

DEPARTMENT OF ENERGY**Office of Leasing Policy Development****[10 CFR Parts 212, 375 and 391]****Leasing; Proposed Rulemaking and Public Hearing Regarding the Acquisition and Disposition of Federal Royalty Oil****AGENCY:** Department of Energy.**ACTION:** Proposed Rule

SUMMARY: This proposed rulemaking is being issued pursuant to section 302(b)(5) of the Department of Energy Organization Act (DOE Act). It provides procedures for the disposal of oil royalties taken in kind by the United States from onshore and Outer Continental Shelf (OCS) oil and gas leases. In addition, these regulations amend the Department of Energy (DOE) mandatory petroleum price regulations (10 CFR Part 212), in order to provide consistent treatment of royalty oil under both the price regulations and the regulations proposed in this notice. Because these are the first regulations issued under DOE's section 302(b) DOE Act authority, a Part 375 is being proposed to describe DOE's authority in the mineral leasing area and to establish some general provisions that will be applicable to all of DOE's mineral leasing regulations, including procedures for requesting an interpretation and petitioning for the issuance, amendment, or repeal of a rule. When promulgated, these regulations will supersede the existing Department of Interior (DOI) regulations on Federal royalty oil disposal. (30 CFR Parts 225 and 225a).

For information on regional public hearings on this Proposed Rule, see the document entitled "Additional Procedural Information on Proposed Rulemaking and Public Hearing. Regarding the Acquisition and Disposition of Federal Royalty Oil" published in today's issue of the **Federal Register**.

DATES: Comments are due by October 5, 1979, 4:30 p.m. Requests to speak are due by August 22, 1979, 4:30 p.m. Hearing: September 12, 1979, 9:30 a.m.

ADDRESSES: All written comments and requests to speak at the public hearing should be sent to the Office of Hearings Management, Economic Regulatory Administration, Room 2313, Box XF (Docket No. LPD-79-02), 2000 M Street, NW., Washington, D.C. 20461.

HEARING LOCATION: Room 2105, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearings Management), Economic Regulatory Administration, 2000 M Street, NW., Room 2214C, Washington, D.C. 20461. (202) 254-5201.

Susan Pearce (Regulatory Programs), Leasing Policy Development Office, U.S. Department of Energy, 12th & Pennsylvania Avenue, NW., Room 2313, Washington, D.C. 20461 (202) 633-9035.

James G. Beste (Office of General Counsel), U.S. Department of Energy, 12th & Pennsylvania Avenue, NW., Room 7140, Washington, D.C. 20461 (202) 633-8788.

Frederic C. Appel (Public Affairs), Resource Applications, U.S. Department of Energy, 12th & Pennsylvania Avenue, NW., Room 3307, Washington, D.C. 20461 (202) 633-9418.

SUPPLEMENTARY INFORMATION:

- I. Introduction.
- II. General Provisions--Part 375.
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I. Introduction.

Sections 302 and 303 of the DOE Act (Pub. L. 95-91, 91 Stat. 578-579, 579-580, (42 U.S.C. 7152, 7153)), transferred to the Secretary of Energy certain authorities previously held by the Secretary of the Interior under the Outer Continental Shelf Lands Act (OCSLA), the Mineral Lands Leasing Act (MLLA), the Mineral Leasing Act for Acquired Lands (MLAAL), the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act. As a result, with respect to Federal leases, the Secretary of Energy is authorized to promulgate regulations that (1) foster competition, (2) implement alternative bidding systems, (3) establish diligence requirements, (4) set rates of production, and (5) specify the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind. In addition, under section 302(c) of the DOE Act, the Secretary of Energy is granted the authority to establish rates of production for Federal leases, and under section 303(c)(1), the

Secretary reviews and may approve or disapprove any term or condition of a Federal lease that relate to DOE's section 302(b) authority to promulgate regulations.

As required by section 303(b) of the DOE Act, the Secretary of the Interior was consulted during the preparation of these proposed regulations and afforded not less than 30 days to comment formally on them. The Secretary of the Interior provided comments which were considered in redrafting these regulations prior to today's publication.

II. General Provisions--Part 375

Since these are the first regulations being proposed under the authorities transferred to DOE by sections 302 and 303 of the DOE Act, the regulations introduce a general provisions Part 375 applicable to all mineral leasing regulations promulgated by DOE in Subchapter C. Part 375 describes DOE's authority in the mineral leasing area and contains general definitions and procedures for requesting an interpretation of DOE's mineral leasing regulations and petitioning for the issuance, amendment, or repeal of a rule.

Subpart A of Part 375 establishes a general framework for DOE's mineral leasing regulations. Section 375.001 of the proposed regulations describes the purposes of the General Provisions Part 375, as well as the scope of Subchapter C. In addition, this section explains the division of mineral leasing authority made by Section 303(a) of the DOE Act.

Section 375.002 states that the provisions in Subparts A and B of 375 are applicable to all the regulations in Subchapter C, unless otherwise noted.

DOE's authority in the mineral leasing area is set forth in § 375.003 of the proposed regulations. This section restates the transfers of authority made by section 302(b) and 302(c) of the DOE Act from the Secretary of the Interior to the Secretary of Energy. Further, this section describes the consultative role afforded to the Secretary of the Interior by section 303(b) of the DOE Act in the preparation of regulations by the Secretary of Energy under section 302(b) of the DOE Act.

Definitions which are applicable to all the DOE mineral leasing regulations found in Subchapter C are established by § 375.004. Definitions which are mineral or function-specific will be located in the parts or subparts applicable to the particular mineral or function.

Section 375.005 explains the effect of the DOE mineral leasing regulations on existing DOE regulations. In those cases where DOE regulations will supersede or supplement DOI-regulations, such supersession or supplementation will be noted in the appropriate rulemaking.

Subpart B of Part 375 contains administrative procedures applicable to DOE's mineral leasing program. Section 375.101 of the proposed regulations would establish the procedures for filing a formal request for an interpretation of DOE's mineral leasing regulations. This section proposes that request for interpretation be filed with DOE's Office of General Counsel in accordance with Subpart F of Part 205 of Title 10, Code of Federal Regulations. This section also provides for consultation with DOI's Solicitor prior to issuance of an interpretation.

