BY THE COMPTROLLER GENERAL

Report To The Honorable Richard B. Cheney House Of Representatives OF THE UNITED STATES

Impact Of Making The Onshore Oil And Gas Leasing System More Competitive

While the Federal Government's present way of leasing public onshore lands for oil and gas development has certain flaws and inequities, it basically has succeeded in making an important contribution to domestic oil and gas production--mainly by making a good deal of land available and continually accessible for exploration and development. Thus, before any sweeping changes are made, there ought to be a clear understanding and agreement--both in the administration and in the Congress--on the objectives sought and likely impacts to result.

While S. 1637--an administration-sponsored bill to expand competition in leasing these lands--has several commendable features, it is based on insufficient data and analyses and poses such great uncertainties that it should not be enacted. Many objectives of increased competition can be achieved without a major overhaul of the present system.

EMD-80-60

MARCH 14, 1980

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-197863

The Honorable Richard B. Cheney
House of Representatives

Dear Mr. Cheney:

In partial response to your letter of May 21, 1979, enclosed is our analysis of the administration's bill to expand competitive leasing of Federal onshore oil and gas resources. This bill was introduced in the Senate as S. 1637, but has not yet been introduced in the House. As agreed with your office, we directed our efforts primarily to S. 1637, but believe our observations will be useful as well in considering any other legislative changes that might be proposed for competitive leasing. We also took into account certain regulatory changes that have been proposed by the Department of the Interior.

In the interest of a timely response, our examination concentrated on information and sources available in the Washington, D.C., area and in the State of Wyoming. While leasing activities may differ in some respects between States, Wyoming is by far the most active State in terms of Federal oil and gas leasing.

We believe that while S. 1637 has several commendable features, it is based on insufficient data and analyses and poses such great uncertainties that it should not be enacted. We found that Interior had a rather limited basis for assessing the present oil and gas leasing situation or for evaluating the likely impact of its proposed changes. This is attributable in large part to the lack of readily available data to analyze, insufficient input from those most affected, and unclear aspects of the bill itself. However, in our opinion it would be difficult under any circumstances to confidently predict the effect of this or any other similar changes because there are a great many interacting variables, most of which depend on the responses of individuals and companies. In addition, S. 1637 as presently drafted, grants the executive branch considerable latitude in administering leasing activities. Without knowing how these provisions will be defined and implemented, assessing the bill's impact is further complicated.

The merits of the bill are further clouded by a lack of a clear objective. The bill, in our view, seems to place more emphasis on recovery of fair market value than on production at a time when efforts to stimulate oil and gas production from domestic sources--and particularly from public lands--would seem a high priority.

The type of leasing system proposed, in our opinion, could very likely result in considerably less land under lease, delays in making lands available for leasing, and less incentive and opportunity for independent oil companies and others to continue their traditional role of searching out and exploring lands for prospective oil and gas. In addition, the dual emphasis of offering larger tracts and encouraging bonus bidding could significantly alter the dynamics and structure of participation in the system in favor of the major oil companies.

Further, our analysis in Wyoming, as well as a recent study by the Interior Department, suggests that a competitive system might not bring in a significant amount of revenue and may actually not even offset losses in filing fees now obtained through noncompetitive leasing.

On the positive side, we agree with the bill's emphasis on promoting diligent development through shorter term leases--although the extent to which production can be increased through stricter diligence is uncertain. We also agree with the bill's attempts to restrict assignments and excessive overriding royalties, and with certain proposed regulatory changes geared to correcting potential abuses in the current lottery system--changes which are generally consistent with our April 1979 report on that subject which pointed out internal control weaknesses that might enable manipulation of the lottery system. 1/ In addition, we believe other actions proposed to reduce the role and influence of "fly-by-night" brokers as well as to discourage participation by speculators--including private citizens--who have neither the capability nor intention of developing oil and gas resources are steps in the right direction, although we believe this may reduce Federal receipts. Alternatively, we believe these objectives can be satisfied without a major

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1/Onshore Oil and Gas Leasing--Who Wins the Lottery? (EMD-79-41, Apr. 13, 1979).

overhaul of the entire system. Our analysis in Wyoming indicated that some speculators--particularly small independent operators--who search out and assemble tracts for exploration by others or themselves may be making a worthwhile contribution to the development process. Penalizing their efforts would do little to increase production from public lands.

Because the onshore oil and gas leasing system has resulted in the production of significant amounts of oil and gas, we suggest that caution be exercised in any major revamping of the system until there is a better understanding of its impact and a clear statement of its objective.

There are no doubt several ways in which the present leasing system could be modified to achieve a close approximation of fair market value and/or greater production. One which we believe may warrant greater consideration involves raising the royalty and perhaps land rentals, along with instituting stricter diligence requirements. Present onshore oil and gas royalties exceed $300 million a year and rentals exceed $50 million a year. A modest increase in royalty and/or rental (such as raising the present noncompetitive lease rentals and royalties to an amount comparable to that obtained on competitively leased land, which S. 1637 essentially does) would bring in significant revenues and, if accompanied by corresponding reductions in overriding royalties, may eliminate many of the possible undesirable aspects of a more competitive-type system. Speculator profit would be reduced, Federal and State receipts would increase, producer costs would not increase, and therefore production should not decrease, and the independent would not be hurt.

This proposal, as with any, warrants more detailed examination because, as is discussed in appendix I, the possible ramifications of any change can be far-reaching and difficult to identify. We believe, therefore, that the Congress should not adopt S. 1637 in its present state and that caution be exercised in making any major changes to the present system. Better understanding of and agreement on the objectives sought and likely impacts to result from such actions are needed.

Other factors which may have an impact on oil and gas production are restrictions on access to Federal lands and delays in the permitting process. We are studying these

issues separately and will be reporting our results to you at a later date.

As you are no doubt aware, the Secretary of the Interior suspended all onshore noncompetitive oil and gas leasing on February 29, 1980, citing probable violations of criminal statutes. According to the Secretary, the suspension will be in effect either until changes can be made to correct the abuses disclosed or, if it is found necessary, to convert to an all competitive system. The Secretary pointed out that the suspension will give Congress time to enact S. 1637.

At present, we do not know the extent of and specific nature of violations identified, so we cannot comment on the merits of this severe action. As indicated above, GAO has previously reported on the potential for manipulation of the lottery system, and the Department of the Interior had been considering proposed regulations designed to prevent potential abuses of the system. Whether the nature and magnitude of the problems will require major changes to noncompetitive leasing remains to be seen but, in any event, we feel that implementation of any change should consider the facts and potential problems outlined in more detail in appendix I.

Time did not permit the Department of the Interior to comment formally on our draft report. However, we did meet and discuss the draft with cognizant Interior Department officials, and we did attempt, where we considered appropriate, to reflect their views and suggestions in the final report. Specific comments and our evaluation are included on p. 45 of appendix I.

As arranged with your office, copies of this report will be made available to appropriate House and Senate energy committees, to the Secretary of the Interior, the Secretary of Energy, and to other interested parties.

Sincerely yours,

Comptroller General
of the United States

Contents

ABBREVIATIONS

BLM	Bureau of Land Management
DOE	Department of Energy
GAO	General Accounting Office
KGS	known geologic structure
PGP	Producing Geologic Province
USGS	U.S. Geological Survey

APPENDIX I

ANALYSIS OF IMPACT OF S.1637 OR SIMILAR LEGISLATION ON FEDERAL LEASING OF ONSHORE OIL AND GAS RESOURCES

BACKGROUND

Onshore leasing of Federal lands is an important, although declining, source of our Nation's oil and gas supply. Federal onshore lands only provide about 5 percent of our domestic oil and gas production. Federal onshore oil production in calendar year 1978 was 154.8 million barrels, a steady decline from a peak of 216 million barrels in 1969. Wyoming is by far the largest source of Federal onshore oil, and New Mexico, of gas.

The present Federal leasing system for onshore oil and gas has been criticized over the years. Several changes have been made; many others, proposed. Generally, the controversy has centered around the merits of a competitive versus a non-competitive leasing system. A more competitive system has been viewed as a way to increase Federal receipts and also to correct other problems perceived in the present lottery-type system. At the same time, there has been concern that an all-competitive system might be detrimental to independent oil producers who have dominated the development of the small onshore tracts.

A recent attempt to correct the perceived deficiencies of the present leasing system is S.1637, a bill introduced on behalf of the administration. The bill was widely criticized in Senate hearings held in October 1979 and, as a result, alternative legislation or proposed modifications to S.1637 may be forthcoming.

In response to a May 21, 1979, request from Congressman Richard Cheney of Wyoming (see app. IV), we examined the basis for, and possible impact S.1637 or other similar legislation might have on, oil and gas production from Federal leases, Federal revenues and operating expenses, and on the composition of the oil and gas industry--particularly as it might affect independent oil producers. We reviewed the Department of the Interior's basis for its bill (see app. II) and other proposed regulations (see app. III), and also considered possible alternatives. We sought the views of oil company representatives as well as appropriate Interior and Department of Energy (DOE) officials in Washington, D.C.; Denver, Colorado; and Casper, and Cheyenne, Wyoming. In addition, we analyzed field data in the State of Wyoming to see what effect the bill would have on leasing activities in that State. Wyoming is by far the most active State in Federal oil and gas leasing.

