national effort to ensure reliable and affordable supplies of energy for all Americans, it is hereby ordered as follows:

Section 1. Policy. It is critical that the United States develop an energy policy that increases domestic production of energy in an environmentally responsible manner, and promotes development of new technologies that can conserve fossil fuels and reduce energy-related pollution. Furthermore, given the projected 25 percent increase in demand for motor vehicle fuels by 2020 in the United States, it is critical that the United States develop an energy policy that expedites the expansion of facilities critical to production, transportation, and manufacturing of oil, natural gas, and petroleum products.

It is imperative that agencies consider the energy implications of environmental and other regulatory actions to avoid unintended and inordinate complications in energy production and supply. The following principles should guide agency decisions that may affect energy matters:

(a) Energy is a central part of the global economy in which supply and demand are best satisfied through free markets and private sector initiatives. Government policies that minimize interference with a free-market system will contribute to fewer supply disruptions and, consequently, will help moderate price variability.

(b) U.S. national security and economic vitality are enhanced by diversifying energy sources and increasing domestic supplies.

(c) Government policies should create a predictable operating and investment environment for energy suppliers.

(d) Environmental concerns must be addressed but free-market-based incentives, rather than governmental command and control, provide the best foundation for cost-effective solutions.

(e) Technology can help increase supplies, lower costs and improve environmental performance and energy efficiency, meriting both private initiative and government support.
Section 2. Consultation with Secretary of Energy Required. All federal agencies shall include in any regulatory action that could significantly and adversely affect energy supplies, distribution, or use, a detailed statement on (i) the energy impact of the proposed action, (ii) any adverse energy effects which cannot be avoided should the proposal be implemented, and (iii) alternatives to the proposed action. Prior to taking such regulatory action, the agency shall consult with, and obtain the concurrence of, the Secretary of Energy. The agencies' actions directed by this Executive Order shall be carried out to the extent permitted by law.

Section 3. Existing Regulations. To ensure that all existing rules, regulations, and agency policies are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law, each agency shall within 90 days of the date of this Executive order, submit to the Director of the Office of Management and Budget a program under which the agency will periodically review its existing rules, regulations and policies to determine whether any such rules, regulations or policies could significantly and adversely affect energy supplies, distribution, or use and whether, after consultation with the Secretary of Energy, any such rule, regulation or policy should be modified or eliminated so as to make the agency's regulatory program in greater alignment with the President's priorities and the principles set forth in this Executive order. Any rules, regulations or policies selected for review shall be included in the agency's annual plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are inconsistent with the policies set forth in this Executive order.

Sec. 4. Resolution of Conflicts. To the extent permitted by law, disagreements or conflicts between the Secretary of Energy and other agency heads that cannot be resolved by the Secretary of Energy and the other agency head shall be resolved by the President, or by the Vice President acting at the request of the President, with the Secretary of Energy and the other relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Secretary of Energy, the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Section 5. Definitions.

(a) "Agency," means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1).

(b) "Regulation" or "rule" means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.
(c) "Regulatory action" means any substantive action by an agency that promulgates or is expected to lead to the promulgation of a rule, regulation or policy, including, but not limited to, notices of inquiry, advance notices of proposed rulemaking, notices of proposed rulemaking, and guidance documents.

Section 6. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.