Section 375.102 proposes that a request for the issuance, amendment or repeal of a rule be filed with the General Counsel and treated as a petition for a rulemaking in accordance with the procedures of Subpart L of 10 CFR Part 205. Under Subpart L, the General Counsel or his delegate may respond to a petition for issuance, amendment or repeal by either: (1) Instituting a rulemaking as proposed or as modified, in his discretion; (2) notifying the petitioner in writing that he does not intend to institute a rulemaking as proposed or as modified and stating the reasons; or (3) notifying the petitioner in writing that the matter is under continuing consideration and that no decision can be made at that time because of the inadequacy of available information, changing circumstances or other stated reasons.

III. Oil Royalties Taken in Kind--Part 391

A. General

DOI has administered programs through the United States Geological Survey (USGC) for the disposal of the United States oil royalties taken in kind (herein "royalty oil") for over 30 years in the case of onshore royalty oil, and during the last five years for OCS royalty oil. The DOI onshore royalty oil program has been operated under the regulations at 30 CFR Part 225, which were issued under the authority of the MLLA (Act of February 25, 1920, 41 Stat. 437 (30 U.S.C. 181 *et seq.*)) and the MLAAL (Act of August 7, 1947, 61 Stat. 913 (30 U.S.C. 351 *et seq.*)), while the offshore royalty oil program has been operated under the regulations at 30 CFR Part 225a, issued pursuant to the OCSLA (Act of August 7, 1953, 87 Stat. 462 (43 U.S.C. 1331 *et seq.*)). In addition to the above statutes, the Secretary of the Interior has been guided by Sections 2 and 8 of the Small Business Act (Pub. L. 85-536, sections 2(2), 2(8), 72 Stat. 384, 389 (15 U.S.C. 631, 637)) in disposing of royalty oil to small refiners.

B. Proposed Regulations (Part 391)--General

As discussed above, with the enactment of the DOE Act, the authority to promulgate regulations "specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind" was transferred from the Secretary of the

Interior to the Secretary of Energy (42 U.S.C. 7152(b)(5)). However, these proposed regulations would continue the operation and policy of the existing DOI programs regarding the sale of royalty oil to small refiners but would add a provision, to be exercised at the discretion of the Secretary of the Interior, that would allow the sale of OCS royalty oil to the public by competitive bidding. The provision for the sale of OCS royalty oil to the public has been added to conform to the recently enacted Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372, OCSLAA). In addition, those amendments require that DOE be consulted in making the determination to offer OCS royalty oil to small refiners.

As stated above, the proposed regulations would continue the policy of making OCS royalty oil available to small refiners. However, if it is determined that small refiners do have access to adequate supplies of oil at equitable prices, then OCS royalty oil may be offered, at the discretion of the Secretary of the Interior, for sale to the public by competitive bidding at not more than its regulated price or, if no regulated price applies, at not less than its fair market value. The onshore regulation provides for the sale of royalty oil only to small refiners not having their own source of supply. To participate in these royalty oil programs, a small refiner must have been certified as a small business concern by the Small Business Administration (SBA) in accordance with the provisions at 13 CFR Part 121.

The regulations in this notice would supersede the applicable DOI regulations relating to the disposal of Federal royalty oil promulgated in 30 CFR Parts 225 and 225(a).

C. Specific Royalty Oil Provisions

The existing DOI regulations on the disposition of Federal onshore royalty oil at 30 CFR Part 225 provide for, with certain exceptions, the sale of royalty oil to eligible refiners at the market price, without premium or bonus; however, in the case of contracts which become effective or which are extended on or after June 1, 1976, a charge for the cost of administration in an amount equal to one-half percent of the market price is made for each barrel of onshore royalty oil sold. Preference eligible refinery, *i.e.*, eligible refiners located in the area of production, are given a preference over other eligible refiners in the purchase of Federal royalty oil. When applications are filed by two or more preference eligible refiners for the same oil, the oil is allocated among the applicants drawing or on an equitable prorated basis. When applications are filed by two or more eligible refiners for the same oil, and no applications for the same oil are filed by preference eligible refiners, or the needs of preference eligible refiners have been adequately supplied with only a part of the royalty oil available, the royalty oil remaining is

allocated to eligible refiners by a drawing or on an equitable prorated basis.

For OCS royalty oil, the present DOI regulations at 30 CFR Part 225a provide for its sale only to small refiners for use in their refineries and not for sale in kind, except when special circumstances warrant other action. All Federal royalty oil sales are made at the market price, without premium or bonus; however, a charge for the cost of administration of an amount equal to one-half percent of the market price is made for each barrel of OCS royalty oil sold. When applications are filed by two or more small refiners for the same oil, the oil is allocated among the applicants by a drawing or on an equitable prorated basis. OCS royalty oil produced under a section 8 lease can only be made available for disposal when the lessee or operator under the lease involved elects to pay royalty in kind to the Secretary of the Interior. OCS royalty oil produced in areas for which ownership is in dispute between the Federal Government and a State can be made available for disposal only with the concurrence of that State.

With the exception of the addition of a provision for OCS royalty oil sale to the public and the other modifications explained below, most of the revisions proposed by DOE to the existing DOI regulations (30 CFR Parts 225 and 225a) constitute a rewording or an updating of the present regulations. In considering what revisions DOE would propose to the royalty oil regulations, DOE personnel consulted at length with representatives of both DOI and SBA.

The proposed substantive revisions to the existing DOI regulations are: (1) Modification of the definition of "market price" (§ 391.202) to conform, in the case of the onshore regulation (§ 391.202) to the DOE Mandatory Petroleum Price Regulations in 10 CFR Part 212 and the case of the OCS regulation (§ 391.102), to the OCSLAA; (2) removal of the requirement in the OCS royalty oil regulation that limits the amount of royalty oil that may be purchased by any one refiner to 60 percent of the refiner's capacity; and (3) modification of SBA's role to the extent that the determination and certification of a refiner's refining capacity shall be made by the Economic Regulatory Administration ("ERA") of DOE (§ 391.002).