Much of the data desired was not readily available. Data on lease assignments, bids, current lessees, drilling data, lease histories, and overall data comparing competitive and noncompetitive leases in terms of acreage, production, and unleased land was not available in summary form and had to be compiled manually from several raw data files on a limited sample basis. Other information such as the types of lessees (broker, producer, etc.), the cost of certain segments of Interior's operations, money received by assignors, and intended application of certain of the bill's provisions was not available at all.

We did, on a limited basis, examine actual lease offerings to obtain bid and lottery application data such as lease winners, acreage, number of leases, bid amounts, and number of applications. We also examined individual lease files and lease registers to obtain data on lease assignments.

We also examined selected known geologic structures (KGSs) and adjacent land to see the extent of leased acreage and potential for trust consolidation. This information was also traced into U.S. Geological Survey (USGS) drilling records to determine the extent of drilling activity.

Key aspects of present leasing system

Onshore Federal oil and gas is leased under authority of the Mineral Leasing Act of 1920. Land is leased either through competitive bidding, over-the-counter, or lottery-type procedures, briefly described below:

--Competitive Bidding. Only a small amount of land (available statistics indicate as little as 2 percent) is leased this way. By law, land located on a known geologic structure, or "KGS," is leased competitively. A KGS is essentially land with proven production. Once a producible well is "completed," the land around the well, generally about 1 square mile, is designated a KGS. The next time that such land is available for lease, it is leased to the bidder offering the highest cash bonus. All tracts offered for competitive bidding are evaluated beforehand by the U.S. Geological Survey. The value placed on the tract by USGS is not made public, but is compared with the highest bid received. If the highest bid received falls too far below USGS' appraisal, the bid may be rejected.

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--Simultaneous, or Lottery System. The vast majority of land (e.g., about 85 percent in Wyoming) is leased under this system. As noncompetitive leases expire or are otherwise terminated, they are re-posted for monthly drawings. Every interested party submits an application along with a $10 filing fee. The winning applicant is randomly selected.

--Regular, or Over-the-Counter. Land not presently leased is available to the first applicant who submits an application along with the first year's rental, and a $10 filing fee. Potential lessees generally identify the land by examining maps and title data in Interior's Bureau of Land Management (BLM) offices. A substantial amount of land (about 14 percent in Wyoming) is still leased this way. Prior to 1960, all noncompetitive land was leased in this way, but the mob scenes that ensued as desirable tracts became available resulted in implementing the lottery system for expiring leases.

Major lease terms

Rental: All competitive leases require an annual rental of $2.00 an acre; noncompetitive leases are for $1.00 an acre.

Length of Lease: Competitive leases run for 5 years and noncompetitive leases for 10 years. Any lease will be extended for as long as oil or gas is being produced. Any lease on which active drilling is underway at the expiration date is granted a 2-year extension.

Unit agreements can be formed whereby several adjacent lessees form a type of joint venture for exploration and drilling. Unit agreements run for 5 years, so any lessees in the unit can, in effect, receive a lease extension of up to 5 years. At the end of the 5-year period, a producing unit is formed based on any successful drilling.

Any portion of the unit that is not part of the producing area is "segregated" from the unit and granted an extension for 2 years or the remaining life of the lease, whichever is longer. (This would include all of the leases in the unit if there was no successful drilling.)

Communitization agreements are also formed where well spacing restrictions do not permit each lessee to drill. These agreements last for 2 years, and leases within them are granted 2-year extensions upon termination.

Royalties: The Federal share of production on noncompetitive leases is 12-1/2 percent. On competitive leases, it is not less than 12-1/2 percent. Competitive leases are presently issued on a sliding scale of from 12-1/2 to 25 percent, with the royalty based on the amount of production.

Acreage limitations: Competitive leases are limited by law to a maximum of 640 acres. Noncompetitive leases are limited by regulation to 2,560 acres.

Assignment and lease splitting: All leases can be transferred or assigned. A lessee can assign all or part of his interest in the lease to one or more parties. He can also assign part of the acreage, which in effect creates a new lease. It is a common practice for the assignor to retain a certain percentage of any future production on the lease, referred to as an overriding royalty. Many leases are assigned several times, resulting in complex ownership and royalty patterns, and can also result in a lease's being split into several smaller leases.

Leases can also be split when they are segregated out of unit agreements as discussed above, or by a KGS designation, i.e., when a lease expires that is only partially on a KGS. They can also be split by voluntary relinquishment, when the lessee turns back part of his lease to the Government. Presently, no lessee action is permitted which would result in a lease smaller than 40 acres, but there are many leases of less than 40 acres, apparently primarily as a result of KGS designations. BLM does attempt to consolidate leases whenever possible, i.e., when nearby leases expire at about the same time.

Perceived problems with present system

The Department of the Interior, in drafting S.1637, cited several basic problems with the present leasing system, primarily,

--indications that the Government (and therefore the public) is not receiving fair market value for the lands being leased;

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--intrusion into the leasing system by pure speculators having neither the desire nor the ability to produce oil and gas--with numerous assignments resulting in high-cost overriding royalties, reduced production, and the breaking up of leases into small, less efficiently sized tracts;

--no substantive means of assuring diligence in development;

--no orderly Federal plan for the lease issuance and resource development process;

--several actual and potential abuses with the lottery system; and

--indications that onshore Federal lands have not contributed their fair share of domestic oil production i.e., production commensurate with resources.

Another reason to consider revising the present system is the possibility that the lottery system could be declared illegal in the near future. The Federal Communications Commission has ruled against its broadcast advertisement, 1/ and the Justice Department is now examining its legality.

Another recent action also clouds the future of noncompetitive onshore leasing. On February 29, 1980, the Department of the Interior suspended all such leasing as a result of probable violations of criminal statutes including wire fraud, mail fraud, fraudulent statements, and conspiracy. All leases will be suspended until the Department determines whether the system can be reformed to correct the abuses disclosed and until changes are made, or concludes it is necessary to convert onshore leasing to an all competitive system. According to Secretary Andrus, "the suspension will also allow the Congress time to enact legislation, which I recommended last June, to end widespread abuses in the present noncompetitive oil and gas leasing system."

1/On May 3, 1979, the Federal Communications Commission issued a declaratory ruling that the simultaneous oil and gas lease drawing is a lottery and that, as such, Section 73.1211 of the Commission's Rules prohibits its broadcast advertisement.

The impact of this suspension will obviously be dramatic, with over 99 percent of Wyoming's onshore lands being leased noncompetitively. According to Department of the Interior documents, the suspension will cost the Federal Government $3.5 million a month in lost filing fees and rentals.

We have no basis for commenting on the merits of this severe action by Interior, not knowing the magnitude or the seriousness of the problems identified by Interior. As pointed out below, Interior was about to implement several regulatory changes directed at correcting potential abuses of the lottery system. It is noted that these changes are consistent with, and actually go beyond, recommendations in our April 1979 report on that subject, 1/ where we pointed out that weaknesses in the lottery system could allow possible manipulation of the drawing outcome.

Changes proposed by S.1637

Interior has concluded that a more competitive system will rectify many of these problems. The Department drafted S. 1637 which, in conjunction with several proposed administrative changes, includes provisions and attempts to achieve the objectives indicated below.

1. The maximum tract size for competitive leases will be enlarged from the present 640 acres to 2,560 acres; and by regulation, the noncompetitive lease size will be enlarged from 2,560 acres to 10,240. Interior felt this would result in more efficiently sized leases and reduce the time presently used by developers in buying up leases to accumulate larger tracts. It was also felt that larger leases and their resultant higher cost might discourage speculators. 2/

2. KGSs would be expanded outward 3 miles to increase the amount of land subject to competitive

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1/"Onshore Oil and Gas Leasing--Who Wins the Lottery?" (EMD-79-41, Apr. 13, 1979).

2/Interior expects, however, that the average lease size shall not change dramatically. Leases as small as 40 acres shall continue to be offered.

leasing. This is intended by Interior to increase revenues, come closer to fair market value recovery, and at the same time help assure that the lease goes directly to the developer. The magnitude of this change can be significant in terms of increasing the amount of land subject to competitive leasing. A KGS based on one well is generally 1 mile square. As additional wells are drilled, the KGS grows. The map on the following page shows one USGS official's interpretation of the impact of a 3-mile extension of a KGS located in the Overthrust Belt. (As explained later, the extension process itself is imprecise and subject to some interpretation.) The particular KGS shown presently encompasses 2,120 acres; the 3-mile extension increases this to 44,160 acres, over 20 times its previous size. Under S.1637, a KGS could be enlarged to as much as 49 times its original size.

3. A further designation will be made of a "Producing Geologic Province (PGP)." Interior stated that these should be essentially the same as sedimentary basins. Tracts within these areas would be subject to competitive leasing if they receive competitive interest, have favorable geologic evidence, or are close to a producing well. Otherwise, the land will be leased noncompetitively. Interior's objective here is to expand the competitive acreage, but also represents an attempt to retain some noncompetitive land for the independent oil companies in the event they are unsuccessful in the competitive bidding, and to permit low-cost entry into truly wildcat areas. The map on page 27 shows the possible impact this could have, in terms of making more land areas subject to competitive bidding. This is especially significant when viewed in the context that in 1978, over 99 percent of the acreage leased in Wyoming was leased noncompetitively.