The modification of the definitions of "market price" by these regulations should not significantly affect the existing programs. With regard to the onshore regulation, a provision is added to the present DOI definition stating that the "market price" of the royalty oil shall not exceed the lawful first sale price of oil as established under the DOE price regulations (10 CFR Part 212). The OCS regulation has been modified to conform to the language of the OCSLAA by stating that OCS royalty oil shall be sold at the "regulated price" or, if no "regulated price" applies, at the "fair market value."

Regarding the removal of the current requirement in the OCS royalty oil regulations limiting the amount of offshore royalty oil

purchased by any one refiner to 60 percent of its refining capacity (30 CFR Part 225a.3), DOE has been advised that the purpose of this requirement is not being satisfied as a result of the present high demand for royalty oil. The original intent of the 60 percent limitation was to avoid a situation in which the smaller independent refiners were operating only on Federal royalty oil. This limitation required small refiners to compete in the open market for at least a portion of their crude oil. However, with the present level of demand for royalty oil by eligible refiners, and because such a limitation is administratively impractical to enforce, this provision is being eliminated.

DOE has made no modifications to DOI's oil allocation policies for the small refiners who, through application, are eligible to receive royalty oil. However, DOE is interested in soliciting comments from interested parties regarding the equitability of the present allocation procedures.

Because of ERA determines and certifies the refining capacity of all refiners in the United States in connection with its administration of the DOE Mandatory Petroleum Allocation and Price Regulations, it is being proposed at § 391.002 that the determination of a small refiner's refining capacity, which is considered in SBA's certification of a refiner as a small concern, be performed by ERA. The ERA refiner certification has industry acceptance, is published quarterly, and would assure consistency in Federal programs relating to crude oil sale and allocation. If a small refiner applicant has not previously received ERA's capacity certification, the certification evaluation would specifically be performed in the course of evaluating the application. These proposed regulations would not otherwise alter the SBA role in the small refiner certification process.

DOE is aware of pending litigation regarding the applicability of the small refiner preference in the onshore regulations (*Plateau Inc. v. DOI*, Civil No. 76-687-M (D.N.M., November 23, 1977)). However, DOE has determined to retain the small refiner preference pending ultimate disposition of that litigation.

IV. OCS Royalty Oil Sales to the Public

Section 27 of the OCSLAA provides for the sale of OCS royalty oil to the public by competitive bidding at not more than the DOE regulated price, at the discretion of the Secretary of the Interior. As stated previously, the regulations would provide that the sale to the public be initiated only when it has been determined that small refiners have adequate access to oil at equitable prices.

Section 27(b)(3) of the OCSLAA specifies that the Secretary of the Interior must dispose of OCS royalty oil in a sale to the public "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." It is DOE's interpretation that these proposed regulations are consistent with regulations promulgated under the Emergency Petroleum Allocation Act (Pub. L. 93-159, 87 Stat. 628 (15 U.S.C. 751 *et seq.*)).

After it has been determined that OCS royalty oil shall be sold to the public, the proposed for sale begins with a determination by DOI as to the number of equally sized allotments of OCS royalty oil to be sold. This determination is then included in the Notice of Availability of OCS Royalty Oil which DOI publishes in the **Federal Register**. Any member of the public, designated in the proposed regulation as a "purchaser," may then bid for an allotment of not more than the DOE regulated price. The allotments shall be awarded to those bidding the regulated price, or if no regulated price applies, to those bidders bidding fair market value. If two or more purchasers submit the same bid price and those bids by virtue of their amounts make the bidders eligible for allotments, a drawing shall be held to determine who shall receive allotments if there are more purchasers than allotments.

DOE is proposing that the royalty oil sold to the public may not be resold in kind (§ 391.110(b)(2)). Therefore, those receiving allotments are not required to accept the entire allotment quantity if they cannot utilize it fully. Any excess royalty oil remaining after the initial sale may, at the discretion of DOI, be combined into additional allotments and offered to other bidders. As is currently authorized, exchanges of royalty oil would be permitted, subject to DOI approval.

To assure that royalty oil for sale to the public will be widely distributed, DOE is proposing that no member of the public (purchaser) may obtain more than one allotment of oil per OCS royalty oil sale (§ 391.110(b)(5)).

V. Amendments to DOE Mandatory Petroleum Price Regulations--Part 212

The present DOI regulations provide for an administrative charge of 1/2 of one percent of the market price for each barrel of royalty oil sold. DOE proposes to amend 10 CFR § 212.74 to add a new paragraph (d) that would permit an adjustment to the ceiling price for crude oil sold under proposed Part 391 to reflect this administrative charge.

We are also amending § 212.74 of the Mandatory Petroleum Price Regulations to add a new paragraph that will provide that the percentages of crude oil sold at lower tier, upper tier or other prices may be the same for all owners of an interest in a property for which DOE has issued, to one or more of the owners thereof, an order specifying the percentages to be sold at each price. The Office of Hearings and Appeals of DOE has generally permitted working interest owners to sell a higher percentage of their production at upper tier or

market clearing prices than would otherwise be permitted by the regulations in those situations where such exception relief has been found necessary to prevent the cessation of production. Such relief has not been extended to the owners of royalty interests on the stated basis that they have not incurred the increased costs that impair economic incentive to maintain production.

Royalty agreements themselves are contractual in nature and many such agreements might resemble more closely a rent charged the producer, calculated on the basis of the producer's actual receipts for volumes of crude oil produced from a property, than a discrete first sale of crude oil by the owner of the royalty interest. Permitting similar treatment under the DOE price regulations of volumes of crude oil associated with the royalty interest and those volumes owned by the holder of the producing interest would simplify administration in this aspect of DOE's regulatory programs and would avoid the possibility that the effect of DOE's price rules on individual royalty owners would turn upon the details of individual royalty agreements.

VI. Environmental Analysis

After reviewing the proposed regulations pursuant to DOE's responsibilities under the National Environmental Policy Act of 1969 (Pub. L. 91-190, 83 Stat 852, (42 U.S.C. 4321 *et seq.*)), DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quantity of the human environment. Therefore, DOE has determined that no environmental impact statement is required for the proposed regulations.

VII. Significance Review

DOE has determined that these proposed regulations are significant but will not have a major impact within the meaning of DOE procedures to implement Executive Order No. 12044 on "Improving Government Regulations" (DOE Order No. 1030.1, (44 FR 1032, January 3, 1979)). The regulations will not have a major impact because they will not create an incremental economic effect on the existing regulatory environment nor adversely impact competition for royalty oil.