4. A royalty of "not less than 12-1/2 percent" would become standard for all leases, regardless of the leasing method, in order to permit a higher return on noncompetitive leases with high production. Present royalty rates are 12-1/2 percent for non-competitive leases and not less than 12-1/2 percent for competitive leases.

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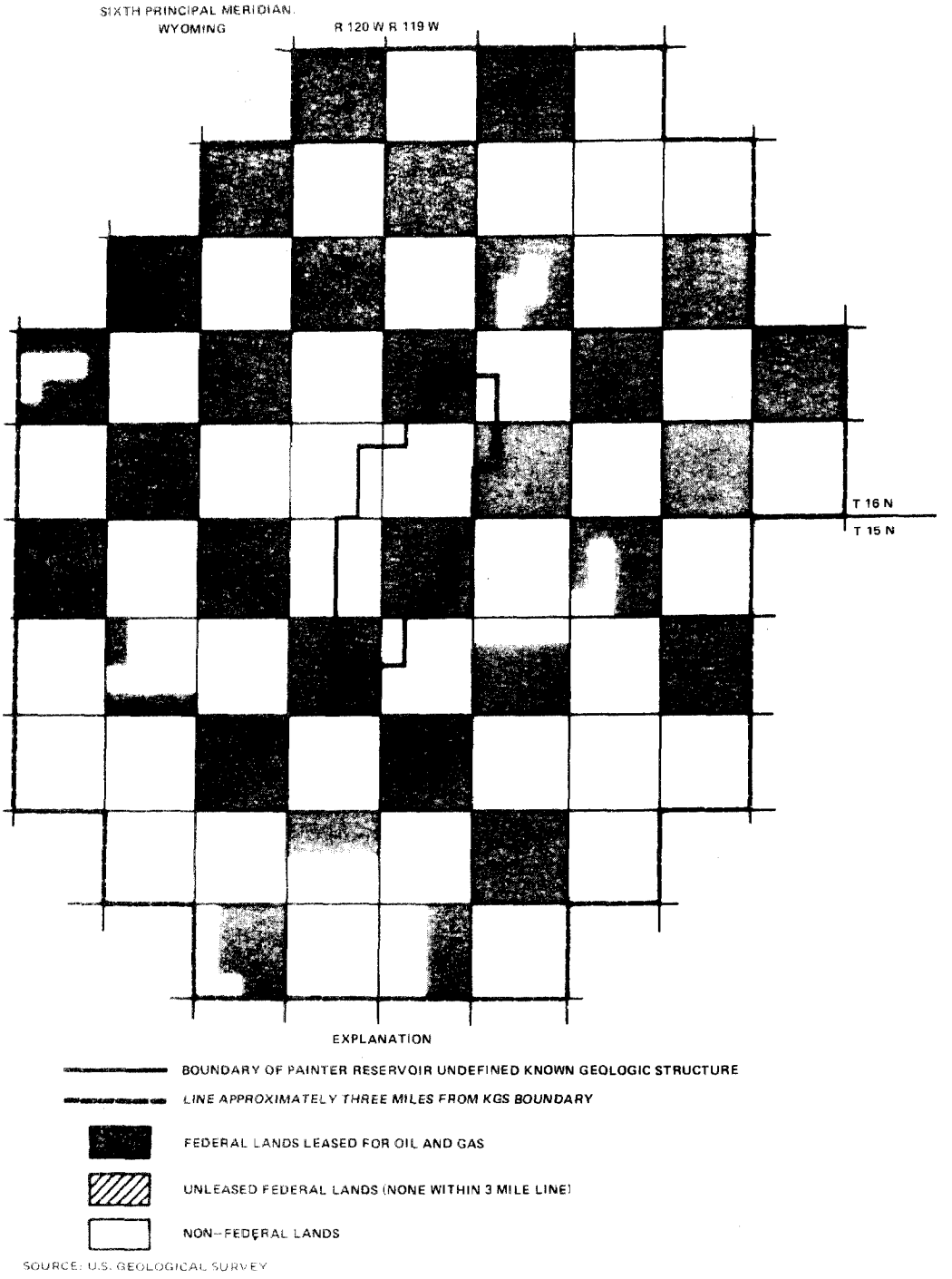
IMPACT OF A THREE MILE EXPANSION OF THE PAINTER RESERVOIR KGS IN WYOMING



SOURCE: U.S. GEOLOGICAL SURVEY

5. Interior would be given the authority to disapprove assignments of less than 640 acres or assignments containing excessive overriding royalties. It was felt that this would reduce the incentive to speculate on the lands.

6. To assure prompt exploration, the primary term of noncompetitive leases would be reduced from 10 to 5 years, and the automatic 2-year extension for drilling would be deleted.

7. By regulation change, leases will be offered quarterly instead of monthly to permit consolidation of expired leases into larger leases.

8. Other regulatory changes, primarily to correct actual and potential abuses of the lottery system are also being proposed. The bill and the regulatory changes are included as appendixes II and III.

THE BILL AND ITS IMPACT ARE DIFFICULT TO EVALUATE

We found that the Interior Department had a rather limited basis for assessing both the present oil and gas leasing situation as well as the likely impact of its proposed changes. This is attributable in large part to the lack of readily available data to analyze, or of sufficient input from those most affected, as well as some unclear aspects of the bill itself. However, it is difficult to predict the effect of this or any other similar changes because there are a great many interacting variables, most of which depend on the responses of individuals and companies to Federal actions which are largely discretionary. In addition, S.1637--as presently drafted--grants the executive branch broad latitude in administering leasing activities, thus making it difficult to assess its impact without knowing how the provisions will be defined and implemented.

The merits of the bill are further clouded by the lack of a clear objective. The bill, in our view, places more emphasis on maximizing "front-end" revenues than on increasing production--at a time when efforts to stimulate oil and gas production would seem of high priority. Also, some provisions of the bill may be difficult to implement, causing yet another uncertainty in any assessment of its impact.

Interior's limited basis for its bill

We examined the Interior Department's backup data for S.1637, and found that its data was incomplete and outdated although, admittedly, much of the desired data is not readily available. Further, we found that Interior did not obtain significant input from other affected parties such as industry, the public, and other Federal agencies, although Interior officials believe they obtained enough input to know the position of the affected parties.

The development of S.1637 was done almost exclusively by the Department, at the headquarters level. We found only limited input from field offices, industry, and the public and a heavy reliance on outdated secondary sources of information whose relevance and representativeness with respect to the present leasing system may be questionable. No public hearings were held, only a few selected elements of the oil and gas industry were contacted to discuss conceptual rather than specific changes, and Interior's field offices were not asked to comment on how the changes would affect their operations at the State level.

For example, the director of the BLM State office with the highest volume of oil and gas leases told us it would be absolutely impossible for his office to be responsive to some of the changes proposed, and has sent a memorandum to that effect to BLM's headquarters. A BLM official told us the director's observations were perceived to be an exaggeration of the potential impacts.

Another concern is the outdated nature of the information used in formulating the proposed changes. Members of Interior's task force responsible for drafting S.1637 told us that, because of severe time constraints, they had to rely heavily on secondary sources of data. We found that many of the changes proposed in S.1637 were derived from prior studies, the latest of which was completed in 1975 and the oldest, in 1963. Given the recent changes in oil and gas development economics and the resultant impact on the dynamics of leasing public oil and gas lands, we believe there is a basis for questioning the relevance and representativeness of the information used. It was not until late 1973 that the quantity of oil available domestically became a critical concern. As a result, the relative emphasis on

fair market value recovery versus production seems to have been greater prior to that time.

Also, much oil and gas lease data at the State office level (e.g., numbers of current leases by type, size, location, and if producing; aging of leases; types of leases; frequency of assignment, relinquishments, terminations, etc.) is not available in summarized form for use by public land managers. Detailed information is needed on the current status of the present leasing system and its products, i.e., leases acquired for speculation or development purposes, in order to define the system's problems, effect their solution, and to properly manage use of public oil and gas lands.

Objective of S.1637 is unclear

Overall, we found that Interior's analysis leaves many questions unanswered. As indicated above, this stems primarily from the difficulty in predicting the responses of individuals to multiple and varied proposed changes--both legislative and administrative--and also from a lack of available data to analyze. But we also felt hampered by what we felt was the absence of an overall objective against which to assess the merits of any proposed changes. For example, actions to achieve a goal of increasing Federal revenues will likely also increase producer costs and may therefore reduce production. If increased production is the goal, a reduction of producer cost, coupled with minimal Government land withdrawals and other restrictions, may be more desirable. If environmental protection is the dominant goal, then tight access to land and a good deal of administrative discretion in the leasing process may be desirable. Most changes to the leasing system will have an effect on all these objectives. The bill appears to emphasize recovery of fair market value.

While the objectives for any leasing system adopted will no doubt be a blend of all the above, we believe it would be desirable for the Congress and executive branch to establish clear and specific objectives for any revisions to the leasing system.

Latitude permitted by S.1637

The bill as presently drafted contains certain provisions, the impact of which will be difficult to predict because of how they may be defined and administered. For example,

--the provisions of the new bill can be exempted while PGPs are being identified;

--USGS employees have advised us there will be considerable judgment applied in establishing the boundaries of a PGP;

--the designation of lands "favorable for the discovery of oil or gas" appears equally subjective;

--various bidding systems are permitted;

--the bill does not specifically provide the leasing procedure for lands outside a PGP;

--standards Interior is to follow in granting lease extensions are vague;

--standards Interior is to follow in disapproving assignments are vague;

--we were told that the bill's provisions are not intended to apply to Alaska; however, the bill does not specifically state this; and

--competitive leases will not exceed 2,560 acres "unless necessary to comprise a reasonable economic unit."

Some aspects of the bill may be difficult to implement

We noted certain provisions in the bill that may cause problems or additional costs in implementing. These include the tract nomination process that will have to be established, the identification of true competition, difficulties in implementing a quarterly drawing, and the establishment of KGS boundaries. Each of these is described in detail below.

The tract nomination process may be difficult to establish

Under S.1637, Interior intends to lease all lands outside a PGP noncompetitively, and all lands within an expanded KGS competitively. Lands outside a KGS, but within a PGP, will be leased competitively if there is geologic evidence of oil, or nearby production, or competitive interest. Otherwise, it will be leased noncompetitively. Interior has not yet established implementing procedures, but some of these provisions may be difficult to implement. For example, there is presently a dearth of geologic evidence on which to base competitive leasing decisions.

The competitive interest aspect could also become complicated. It is likely that many tracts will have to be offered or posted twice. For example, lands will presumably be either offered noncompetitively or their availability announced, and if there is sufficient interest, they will be pulled back and re-offered competitively. Or, lands could be put up for bids initially, and then re-offered noncompetitively if there was not sufficient interest. Or lastly, there could be some kind of nomination process to determine competitive interest. In all cases, the administrative workload and resulting costs and delays in leasing could be more than in the present system.

It is unclear as to what constitutes competition

We also noted that under the proposed regulatory changes, Interior anticipates that any noncompetitive tract would be dropped from the lottery system if 10 or fewer applications were received and converted to regular-offer (over the counter) leasing. This would apparently mean that as many as 10 filing fees would be returned and the land issued to the first applicant to apply. Thus, the leasing process would be administered twice, and the filing fees could be forfeited as well.

However, we were told that under S.1637, two or more bidders will establish a competitive situation. This is inconsistent with the above concept that even 10 applications are not sufficient for the lottery system, let alone the competitive system. We believe this discrepancy should be clarified.

Possible difficulties in implementing a quarterly drawing

BLM field officials have strong doubts as to whether it is physically possible to implement a quarterly drawing system. The Director of BLM's Wyoming State Office and members of his staff responsible for implementing changes to the oil and gas leasing system in Wyoming told us that they will not be able to process the number of simultaneous filings they anticipate receiving for a quarterly drawing until a computerized system now being tested is operational. We were told that the system is not expected to be fully implemented in Wyoming until September 1980, and that the other State offices are scheduled to be brought on line at 1-year intervals after that date. The BLM officials also told us that quarterly tract consolidation will be a problem and will not be resolved by the addition of the computerized system. We were told that tracts cannot be consolidated until all of the parcels being offered for simultaneous lease have been identified and cleared for release. This usually occurs as a last step because of the interaction of all parcels in the consolidation process. Therefore, the workload can not be spread through the quarter but instead will peak just before the end and may become difficult to manage.

KGS boundaries may be difficult to establish

The KGS designation could also cause some interpretative or administrative problems if not clarified. The KGSs we examined follow straight lines and lie on logical subdivisions of the townships. A literal interpretation of the bill would require subjective extensions of more or less than the 3 miles called for in the bill. This would probably lead to administrative appeals or would have to result in curved corners, which could be administratively difficult (see next page):

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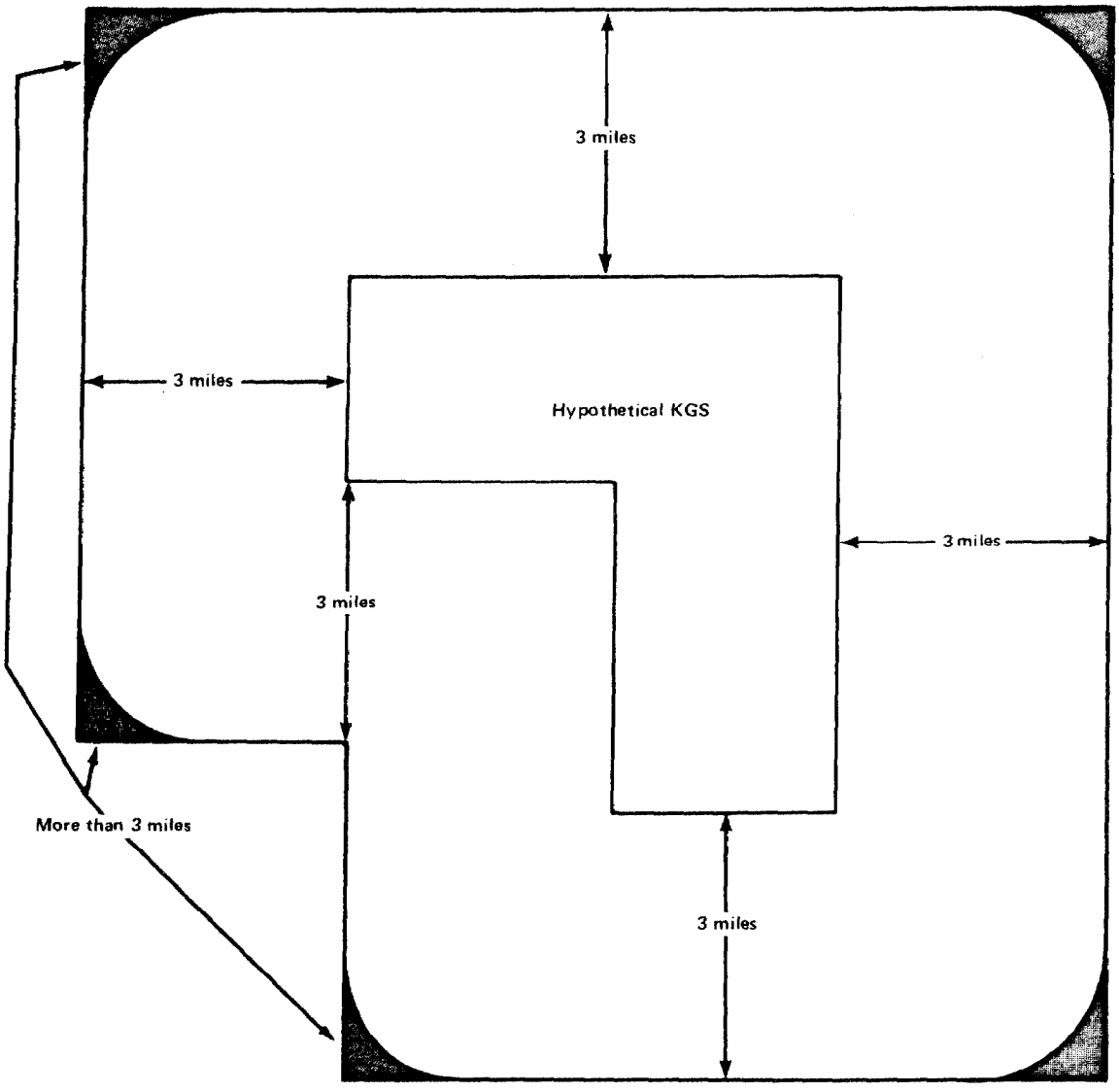
ADMINISTRATIVE DIFFICULTIES OF A THREE MILE KGS EXPANSION



If the provision is retained, we suggest the bill be modified to provide for approximate 3-mile extensions that fall on typical township subdivisions.

GAO ANALYSIS OF THE IMPACT OF S.1637

As discussed above, formulating changes to the system for leasing onshore oil and gas lands is a complex process requiring proper consideration of, and balance between, national energy needs and other issues such as environmental quality, land use, socio-economic concerns, and adequate financial return. How S.1637 will affect these issues is of great concern to many public and private entities evaluating the need for, and potential impact of, these changes.

The impact of the bill is extremely difficult to measure because of the lack of (1) readily available data to analyze, (2) unclear aspects of the bill itself, and (3) the difficulty of predicting the responses of individuals and companies. We did attempt in our limited review to supplement the existing data, and we also spoke to representatives of the oil industry to get their perception of the present situation and S.1637. We believe our information will be useful in deliberations on S.1637 or other legislation directed at competitive leasing.

Following are our observations on the possible impact of a competitive leasing system on Federal receipts and expenses, oil and gas production, recovery of fair market value, and the independent oil producer.

Impact of S.1637 on revenues

The bill would no doubt have a significant impact on Federal receipts, but it is very difficult to forecast exactly what the net effect would be. The two obvious impacts would be a reduction in noncompetitive filing fees (which totaled $29.7 million in 1978) and an increase in competitive bid revenues (which totaled $12.7 million in 1978), but the extent of change is difficult to measure. Interior, using a previous study, concluded that the total receipts for promising tracts might be expected to be the same under either a competitive or noncompetitive system. This is attributable to the rapidly increasing rate of noncompetitive filings relative to competitive leasing in recent years as shown for Wyoming on page 17. If these trends continue, noncompetitive leasing will become more and more favorable in terms of Federal receipts.