VIII. Public Comments and Public Hearing Procedures

A. Written Comments

You are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposals set forth in this notice. Written comments should be identified on the outside envelope and on the document with the designation: Box XF, "DOE Proposed Royalty Oil Regulations" (Docket No. LPD-M-02). Ten copies should be submitted. All copies received by October 5, 1979 and all other relevant information will be considered by

DOE before final action is taken on these proposed regulations.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

B. Public Hearings

1. *Procedure for Request to Make Oral Presentation.* The time and place for the hearing are indicated in the "Dates" and "Hearing Location" sections at the beginning of this preamble.

If you have an interest in the proposed amendments issued today, or represent a group or class of persons that has an interest, you may make a written request (See "Addresses") for an opportunity to make oral presentation by 4:30 p.m., August 22, 1979. Please describe the interest concerned and, if appropriate, state why you are a proper representative of a group or class of persons that has such an interest, and give a concise summary of the proposed oral presentation. You should also provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., August 24, 1979. One hundred copies of your statement labeled "DOE Proposed Royalty Oil Regulations" are due September 11, 1979 and should be delivered to the "Request to Speak" address at the beginning of this preamble. In the event any person wishing to testify cannot meet the 100-copy requirement, alternative arrangements can be made with the Office of Hearings Management in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling the Office of Hearings Management at (202) 254-5201.

2. *Conduct of the Hearings.* DOE reserves the right to select the persons to be heard at this hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak before 4:30 p.m., September 11, 1979. If you wish to ask a question at the hearing, you

may submit the question, in writing, to the presiding officer. DOE or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the DOE and made available for inspection at the DOE Freedom of Information Office, Room GB-145, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., 20585, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

(Mineral Lands Leasing Act, ch. 85, 41 Stat. 450 (30 U.S.C. 181 *et seq.*, 1920), as amended by Act of July 13, 1946; Mineral Leasing Act for Acquired Lands, ch. 513, 61 Stat. 913 (30 U.S.C. 351 *et seq.*, 1947); Outer Continental Shelf Lands Act, ch. 345, 67 Stat. 462 (43 U.S.C. 1331 *et seq.*, 1953), as amended by Pub. L. 95-372; Emergency Petroleum Allocation Act, Pub. L. 93-159, 87 Stat. 627 (15 U.S.C. 751 *et seq.*, 1973), as amended by Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133 and Pub. L. 94-163; Administrative Procedures Act, as amended by Pub. L. 89-554, 80 Stat. 383 (5 U.S.C. 553); Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*, 1977); E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, it is proposed to amend Chapter II, Title 10 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C. July 28, 1979.
George S. McIsaac,
Assistant Secretary, Resource Applications,
Department of Energy

1. Chapter II of Title 10, Code of Federal Regulations, is amended by establishing a Subchapter C and adding Parts 375 and 391 thereof to read as follows:

SUBCHAPTER C--LEASING

PART 375--MINERAL LEASING: GENERAL

Subpart A--General Provisions

Sec.

375.001 Purpose and scope.

375.002 Applicability.

375.003 Authority.

375.004 Definitions.

375.005 Effect on Existing Regulations.

Subpart B--Administrative Procedures

375.101 Interpretation.

375.102 Rulemaking.

Authority: Pub. L. 89-554, 80 Stat. 383 (5 U.S.C. 553); secs. 302, 303 and 644, Pub. L. 95-91, 91 Stat. 578-579, 579-580, 599 (42 U.S.C. 7152, 7153 and 7254); E.O. 12009, 42 FR 46267.

Subpart A--General Provisions

§ 375.001 Purpose and scope.

(a) The purpose of this Part 375 is to describe DOE's general authority in the mineral leasing area and to establish some general provisions applicable to DOE's mineral leasing regulations in this Subchapter C.

(b) The mineral leasing regulations issued by DOE pursuant to sections 302(b) and 303 of the DOE Act will be found in this Subchapter C.

(c) Section 303(a) of the DOE Act provides that the Secretary of the Interior retains any mineral leasing authorities not transferred under section 302(b) of the DOE Act, and that he is solely responsible for the issuance and supervision of Federal leases and the enforcement of all regulations applicable to the leasing of mineral resources, including but not limited to lease terms and conditions and production rates.

§ 375.002 Applicability.

The provisions in Subpart A and Subpart B of this Part 375 are applicable to all of the regulations in Subchapter C, unless otherwise noted.

§ 375.003 Authority.

(a) Section 302(b) of the DOE Act transferred to, and vested in, the Secretary of Energy the functions of the Secretary of the Interior to promulgate regulations under the Outer Continental Shelf Lands Act, the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act, which relate to: The fostering of competition for Federal leases (including, but not limited to, prohibition on bidding for development rights by certain types of joint ventures); implementation of alternative bidding systems authorized for the award of Federal leases; the establishment of diligence requirements for operations conducted on Federal leases (including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspension of operations or production as they relate to such requirements); the setting of rates of production for Federal leases; and specifying of the procedural terms and conditions for the acquisition and disposition of Federal royalties were taken in kind.

(b) The functions of the Secretary of the Interior to establish production rates for all Federal leases was also transferred to, and

vested in, the Secretary of Energy by section 302(b) of the DOE Act.

(c) Section 303(c)(1) of the DOE Act requires the Secretary of the Interior to afford the Secretary of the Energy not less than thirty days, prior to the date on which the DOI first publishes or otherwise prescribes the terms and conditions on which a Federal lease will be issued, to disapprove any term or condition of such lease that relate to any matter with respect to which the Secretary of Energy has authority to promulgate regulations under section 302(b) of the DOE Act. No such term or condition may be included in such lease if it is disapproved by the Secretary of Energy.

(d) In exercising his authority to promulgate regulations under section 302(b) of the DOE Act, the Secretary of Energy is required by section 303(c)(1) of the DOE Act to consult with the Secretary of the Interior during the preparation of such regulations and afford the Secretary of the Interior no less than thirty days prior to the date on which the DOE first publishes or otherwise prescribes regulations for comment on the content and effect of such regulations.

§ 375.004 Definitions.