It should also be noted that filing fees are retained by the U.S. Government, whereas competitive bid receipts are shared with the States.

Recent Onshore Oil and Gas Leasing Activity in the State of Wyoming

	Simultaneous Leases				
Year	No. of offers filed	No. of parcels filed on	Offers per parcel	Open land applications	Competitive leases
1971	208,468	4,684	45	913	97
1972	210,242	3,047	69	1,226	147
1973	306,903	2,679	115	1,243	144
1974	624,045	2,468	253	2,374	133
1975	1,091,317	2,470	442	1,126	153
1976	1,234,856	2,946	419	612	93
1977	1,737,230	2,886	602	459	117
1978	2,096,930	2,665	787	254	107

Interior's study of Federal receipts under S.1637

The Department of the Interior did prepare an analysis of the possible impact S.1637 might have on Federal receipts. While the study does contain certain assumptions and omissions that, in our opinion, reduce its accuracy, the results are nonetheless interesting. It suggests that the increased

revenue from competitive bidding may be rather slight, and could, in fact, be more than offset by reduced filing fees:

	Actual Federal receipts, 1978	Interior's estimates of receipts under S.1637 (note a)	Change
	(millions)		
Competitive bid receipts	$ 12.7	$ 21.9 to $ 29.8	$ 9.2 to $ 17.1
Rentals	55.7	120.7	65.0
Royalties (note b)	308.7	308.7	.0
Filing fees	29.7	19.9	- 9.8
Total	$ 406.8	$471.2 to $479.1	$64.4 to $ 72.3

a/Netted against increases/reductions in income tax.

b/The impact on royalties is being studied separately by Interior. For purposes of this study, Interior assumed they would remain unchanged.

Thus, while the increase in receipts appears significant, the reader should be aware that most of it stems from increased acreages of land that would now rent for $2 an acre rather than $1 an acre (as well as an apparent error to be discussed later). Any changes in rents and royalties are not a direct result of competitive bidding, but stem from the coincidental fact that competitive leases have a higher rental and royalty rate. The above data suggests that the actual impact of competitive bidding (increased bid receipts minus lost filing fees) will range from an increase in receipts of $7.3 million to a reduction of $600 thousand.

While the study has not yet incorporated the effect of S.1637 on royalties, we suspect this will also show an increase but, again, it will be the result of a higher royalty rate, not a direct result of competitive leasing.

In fact, we estimate that merely increasing the rental on all noncompetitive land from $1 to $2 an acre would bring the Government about as much revenue as Interior projects for S.1637--an additional $55.3 million (after taxes), assuming that the increased rental would not result in a reduction of leases. Our analysis thus shows the difficulty in predicting with any confidence the impact of converting to a competitive leasing system.

Following is a partial listing of our observations which we believe shows the difficulty of making such estimates:

--The study assumes that the number of lottery filings is indicative of potential competitive bids. In calculating bids, the study prorates historical bid data to land presently leased noncompetitively, based on the number of lottery applications. We believe, in light of the evidence that a great many of these lottery applications are from speculators--and the bill is taking several actions to reduce their involvement--that it may be inappropriate to assume a correlation between present lottery interest and future competitive interest.

--The study, in effect, assumes that lease offerings with large numbers of lottery applications will be leased competitively, but at the same time assumes a reduction in filing fee receipts proportionate to the acreage transferred to a competitive status. If the assumption is valid that most of the lottery applications of today are for land that will be leased competitively under S.1637, then logic dictates that a disproportionate share of the present filing fee receipts will be lost, not an amount proportionate to the acreage.

--The study ignores the fact that tract consolidation, and its resulting fewer leases, will further reduce the amount of filing fees received (since filing fees relate to the number of leases, not the amount of acreage), and also ignores the fact that quarterly drawings will reduce rental revenues because the land will lie unleased for longer periods of time.

--The study ignores the impact of the PGP designations, which will likely further reduce the acreage leased and filing fee receipts, but will also increase competitive bid revenues.

--The study assumes no reduction in acreage leased and any resulting impact on land rental revenues. If the bill is successful in reducing the involvement of the pure speculator, and if our suspicion is correct that a significant amount of land presently leased is of interest only to the pure speculator, then any reduction of speculator involvement caused by competitive bidding (or other provisions such as shorter term leases and reduced overriding royalties) may further reduce the acreage under lease, and rental revenues as well.

--The impact of S.1637 on rentals appears substantially overstated. In calculating rental receipts under S.1637, Interior assumed that all nonproducing acreage would generate either $1 or $2 a year, depending on whether it is to be leased noncompetitively or competitively. According to the figures used in the Department's study, however, nonproducing acreage in 1978 actually generated only $0.60 an acre ($55.7 million in rentals for 92.6 million acres). As a result of netting present and projected receipts, the remaining $0.40 an acre is inappropriately treated as additional revenue S. 1637 would generate, thus overstating the impact of the bill by $37 million. (This, however, does not eliminate the relative significance of land rentals versus competitive leasing. The maximum impact of competitive leasing remains at $7.3 million, versus a $2-a-year rental potentially adding $55.3 million in receipts.)

The above examples generally demonstrate Interior's overstatement of income under a more competitive leasing system. They (1) point out the difficulty in making accurate assessments of the bill's impact, (2) suggest the actual financial impact of competitive leasing may be less dramatic than many people anticipate, and (3) show that most of the money S.1637 would generate comes from aspects other than competitive leasing.

APPENDIX I

Changing the system to reduce noncompetitive filings may further reduce revenues

Much has been written about speculator involvement in the Federal oil and gas leasing system. While we believe that much so-called speculator involvement in the present leasing system contributes very little to oil and gas development, it should be recognized that any effort to reduce this involvement could also significantly reduce Federal receipts and, therefore, the associated State revenue sharing. For purposes of this report, we have not attempted to pre-judge the motives of individuals in acquiring leases, but we have attempted to identify any affiliation they may have with the oil and gas industry--thus the direct contribution they likely could make to oil and gas development. Where no affiliation could be determined, we considered their involvement as purely speculative.

Using this approach, we analyzed the open land, competitive, and simultaneous leases issued by BLM's Wyoming State office during calendar year 1977. A summary of our findings follows:

Total Leases Issued by BLM's Wyoming State Office in 1977

Type	No.	Percent of leases	Acreage	Percent of acreage	Avg. No./ Mo.	Avg. acres/ lease
Open Land	278	8.7	344,784	14.2	23	1,240
Simultaneous	2,802	87.6	2,060,646	84.7	234	735
Competitive	120	3.7	27,109	1.1	10	226
Total	3,200	100.0	2,432,539	100.0	267	760

The above table shows the wide difference in the number and size of leases issued competitively and noncompetitively. Noncompetitive leases account for approximately 99 percent of the acreage and 96 percent of the leases issued by the Wyoming State office in 1977. Comparable figures on total leases issued in fiscal years 1974 through 1978 and on the 2,549 leases covering 1,924,756 acres issued by the BLM State office during the 9 months ended September 30, 1979, show virtually

identical distributions for the types of leases and the numbers and sizes of leases issued. This demonstrates a consistent Federal lease pattern that is heavily oriented toward noncompetitive leasing, and more specifically, toward the simultaneous method of leasing public oil and gas lands.

The increased interest in simultaneous lease offerings is also demonstrated by the table on page 17. It shows a continued sharp increase in the number of simultaneous filings at a time when open land applications are on the decline and competitive filings appear to have leveled off. The table also indicates the average number of simultaneous filings for each parcel offered has increased from about 40 in 1971 to around 800 in 1978.

"All that glitters is not gold," however, and there are signs the data noted above merely reflects an increased interest on the part of pure speculators in oil and gas lands which (1) are not necessarily favorable for production but (2) have a high visibility as the result of published listings of expired or otherwise terminated leases and promotion of simultaneous lease offerings by filing services.

We sampled 627 competitive and noncompetitive leases of each type 1/ and found what appears to be substantial pure speculator interest in each category, with heavy emphasis on noncompetitive leases, especially the simultaneous offers. Results from our sample, detailed below, give some indication of the apparent degree of speculative interest in each type of lease--open land leases, awarded over-the-counter; simultaneous leases, whose award is based on luck-of-the-draw; and KGS leases, awarded competitively.

1/Sample consists of all the open land and competitive leases issued by BLM's Wyoming State office during calendar year 1977, and the simultaneous leases issued by that office in June 1975 and 1977. We limited the number of simultaneous leases sampled due to the large number of these leases issued monthly (averaged 234 a month in 1977).

Sample of Leases Issued by BLM's Wyoming State Office

Lease type	Total	Leased to individual		Assignments		Producing leases (note a)	
		No.	Percent	No.	Percent	No.	Percent
Open land	278	255	92	166	60	6	2
Simultaneous	b/229	b/217	95	b/149	65	b/3	1
Competitive	120	51	43	43	36	18	15

a/Leases classified as producing leases on the serial register maintained for each lease by BLM's Wyoming State office.

b/Represents approximately one-twelfth of the total in 1977.

Our analysis showed that most individuals or entities awarded open land or competitive leases appeared in some way to be affiliated with the oil and gas industry 1/; we found that most of those awarded simultaneous leases did not have similar affiliation.

The affiliates awarded open land and competitive leases appear in many instances to be professional landsmen, geologists, petroleum engineers, consultants, etc., who exercise informed judgments in selectively leasing public oil and gas lands. In our opinion, many of these participants in the present leasing system may be making a worthwhile contribution to oil and gas development by seeking out, assembling, and assigning to prospective developers tracts deemed favorable for oil and gas production. Although the affiliates are active in the simultaneous lottery as well, they appear to concentrate their efforts on acquiring leases awarded "over-the-counter" and competitively as opposed to the more common "mail order" variety of speculator, who appears to concentrate on the simultaneous drawing and who depends in many cases on the advice of brokers and filing services.

1/Based on a comparison of individuals or entities identified as original lessees on the lease records maintained by BLM's Wyoming State office with listings of oil and gas industry affiliates contained in the "1979 Western Oil Reporter-Rocky Mountain Petroleum Directory."

On the other hand, it appears from our sample that a high percentage of simultaneous leases involve acreage not necessarily favorable for oil and gas development and are awarded to individuals for what seems to be purely speculative purposes given (1) the small percentage of producing simultaneous leases, (2) the low incidence of drilling (see p. 33) for parcels continuously being re-leased noncompetitively, and (3) the number and frequency of assignments.

As mentioned earlier, our analysis indicates a much higher degree of pure speculator interest in the simultaneous leases. The cost of participating is minimal ($10 per filing fee and $1-per-acre annual rental) and the risks, few. The simultaneous leases sampled averaged almost 540 filings each, with a $1-per-acre annual rental. The competitive leases averaged four bids each, with an average high bonus bid of $122.61 per acre and a $2-per-acre annual rental. It appears likely then that an expanded competitive leasing system would discourage participation of many speculators who now concentrate on acquiring leases through the luck-of-the-draw. However, we also found that the receipts to the U.S. Government from the simultaneous leases is not insignificant, as shown below.

Estimated Receipts (Excluding Royalties) for Simultaneous Versus Competitive Leases Issued by BLM's Wyoming State Office in 1977

Lease type	Filing fees	Bonus	Rentals	Total	Percent
Simultaneous (note a)	$15,130,800	N/A	$2,060,646	$17,191,446	84
Competitive (note b)	N/A	$3,307,298	54,218	3,361,516	16
Total	$15,130,800	$3,307,298	$2,114,864	$20,552,962	100

a/Simultaneous receipts based on 2,060,646 acres covered by 2,802 leases issued, an average 540 filings per lease; a $10 filing fee; and $1-per-acre rental.

b/Competitive receipts based on 27,109 acres covered by 120 leases issued, an average bonus of $122 per acre, and a $2-per-acre rental.

Our above estimate shows that simultaneous leases accounted for 84 percent of the $20,552,962 in filing fee and rental receipts from simultaneous and competitive leases issued by BLM's Wyoming State office in 1977. Therefore, a reduction in participation by pure speculators in the simultaneous system--which would seem very likely--could significantly reduce Federal receipts.

We don't want to oversimplify the results of our analysis or minimize the importance of some individuals who provide a valuable service to oil and gas development by seeking out favorable oil and gas lands available for lease and then assigning the leases acquired to prospective developers--both large and small. There is a good possibility, however, that much of the marginal land now under lease is of interest only to pure speculators who do not provide such a service. It is also possible that under S.1637, because of the land's low oil and gas potential or the sheer magnitude of acreage involved, much of this marginal land would remain unleased. This could have considerable impact on filing fee receipts and annual rentals.

S.1637 may not assure that the most promising lands are leased competitively

Under present law, competitively leased land is generally land that has already been leased, developed, and turned back to the Government. 1/ Undeveloped land with high potential can never be leased competitively under present groundrules, and this is undoubtedly the problem that Interior's proposals are trying to rectify. However, our limited work raises a question as to whether a KGS is the most desirable basis for identifying lands most likely to be high in demand.

We examined 11 townships in the State of Wyoming representing older established oil areas, more recently developed areas, and the Overthrust Belt, and observed that, oftentimes, KGS lands--now required to be leased competitively--lie idle and unleased, while adjacent non-KGS lands continue to be leased noncompetitively. According to Interior, 97.6 percent of all KGS land is presently unleased. This is presumably because primary production already has, for the most part, depleted the resource, and much of the available KGS land is considered marginal. This may suggest that much

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1/Except in those cases where a KGS designation extends onto an adjoining lease.

of the noncompetitive land lying just outside KGS areas may be held solely for speculative purposes and may not be of sufficient interest to anyone to pay the higher competitive rental or to submit a bid. We were told in fact, by one oil company official, that land lying just off a KGS is undesirable since it would logically lie just off the reservoir of oil or gas. (This, of course, would not be true in the case of a reservoir whose borders have not yet been identified.)

As described above, much of the KGS land that becomes available for competitive leasing may no longer be considered the most promising area and, therefore, may remain unleased. Oil company representatives we spoke with, as well as Geological Survey officials, felt that most KGS land was undesirable. Thus, an expanded KGS approach--as proposed in S.1637--or even the basic KGS concept, itself, may not be the most desirable means of determining which lands have the most promise. Therefore, S.1637 might result in a reduction in pure speculation and marginal holdings; however, it could also ultimately result in a reduction in production as well as in Federal receipts now obtained through filing fees and rents.

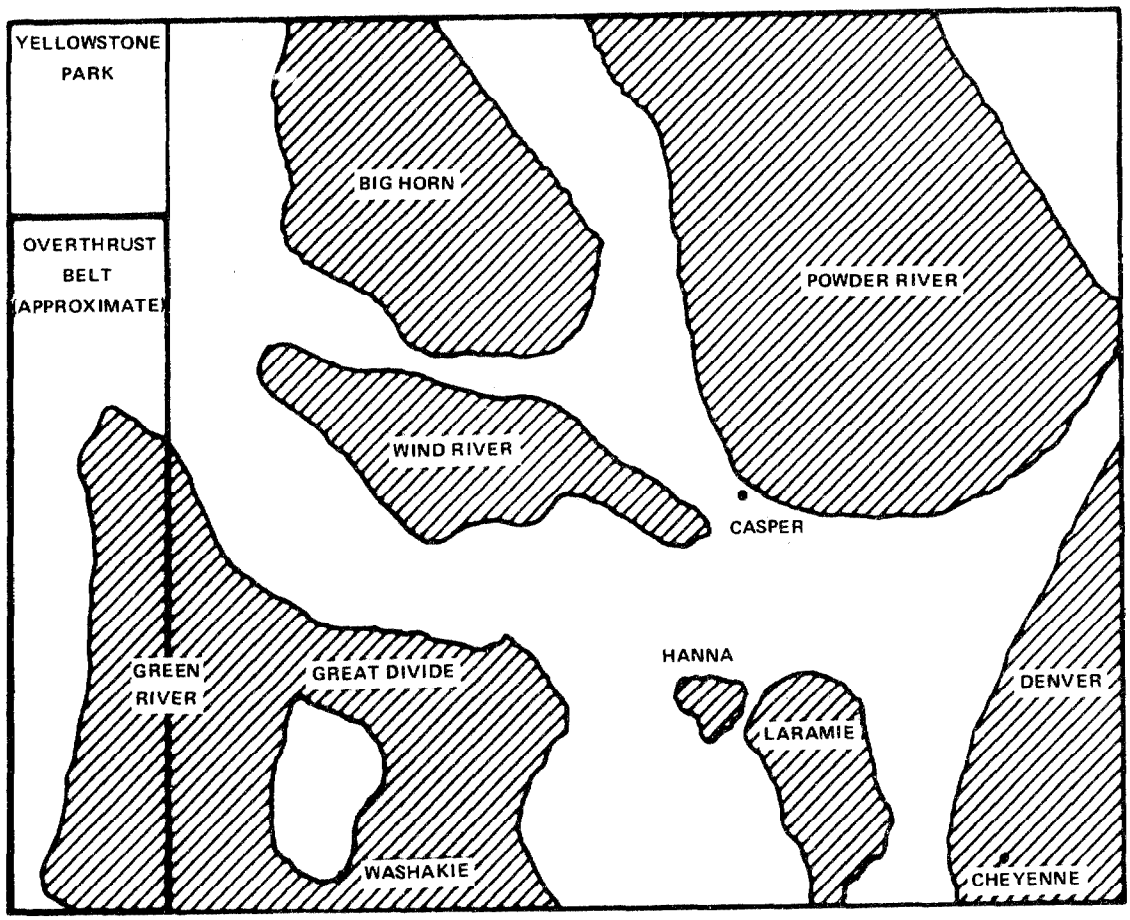
It is generally acknowledged that new areas such as the Overthrust Belt have great interest and potential today, but a new undeveloped area will have few if any KGSs. Thus, it probably would seem desirable in any bill directed at recovery of fair market value through competitive leasing to select lands for competitive interest on the basis of its potential, rather than on past production--as S.1637 does.

The present law provides that KGS lands must either be leased competitively or not at all. The same will be true of the expanded KGSs under S.1637. Because of the possibility that some land could only be leased noncompetitively, it may also be desirable to include in any bill a provision for reversion to noncompetitive leasing when appropriate.