For purposes of this Subchapter:

“Area” means the geographic area over which a Supervisor has jurisdiction unless the context in which the word is used indicates a different meaning should apply.

“Director” means Director, United States Geological Survey, Department of the Interior.

“DOE” means the Department of Energy, including the Secretary of Energy, or his or her delegate.

“DOE Act” means the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 585 (42 U.S.C. 7101 *et seq.*))

“DOI” means the Department of the Interior, including the Secretary of the Interior, or his or her delegate.

“Federal lease” means an assignment which for any consideration, including but not limited to, bonuses, rent, and royalties conferred, and covenants observed, authorizes a person to explore for, or develop, or produce (one or all of these) oil and gas, coal, shale, tar sands, and geothermal resources.

PART 391--ACQUISITION AND DISPOSITION OF FEDERAL ROYALTY INTERESTS TAKEN IN KIND

Subpart A--General Provisions

Sec.

391.001 Purpose and authority.

391.002 Definitions.

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Subpart C--Disposition of Onshore Royalty Oil

391.201 Purpose and scope.

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391.210 Royalty oil allocation.

391.220 Exchange agreements.

391.230 Application; Contents.

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391.241 Action by DOE.

391.250 Notices.

Authority: Act of February 25, 1920, ch. 85, secs. 32 and 36, 41 Stat. 450, 451 (30 U.S.C. 189 and 192), as amended by Act of July 13, 1946, ch. 574, 60 Stat. 533; Act of August 7, 1947, ch. 513, secs. 3 and 10, 61 Stat. 914, 915 (30 U.S.C. 352 and 359); Act of August 7, 1953, ch. 345, secs. 5, 6 and 8, 67 Stat. 464, 468 (43 U.S.C. 1334, 1335 and 1337), as amended by secs. 204, 205 and 208, Pub. L. 95-372, 92 Stat. 636-640, 640-646, 566-668; secs. 302, 303 and 644, Pub. L. 95-91, 91 Stat. 578-599, 579-580, 599 (42 U.S.C. 7152, 7153 and 7254); E.O. 12009, 42 FR 46267.

Subpart A--General Provisions

§ 391.001 Purpose and authority.

The regulations in this Part 391 specify the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind and are issued pursuant to section 302(b)(5) of the DOE Act.

§ 391.002 Definitions.

For purposes of this Part 391--“Notice of Availability of Royalty Oil” means a notice published in the Federal Register by DOI to advise interested parties that royalty oil is being made available for purchase by qualified small refiners or purchasers and the approximate volume of oil which may be available.

“Operator” means the designee of the lessee, who performs the necessary functions relating to oil and gas production.

“Refinery capacity” means actual certified capacity on a barrel per calendar day basis, as determined by the Economic Regulatory Administration of DOE.

Subpart B--Disposition of Outer Continental Shelf Royalty Oil

§ 391.101 Purpose and scope.

The regulations in this Subpart B establish the policy and procedures for the disposition of royalty oil taken in kind from Federal OCS oil and gas leases issued pursuant to the Outer Continental Shelf Lands Act, as amended by Pub. L. 95-372 (Act of August 7, 1953, 67 Stat. 462 (43 U.S.C. 1331 *et seq.*)).

§ 391.102 Definitions.

For purposes of this Subpart B:

“Allotment” means the discrete quantity of royalty oil to be sold to a purchaser. The quantity of oil in an allotment shall be determined by DOI and shall be contained in the “Notice of Availability of Royalty Oil” that is published in the **Federal Register** by DOI.

“Fair market value” means the value of oil determined by DOI (1) computed at a unit price equivalent to the average unit price at which such oil 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 DOI finds that there were insufficient number of such sales to equitably determine such value, computed at the average unit price at which oil was sold pursuant to other leases in the same region of the OCS during such period, or (3) if there were no sales of oil from such region during such period, or if DOI finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by DOI.

“Lessee” means the holder of a Federal OCS oil and gas lease issued under the Outer Continental Shelf Lands Act (Act of August 7, 1953, 67 Stat. 462 (43 U.S.C. 1331 *et seq.*)), as amended, who is authorized to develop and produce oil and gas, including all parties holding such authority by or through the lessee.

“OCS royalty oil” means, for a section 8 lease, an amount of oil that DOI has determined to take in kind in satisfaction of the section 8 lessee’s royalty obligation. For a section 6 lease, “OCS royalty oil” means an amount of oil that the lessee elects and that DOI accepts as payment in satisfaction of the lessee’s royalty obligation.

“Point of delivery” means the place at which OCS royalty oil or the quantity thereof in a commingled stream is delivered by the lessee to the United States and ownership of the OCS royalty oil is transferred simultaneously by the United States to the small refiner/purchaser. With respect to: (1) all leases issued after October 1969, the point of delivery shall be a place designated by or acceptable to the Supervisor. The deliveries normally shall be made immediately downstream from the place of measurement of such oil or of the commingled stream containing such oil, after separation and treating processes: *provided, however*, That if such measurement is at an offshore location and such oil is commingled after such measurement with other untreated oil and is transported to a treating facility for treating and final measurement, the point of

delivery may be immediately downstream of the place of final measurement. However, the point of delivery may be at any other place which the Supervisor determines is practical for both the lessee and the purchaser, and which ensures proper safeguards for the environment; and (2) section 8 leases issued prior to October 1969, the point of delivery shall be a place designated by the lessee.

“Purchaser” means any member of the public who complies with § 391.140(b).

“Regulated price” means the highest price (a) at which oil may be sold pursuant to the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159, 87 Stat. 628 (15 U.S.C. 751 *et seq.*)) and any rule or order issued under such act or (b) at which Federal oil may be sold under any provision of law or rule or order thereunder which sets a price (or manner for determining a price) for oil.

“Section 6 lease” means an oil and gas lease originally issued by an State and currently maintained in effect pursuant to section 6 of the Outer Continental Shelf Lands Act, as amended by Pub. L. 95-372 (Act of August 7, 1953, ch. 345, section 86, 67 Stat. 465 (43 U.S.C. 1335)).

“Section 8 lease” means an oil and gas lease issued by the United States pursuant to section 8 of the Outer Continental Shelf Lands Act, as amended by Pub. L. 95-372 (Act of August 7, 1953, ch. 345, § 88, 67 Stat. 468 (43 U.S.C. 1337)).

“Small refiner” means an owner of an existing refinery or refineries (operating or operable at the time of application to purchase OCS royalty oil) who can demonstrate (1) qualification as a small business concern under the rules of the Small Business Administration (13 CFR Part 121), both at the time of application and at the award of the contract to purchase such oil, and (2) inaccessibility to adequate supplies of oil at equitable prices.

§ 391.110 OCS royalty oil allocation.

(a) *Allocation to small refiners.* (1) Upon determination by DOI to offer OCS royalty oil for sale to small refiners, such oil may be sold only to small refiners upon application filed in accordance with § 391.140(a). Such oil may only be purchased for processing or use in a small refiner’s refinery or refineries and may not be resold in kind.

(2) All such royalty oil sales shall be made at not more than the regulated price, or, if no regulated price applies, not less than the fair market value of the oil; however, a charge for the cost of administration of an amount equal to one-half percent of the sale price shall be levied for each barrel of OCS royalty oil sold to small refiners.

(3) When available OCS royalty oil is insufficient to satisfy the requirements of all small refiners who have made application, the oil shall be allocated among such small refiners by a drawing or on an equitable prorated basis, as determined by the Supervisor.

(b) *Allocation to purchasers.* (1) DOI may sell OCS royalty oil to purchasers only in accordance with any provision of law, or regulations issued in accordance with such provisions that provide for DOE to allocate, transfer, exchange, or sell oil in amounts or at prices determined by such provisions of laws regulations. OCS royalty oil shall not be offered for sale to purchasers if it is determined to offer such oil for sale to small refiners in accordance with paragraph (a) of this section.

(2) Upon determination by DOI to offer OCS royalty oil for sale to purchasers, such oil shall be sold only in equal allotments, by competitive bidding, to purchasers in accordance with the regulations contained in this subpart and may not be resold in kind.

(3) All bids submitted by purchasers of OCS royalty oil must be filed in accordance with § 391.140(b). All sales of royalty oil shall be made at the regulated price or, if no regulated price applies, at the fair market value of the oil.

(4) Allotments of OCS royalty oil shall be awarded to purchasers who are the highest bidders.

(5) No purchaser shall receive more than one allotment of oil for each OCS royalty oil sale.

(6) When two or more purchasers bid the same price for the offered, OCS royalty oil and their bids, by virtue of their amount make them eligible for allotments, a drawing shall be held to determine which purchasers shall receive allotments if there are more purchasers than allotments.

(7) If a purchaser is selected for receipt of an allotment and if the purchaser’s oil supply requirements, as stated in the application filed in accordance with § 391.140(b)(3), exceed the allotment of oil, the purchaser shall only receive an amount of oil equal to the allotment of oil.

(8) If a purchaser is selected for receipt of an allotment and if the purchaser’s oil supply requirements, as stated in his application filed in accordance with § 391.140(b)(3), are less than the allotment of oil, the purchaser shall receive only that amount of oil requested in the application.

(9) If, after all allotments have been sold, an amount of oil remains that is determined by DOI to be large enough for sale, the excess oil shall be made available for sale as another allotment or allotments.

(10) A charge for the cost of administration of an amount equal to one-half percent of the sale price shall be levied for each barrel of royalty oil sold to purchasers.

(c) *Allocation from section 6 leases.* OCS royalty oil produced under a section 6 lease may be made available for sale only when the lessee elects and DOI accepts the royalty oil as payment in satisfaction of the lessee’s royalty obligation. OCS royalty oil produced from areas for which there is a dispute between the United States and a State as to ownership may be made available for sale only with the concurrence of that State, and evidence of such

concurrence shall be furnished in the application filed by the small refiner/purchaser applicant.

§ 391.120 Reimbursement to lessee for transportation.

(a) When the point of delivery for OCS royalty oil produced under a section 8 lease is to be other than on or immediately adjacent to from which the oil is produced, the small refiner/purchaser shall promptly reimburse the lessee for the cost of transporting the oil to the point of delivery. Such reimbursement shall be monthly or at such other interval as may be designated by the Supervisor.

(b) The cost of transportation shall be approved by the Supervisor and may be deducted from the value of the oil at the point of delivery in calculating payments to be made to the United States. The United States guarantees payment to the lessee for such cost of transportation.

§ 391.120 Exchange agreements.

(a) Notwithstanding that OCS royalty oil purchased by a small refiner/purchaser cannot be resold, a small refiner/purchaser may enter into an agreement providing for the exchange of OCS royalty oil purchased for other oil on an equivalent volume or value basis. When a small refiner/purchaser anticipates entering into an exchange agreement for any of the OCS royalty oil that it may purchase complete information regarding such agreement shall be included with the application to purchase OCS royalty oil, unless a later date for submission of such information is specified by the Supervisor.

(b) Exchanges of OCS royalty oil shall not be authorized unless the agreement has been approved by DOI and shall become effective only upon such approval.

§ 391.120 Application; Contents.

(a) *Small refiner applications.* To apply for the purchase of OCS royalty oil offered for sale to small refiners, an applicant must file application during the application period (as specified in the Notice of Availability of Royalty Oil published by DOI in the **Federal Register**) with the Supervisor of the Area in which the oil is produced. Such application shall be filed in triplicate and shall include:

(1) Name and address of the applicant and location of its refinery or refineries, disclosure of the applicant’s affiliation or association with any other refiner of oil or any other business entity if such relationship exists, a statement of the reasons which are the bases of the applicant’s belief that it qualifies as a small business concern under the rules of the Small Business Administration and a complete showing of the efforts made to purchase oil required by the small refiner in the open market, which shall include a certified statement from the chief executive offices of the small refiner, or his delegate, as to the nonavailability of

adequate supplies of oil at equitable prices on the open market;

(2) Certified capacity of the applicant's refinery or refineries in crude throughput of barrels of oil per calendar day, operational status, and, in the case of idle facilities or those under construction, onstream date, all as determined by the Economic Regulatory Administration of DOE and the amount, source and grade of all oil currently available to the applicant from the applicant's own production or by purchase, including any outstanding OCS or onshore royalty oil contracts at the time of application;

(3) Minimum amount and grade of additional oil required to meet the applicant's refining capacity and the field or fields that the applicant believes offer a potential source of OCS royalty oil supply.