Similar questions arise under the PGP concept proposed by S.1637. USGS officials told us that a PGP, although subject to considerable discretion, should equate roughly to sedimentary basins. In Wyoming these appear as follows:

APPENDIX I

SEDIMENTARY BASINS IN THE STATE OF WYOMING



SOURCE: OIL AND GAS FIELDS OF THE UNITED STATES, U.S. GEOLOGICAL SURVEY

A PGP, by definition, is based on generally accepted geologic terminology, and will also be tied to actual production rather than potential production. It thus may not include undeveloped areas such as previously withdrawn land or the Overthrust Belt, which is primarily still nonproducing and, as can be seen from the above map, lies primarily outside a sedimentary basin. We noted throughout the United States considerable amounts of oil and gas deposits lying outside sedimentary basins. Thus, neither the expanded KGS nor the PGP concepts necessarily encompass all land most likely to bring maximum competitive interest.

Further, Interior officials have stated that under S.1637, lands outside a PGP must be leased noncompetitively. Our review of S.1637 has concluded that the wording is such that lands outside a PGP may be leased competitively. It may be desirable, therefore, to clarify this ambiguity, and under a competitive leasing system to also include a provision clearly making high-interest virgin territory, such as the Overthrust Belt, subject to competitive leasing.

Tract consolidation efforts may also diminish revenues

Developers reportedly spend considerable amounts of time buying up leases to get a tract of land large enough to explore or develop. We have previously reported that this takes as long as 3 to 7 years. 1/ In an effort to correct this, Interior proposes converting from monthly to quarterly leasings to allow time for consolidating expired leases into fewer but larger leases. Concurrently, the maximum lease size is being raised from 640 acres for a competitive lease and 2,560 acres for a noncompetitive lease to 2,560 and 10,240, respectively.

BLM/Wyoming pointed out that holding leases for 3 months would also cause significant losses in rental revenue. For Wyoming alone, they estimated the slippage in lease issuances could cost more than $2 million a year in land rental receipts.

An alleged cause of this problem of too small tracts has been broker or filing services breaking up leases into smaller

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1/"Acreage Limitations on Mineral Leases Not Effective" (RED-76-117, June 24, 1976).

pieces to assign to others for investment purposes. However, the industry officials we contacted felt that the present process of accumulating tracts on their own is preferable to having Interior do it. Our analysis indicates it would take a considerable amount of time for the Department to achieve significant tract expansion, and anything approaching the maximum 10,240 acres is probably unachievable.

We examined two townships in Wyoming and found that, over a 10-year period under quarterly drawings, one township could be reduced from 13 leases averaging 742 acres per lease down to 8 leases averaging 1,206 acres; the other township could be reduced from 26 leases averaging 781 acres to 18 leases averaging 1,128 acres. Some of this consolidation, though, could take place even under monthly drawings.

However, we also found that some of Interior's other proposed changes could offset any gains from the consolidation process and may result in more leases than presently exist.

Under present regulation, nonadjacent parcels can be contained in the same lease, but all parcels must lie within a 6x6-mile area. To provide for a more compact leasing unit, this area is being reduced by regulation change to 4x4 miles. As a result, some existing leases whose component parcels are more than 4 miles apart will have to be split. Also, less consolidation could take place than indicated in our sample above. The KGS extension and PGP designations could result in further splitting of existing leases when only portions of existing leases are determined to be competitive, as might any new system for identifying competitive tracts lying outside the expanded KGSs.

While Interior is seeking changes to enable tract consolidation and to reduce lease splitting from assignments, we believe the following additional actions which also lead to lease splitting (discussed on pp. 3 and 4) should be addressed in any legislative changes:

--Segregation through unit agreements, whereby portions of several leases can be combined into one producing unit, and the remaining portions in effect become new smaller leases.

--Voluntary relinquishments to the Government of portions of a lease.

--Present KGS designations that can split a lease into competitive and noncompetitive tracts, ultimately resulting in two smaller leases.

Our sample of 11 townships suggested, in fact, that these may today be a more significant factor than speculator/broker breakup of leases through assignments. Our sample indicated that in the 1950s and 1960s, leases resulting from partial assignments were a significant part of the total leases issued, but that (for reasons unknown to us) they have fallen off drastically in the last 10 years:

Leases Issued in 11 Wyoming Townships Sampled

Decade	Total leases issued	Leases issued as result of partial assignment	
		Number	Percentage
1920s	93	0	0
1930s	14	4	29
1940s	35	0	0
1950s	258	60	23
1960s	302	88	29
1970s	147	6	4

On the other hand, as shown on the next page, BLM figures suggest that lease splitting from unit agreement segregations is rapidly rising, at least in Wyoming, while assignments are holding relatively steady:

Lease Assignments and Segregations in Wyoming, 1971-1978

Year	Assignment	Segregation
1971	14,209	140
1972	15,559	245
1973	15,340	306
1974	14,799	382
1975	16,121	377
1976	15,248	271
1977	15,158	489
1978	15,384	545

It may be desirable to examine the relative impact of lease splitting through segregation, and means by which it might be controlled if necessary.

Impact of S.1637 on expenses

Interior does not envision the bill's having a major impact on the cost of its operations. Normally, a more competitive leasing system would be expected to result in more presale evaluations--and thus more operating costs--since presale evaluations are now done only on competitive leases. Interior did some estimates of the impact of doing more presale evaluations, and concluded that the additional cost of presale evaluations could range from $2.8 million to $56.5 million annually, depending on the assumptions used. However, under the proposed bill, Interior defines fair market value as the amount of money that can be received under a competitive situation, rather than an appraised value. Thus, under this concept, no presale evaluation is needed, and none is intended by Interior.

Office of Management and Budget (OMB) circular A-25 provides that fair market value should be obtained when federally owned property is leased or sold, but it does not require it. Thus, there presumably is no legal problem with Interior's decision not to perform presale evaluations and, in any event,

we are inclined to agree with the Department's definition of fair market value, as explained on page 40.

We discussed S.1637 with key Interior officials in Washington, D.C.; Wyoming; and Colorado, and found that its impact on other agency expenses had not been fully evaluated, although--overall--it appeared to the officials we contacted that the impact would be slight. USGS foresees a need for additional people to perform the PGP designations ($500,000 a year), but this expense would be largely nonrecurring. USGS officials in the field identified no other likely expenses, but pointed out that they had not been tasked with making such estimates or provided a copy of the bill for review or comment. BLM field officials also saw no significant impact on the cost of their operation.

Impact of S.1637 on production

Prior to the Arab oil embargo, little attention was given to the fact that the Nation's petroleum and natural resources are limited. Consequently, real concern about production has only recently surfaced.

The impact of a more competitive leasing system on production is difficult to assess, although it appears likely that S.1637--by creating delays in making lands available and affecting the role of independent operators and others--could actually reduce production. The Government can influence production by (1) creating financial incentives and disincentives, (2) imposing mandatory diligence requirements, (3) levying environmental requirements, or (4) restricting access to public lands.

Is more diligence needed?

The only incentives to diligence inherent in the present process are the annual rental payment and the fact that drilling must be underway prior to the lease expiration date (usually 10 years). Interior expects the bill to achieve greater diligence because there will be a shorter lease period (5 years versus 10), a higher percentage of leases with a higher rental, and a possibility that token drilling efforts will not automatically result in a lease extension. One industry official we spoke with felt that a shorter lease term would step up drilling activity.

While it is true that much of the leased land has never been drilled, it is uncertain as to what extent greater diligence requirements would accelerate exploration, drilling, and production. Even if industry has the ability to drill more, there must be either incentives to increase the level of drilling or actions that require production.

We examined 11 townships in Wyoming in which 849 leases and permits had been issued since passage of the Mineral Leasing Act of 1920. We found that over the years, an average of only slightly more than 1 well for every 10 leases has been the case. On the other hand, our sample suggests that drilling activity has increased considerably over the last 10 years, attributable in large part to drilling activities in the Overthrust Belt, and--presumably--the incentives created by higher oil prices.

Drilling Activity in 11 Wyoming Townships Sampled

Decade	Leases issued	Wells drilled	Wells drilled per lease
1920s	93	11	0.12
1930s	14	3	.21
1940s	35	3	.09
1950s	258	10	.04
1960s	302	33	.11
1970s	147	44	.32
Total	849	105	0.12

National figures correspond roughly to this. Although the 1960s were more active in total, a rapid increase in drilling has occurred on public land in the late 1970s, to a level higher than that of any previous period (although not accompanied by a corresponding increase in completions of producible oil wells).

We found much inactive land being held by individuals who were not affiliated with oil companies and were, therefore,

presumably speculators; we found leases held by oil companies but with no drilling activity (but, of course, they may still be pursuing tract consolidation efforts or geophysical exploration); and we found instances of leases being extended close to the expiration date by means of unit agreements.

It is thus clear that much of the land is not being developed. The key question, however, is whether stricter diligence requirements will increase industry's efforts and, hence, increase production. While many assume that this is the case, incentives are still needed (or provisions for enforcement), and there are various means under the present system whereby lessees can avoid diligent development. Thus, the extent to which production can be increased through stricter diligence requirements is uncertain.