(4) Available transportation facilities that the applicant proposes to utilize (For OCS royalty oil produced under section 8 leases issued prior to October 1968, this should include the proposed point of delivery.);

(5) Amount of any fees that have been or will be paid by the applicant for the transportation of the OCS royalty oil from the OCS leases to the point of delivery; and

(6) Tabulation for the last 12 months of refinery operation of the amount and grade of oil refined by the applicant each month and the kind and amount of the principal finished products.

(b) *Purchaser applications.* To receive OCS royalty oil that is for sale to the public, a purchaser applicant shall file an application during the period (as indicated in the Notice of Availability of Royalty Oil published by DOI in the **Federal Register**) with the Supervisor of the Area in which the oil is produced. Such applications shall be filed in triplicate and shall include:

(1) Name and address of the applicant;

(2) Amount of the applicant's bid per barrel per grade of oil (such bid shall not exceed the ceiling price of oil as prescribed by DOE in Part 212 of this chapter);

(3) Number of barrels and the grade of oil that the applicant desires to purchase;

(4) Available transportation facilities that the applicant proposes to utilize (For OCS royalty oil produced under section 8 leases issued prior to October 1969, this should include the proposed point of delivery); and

(5) Amount of any fees that have been or will be paid by the applicant for the transportation of the OCS royalty oil from the OCS lease to the point of delivery.

§ 391.141 Action by the Supervisor.

(a) The Supervisor shall examine each application filed and, as appropriate, shall request additional information if the information included in the submitted application is inadequate or unsatisfactory. If an application is submitted after the close of the application period (as indicated in the Notice of Availability

of Royalty Oil published by DOI in the **Federal Register**), the application shall be automatically rejected. If additional information is required by the Supervisor, it must be received within 23 days from the receipt of the request or the application shall be automatically rejected.

(b) After the close of the application period and the timely receipt of any additional requested information, the Supervisor shall furnish a report to the Director who will make appropriate recommendations to the Secretary of the Interior.

§ 391.142 Action by DOI.

After determinations are made to take OCS royalty oil in kind and to offer such oil for sale to small refiners in any area or a determination is made by DOI to sell OCS royalty oil to the public, DOI by publication of a Notice of Availability of Royalty Oil in the **Federal Register**, shall specify the manner in which the sale is to be effected, including the form of the contract to be used. In addition, the Secretary of the Interior may authorize the Supervisor or other designated official of the USGS to execute on behalf of the United States any contract for the sale of OCS royalty oil, to approve any exchange agreement, and to determine the amount and type of bond or other security to be required from a small refiner/purchaser in accordance with any contract.

§ 391.150 Notices.

(a) The Supervisor shall notify the section 8 lessees who shall be required to provide OCS royalty oil to a small refiner/purchaser under a new contract at least 30 days prior to the date on which delivery of such oil commences.

(b) When delivery of OCS royalty oil is to be terminated, the Supervisor shall, if practicable, notify the lessees who are providing such oil at least 30 days prior to the date on which delivery is to cease.

Subpart C--Disposition of Onshore Royalty Oil

§ 391.201 Purpose and scope.

The regulations in this Subpart C establish the policy and procedures for the disposition of royalty oil taken in kind from Federal onshore oil and gas leases issued pursuant to the Mineral Lands Leasing Act (Act of February 25, 1920, 41 Stat. 437 (36 U.S.C. 181 *et seq.*)), as amended, or the Mineral Leasing Act for Acquired Lands (Act of August 7, 1947, 61 Stat. 913 (30 U.S.C. 351 *et seq.*)).

§ 391.202 Definitions.

For the purposes of this Subpart C:
"Lessee" means the holder of a Federal onshore oil and gas lease issued under the Mineral Lands Leasing Act (Act of February 25, 1930, 41 Stat. 437 (30 U.S.C. 181 *et seq.*)) or

the Mineral Leasing Act for Acquired Lands (Act of August 7, 1947, 81 Stat. 913 (30 U.S.C. 351 *et seq.*)) who is authorized to develop and produce oil and gas including all parties holding such authority by or through the lessee.

"Eligible refiner" means an owner of an existing refinery or refineries (operating or operable at the time of application to purchase onshore royalty oil) who can demonstrate (1) its qualification as a small business under the rules of the Small Business Administration (10 CFR Part 121), both at the time of application and at the award of a contract to purchase such oil and (2) the inability to purchase in the open market an adequate supply of oil at an equitable price to meet the needs of the capacity or capacities of its existing refinery or refineries.

"Market price" means (1) the highest price per barrel regularly posted, published, or generally paid or offered by any principal purchaser of oil of like quality in the field or area where produced; or (2) if there are no postings in the field or area, the highest price posted in the nearest field or area where oil of comparable quality is produced or sold; or (3) the true value as determined by the Supervisor when in his judgement such highest price regularly posted, published, or generally paid or offered in the same field or area of the nearest field or area is found by him to be less than the true value of the royalty oil. In no event shall the "market price" be less than the estimated reasonable value that the Supervisor would determine as the value of production, pursuant to 30 CFR 221.47, if royalties on the production in question were being paid in the value by the lessee rather than being taken in kind: *Provided, however,* That with respect to oil, the first sale of which is controlled under Part 212 of this chapter, the market price shall not exceed the lawful first sale price of such oil.

"Onshore royalty oil" means an amount of oil produced from a Federal lease and saved for sale which is equivalent to the royalty rate prescribed by the lease instrument times the gross amount of oil produced from such lease.

"Preference eligible refiner" means an eligible refiner whose refinery is located in the Area in which the royalty oil offered for sale is produced.

§ 391.210 Royalty oil allocation.

(a)(1) After a determination has been made by DOI to take onshore royalty oil in kind and to offer it for sale such oil may be sold only to eligible refiners upon application filed in accordance with § 391.230. Such oil may be purchased only for processing or use in an eligible refiner's refinery or refineries and may not be resold in kind.

(2) All such royalty oil sales shall be made at the market price without premium or bonus; however, a charge for the cost of administration of an amount equal to one-half percent of the market price shall be levied for each barrel of onshore oil sold to eligible refiners.

(b) The requirements of preference eligible refiners shall be accorded priority over those requirements of eligible refiners in the purchase of available onshore royalty oil. When onshore royalty oil available for disposal is insufficient to satisfy the requirements of all preference eligible refiners who have made application, the oil shall be allocated among such qualified preference eligible refiners by a drawing or on an equitable prorated basis as determined by the Supervisor. When all preference eligible refiners' requirements are adequately supplied with only part of the royalty oil made available for sale or if no preference eligible refiners apply for the offered oil, the royalty oil available for sale shall be allocated on a similar basis by the Supervisor to those applicants who qualify as eligible refiner applicants.

§ 391.220 Exchange agreements.

(a) Notwithstanding that onshore royalty oil purchased by an eligible refiner cannot be resold, an eligible refiner may enter into an agreement providing for the exchange of oil purchased for other oil on an equivalent volume or value basis. When an eligible refiner anticipates entering into an exchange agreement for any of the onshore royalty oil that it may purchase, complete information regarding such agreement shall be included with the application to purchase onshore royalty oil, unless a later date for submission of such information is specified by the Supervisor.

(b) Exchanges of onshore royalty oil shall not be authorized unless the exchange agreement has been approved by DOI and shall become effective only upon such approval.

§ 391.230 Application; Contents.

To apply for the purchase of onshore royalty oil offered for sale, an eligible refiner must file an application during the application period (as specified in the Notice of Availability of Royalty Oil published by DOI in the **Federal Register**) with the Supervisor of the Area in which the oil is produced. Such application shall be filed in triplicate and shall include:

(a) Name and address of the applicant and location of its refinery or refineries, disclosure of the applicant's affiliation or association with any other refiner of oil or any other business entity if such relationship exists, a statement of the reasons which are the basis of the applicant's belief that it qualifies as a small business concern under the rules of the Small Business Administration (13 CFR Part 121), and a complete showing of the efforts made to purchase oil required by the eligible refiner in the open market, which shall include a certified statement from the chief executive officer, or his delegate, as to the nonavailability of

adequate supplies of oil at equitable prices on the open market;

(b) Certified capacity of the applicant's refinery or refineries in crude throughput of barrels of oil per calendar day, operational status and, in the case of idle facilities or those under construction, onstream date, all as determined by the Economic Regulatory Administrative of DOE, and the amount, source, and grade of all oil currently available to the applicant either from the applicant's own production or by purchase, including any outstanding OCS or onshore royalty oil contracts at the time of application;

(c) Minimum amount and grade of additional crude oil required to meet the applicant's existing refining capacity, and the field or fields that the applicant believes offer a potential source of onshore royalty oil supply;

(d) Available transportation facilities which the applicant proposes to utilize; and

(e) Tabulation for the last 12 months of operation of the amount and grade of oil refined by the applicant each month and the kind and amount of the principal finished products.

§ 391.249 Action by the Supervisor.

(a) The Supervisor shall examine each application filed and, as appropriate, shall request additional information if the information included in the submitted application is inadequate or unsatisfactory. If an application is submitted after the close of the application period (as indicated in the Notice of Availability of Royalty Oil published in the **Federal Register**), the application shall be automatically rejected. If additional information is required by the Supervisor, it must be received within 21 days from the date of receipt of the request; otherwise the application shall be automatically rejected.

(b) After the close of the application period and the timely receipt of any additional requested information, the Supervisor shall furnish a report to the Director who will make appropriate recommendations to the Secretary of the Interior.

§ 391.241 Action by DOI.

After determinations are made to take onshore royalty oil in kind and to offer such oil for sale, DOI, by publication of a Notice of Availability of Royalty Oil in the **Federal Register**, shall specify the manner in which the sale is to be effected, including the form of the contract to be used. In addition, the Secretary of the Interior may authorize the Supervisor or other designated official of the USGS to execute on behalf of the United States any contract for the sale of onshore royalty oil, to approve any exchange agreement, and to determine the amount and type of bond or other security to be

required from an eligible refiner/purchaser in accordance with any contract.

§ 391.250 Notices.

(a) The Supervisor shall notify the lessees who shall be required to provide onshore royalty oil to an eligible refiner under a new contract at least 30 days prior to the date on which delivery of such oil commences.

(b) When delivery of onshore royalty oil is to be terminated, the Supervisor shall, if practicable, notify the lessees who are providing such oil at least 30 days prior to the date on which delivery is to cease.

2. Part 212 of Chapter II of Title 10, Code of Federal Regulations is amended by adding new paragraphs (d) and (e) to § 212.74 to read as follows:

PART 212--MANDATORY PETROLEUM PRICE REGULATIONS

§ 212.74 Upper tier ceiling price rule.

* * * * *

(d) Notwithstanding the provisions of § 212.73(a) and of paragraph (a) of this section, with respect to crude oil sold pursuant to the provisions of Part 391 of this chapter, a producer may charge a per barrel price that exceeds the ceiling price otherwise permitted under this subpart by no more than one half of one percent of the per barrel market price of such crude oil computed pursuant to the provisions of Part 391 of this chapter.

(e) Notwithstanding the provisions of § 212.73(a) and of paragraph (a) of this section, with respect to crude oil produced from a property or portion thereof for which DOE has issued an order that specifies the percentage of such crude oil that may be sold at the lower tier, upper tier or other prices by or for the benefit of one or more owners thereof, the same percentage of crude oil, as specified in the order, may be sold at lower tier, upper tier or other prices by or for the benefit of any other owner of an interest in such crude oil or an interest in the property from which such crude oil is produced.

(Secs. 4 and 8, Pub. L. 93-159, 87 Stat. 629, 633 (15 U.S.C. 753 and 757); Pub. L. 93-511, 88 Stat. 1606; sec. 2, Pub. L. 94-99, 89 Stat. 481; sec. 1, Pub. L. 94-133, 89 Stat. 694; secs. 401(a), 401(b)(1)-(3), 402(a), 403(a) and 451, Pub. L. 94-163, 89 Stat. 941, 946, 948; secs. 121 and 122, Pub. L. 94-385, 90 Stat. 1132, 1133; secs. 301 and 644, Pub. L. 95-91, 91 Stat. 577, 599 (42 U.S.C. 7151 and 7254); E.O. 12009, 42 FR 46287)

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