Diligence is defined as persevering application or the exertion normally expected of someone. The fact that leases are not being developed is not conclusive evidence that they could be developed. Our industry contacts advised us that obtaining land from speculators was generally not a major problem and, in fact, many of the leases are assigned rather quickly. Presumably, then, the land is essentially available to producers. Therefore, it may be that there is more land currently being leased than industry can develop, or that there have not been adequate incentives for greater development. A firm answer to the above question would require knowing what disincentives or other impediments there are to exploration and development. We did not address these questions in this review; however, we are examining them in a separate ongoing review, as discussed on page 38.

If stricter diligence is desired, it appears that Interior has this authority now. A standard provision of all leases is that the lessee agrees:

> "* * * promptly after due notice in writing to drill and produce * * * wells as the Secretary of the Interior may reasonably require in order that the leased premises may be properly and timely developed and produced in accordance with good operating practice."

In prior work on this matter, Interior's Solicitor Office advised us that this provision could be enforced and leases terminated for failure to comply, but that it had never been implemented. Equitable administration of this

authority would probably increase Interior's workload, but may be the best answer to greater diligence.

Another possibility that has been considered in the past is a requirement for performance bonds, whereby lessees would forfeit money if drilling did not take place within a specified period of time. We were advised that this has been used on Indian lands to good effect. This should encourage a rapid transfer of the lease to those capable of producing it (or may eliminate nonproducers entirely) and would also encourage the producers. Again, this alternative emphasizes the necessity of choosing between revenues and production, as it would likely reduce the acreage under lease, probably considerably.

As always, there are also unknown variables. Requiring performance bonds was an option considered by Abt Associates in a major study performed for the Public Land Law Review Commission in 1970. 1/ Their views, which show the wide range of possible effects, are presented below and serve as an illustration of the possible significant impacts, and the difficulty of predicting such impacts, of even a seemingly modest change to the leasing system.

They considered the possibility of requiring a $10,000 bond subject to forfeit if drilling were not begun within a specified period of time. The probable impacts they saw included the following:

--No one would lease unless he really intended to drill. As a result, speculation would be eliminated.

--Because there would be no leases without firm intentions of drilling, expired leases would not be picked up unless they comprised an economically viable block of land. As a result, virtually all land would be unleased after 10 years, at which time over-the-counter leasing of larger blocks would resume.

1/"Energy Fuel Mineral Resources of the Public Lands." A Study Prepared for the Public Land Law Review Commission by Abt Associates, Inc., Dec. 1970.

--Overriding royalties would be eliminated, increasing the amount of drilling and the production from each well.

--Much less land would be leased, reducing bid revenues and filing fees, but the total effect on Federal revenues is unclear.

--Large blocks would be more difficult to assemble, reducing production.

Lease extension practices may be working against diligent development

Lease extension practices, when not properly administered, are inconsistent with the need to encourage or require diligent development of Federal oil and gas leases. Currently, each lease has a fixed term or expiration date unless it is brought into production. Once a lease begins producing, its term is extended for as long as the lease produces, or is capable of producing, in paying quantities. A lease which has no producing or producible well at the end of its initial period will be extended for 2 years if drilling operations are then underway on the lease (or on a unit of which it is a part).

The bill would eliminate this automatic 2-year extension (although Interior says no lease will be cancelled if active drilling is underway), but ignores other possible means of sidestepping diligence, such as through unit agreements and communitization. While unit and communitization agreements often serve a valuable purpose (see page 3), they do provide the means to avoid lease expiration, since lease extensions are granted when forming or cancelling such units.

We believe that if diligent production is to be assured, consideration should be given to the fact that unit agreements and communitization afford an opportunity to "sidestep" lease expiration dates. We were advised that some such agreements appear to have been made solely for the purpose of getting the lease extension, not their intended purpose of allowing cost sharing or efficient development.

Will reduction of speculator involvement increase production?

It is widely felt that the involvement of the speculator adversely affects production because of the time needed for

developers to acquire the leases and because of the higher cost of such things as overriding royalties. Interior feels that the higher costs of larger tracts and competitive bidding will make the land directly available to the developer.

However, our limited contacts with industry suggested that speculators are not necessarily a major delaying factor and that--from industry's point of view--getting land through speculators noncompetitively (although they are now obtained competitively to some degree) may be preferable to higher cost-competitive leases. Industry contacts feel (1) that the present noncompetitive leasing system is preferable to the proposed change, (2) that leases are generally not too difficult to obtain from brokers and speculators, (3) that they are probably able to obtain leases cheaper by negotiating with a middleman than under a full competitive system, and that (4) a competitive system which emphasizes large tracts would result in the major oil companies dominating onshore oil and gas.

Also, it appears that most assignments take place fairly rapidly. Our analysis of oil and gas leases issued by BLM's Wyoming State Office in 1977 showed that as of October 1979, 60 percent of the 278 open land leases and 36 percent of the 120 competitive leases had been assigned. An analysis of simultaneous leases showed that 80 percent of 92 leases issued by that office in June 1975, and 55 percent of the 137 leases issued in June 1977 had also been assigned by October 1979. This appears to confirm the observation of oil firm representatives that leases are readily available from brokers and speculators.

Means to increase the quantity of production

The bill will attempt to increase production through a shorter lease term, larger tracts, control over overriding royalties, and reduction of speculator involvement.

Oil company representatives believe that, while the present leasing system is not perfect, they are not convinced that the proposed changes are better. Company officials believe that two significantly bigger impediments to onshore oil and gas production are (1) environmental restrictions and (2) withdrawals.

Industry officials also told us that they fear S.1637 may indirectly further restrict or delay access to Federal lands. They told us that (1) they envision the favorable land designation and tract consolidation process as taking time, (2) the designation of PGP's might be considered a major Federal action and thus require an environmental impact statement for each PGP, and (3) mandatory competitive leasing of marginal lands on expanded KGSs will effectively make the lands unavailable when they might otherwise have been explored. There is probably merit to industry's contention that access is a major problem.

We are presently reviewing the impact of withdrawals and other environmental restrictions in a separate study.

Impact of S.1637 on the oil industry

A possible adverse effect of any attempts to reduce speculation in the oil and gas leasing system is that they may also have an impact on the non-major oil producers. Oil company representatives expressed concern that independent oil producers would be adversely affected by the proposed changes and resultant delays. We were told that independent oil producers are responsible for the vast majority of oil and gas produced onshore 1/ and that they are also an integral part of the drilling and exploration operations of many major and non-major oil companies. If the independent is not able to compete successfully under the proposed system, is denied access to lands now available to him, or experiences delays in leasing potentially productive lands, oil company representatives believe otherwise realizable production will be sacrificed.

Our analysis of the 120 competitive leases awarded in Wyoming in 1977, and the subsequent assignment of 43 leases, shows participation by individuals and large and small segments of the oil and gas industry. Further, in this case, our analysis does not appear to support an alleged fear of dominance by majors. However, there is concern that a largely competitive system would encourage the majors to increase their activity in this area, and that the non-majors

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1/The Oil and Gas Journal reported that in recent years the non-majors have drilled over 80 percent of all wells and an even higher percentage of wildcat wells.

would be unable to compete. The feeling is (1) that the larger tracts envisioned under S.1637 which will be obtainable merely through cash bidding will be of greater interest to the majors than the present system of small leases that have to be methodically consolidated into an efficiently sized unit and (2) that these larger tracts and a high-per-acre bid might effectively eliminate the independent producer.

Interior acknowledged S.1637's potential for adversely affecting the independent in its work preparing the bill, and a major comprehensive study done for the Public Land Law Review Commission in 1970 concluded that the independent would be hurt by competitive bidding.

Thus, the consensus seems to be that it will be detrimental to independents, and in light of their contributions to domestic oil production, it may be desirable to assure that their interests are protected.

Recovery of fair market value

It seems widely accepted that the Government (and, therefore, the American people) should receive fair market value for the oil and gas being leased. It is also widely believed that fair market value is not now being received and, lastly, it is equally unclear as to what constitutes fair market value.

One of the major problems surrounding fair market value recovery is that the real value of a tract is not known until the oil or gas is finally extracted. Interior makes assessments on competitive tracts, but USGS officials with whom we spoke felt they were of little value. We found that they were often higher than the bids actually received, but generally considerably lower. This shows the difficulty of using an appraisal system to assess recovery of fair market value.

Our analysis of the 69 competitive leases issued by BLM's Wyoming State Office during the period May 1979 through September 1979 showed high bids for the 16,000 acres leased totaled $1.85 million for an average high bid of $116 per acre. USGS' evaluation valued the land at a little over $572,000 or approximately $36 per acre. Appraisals under an expanded competitive system would be considerably more difficult because they would be done in areas where even less data is available for analysis than is available in

the relatively few developed areas where competitive leasing is now taking place.

Interior now proposes defining fair market value as whatever the market will bear, thus meaning that, in a truly competitive situation, fair market value will have been automatically achieved. Under this definition, there will be no need to make pre-sale evaluations or establish a minimum acceptable bid.

It is no doubt true that fair market value is not obtained in many noncompetitive leases. However, if fair market value is related to the value of the oil and gas to be extracted, there are also many instances in which greater than fair market value is realized, i.e., any case in which bids and rentals were paid to the Government but no oil or gas was found.

We believe there are actually two separate fair market values in question--(1) the fair market value of the opportunity to explore for oil and gas and (2) the fair market value of the oil and gas eventually recovered.

Using this concept, we agree with Interior's contention that competitive interest will place an accurate value on the opportunity to search for oil and gas. We further believe that the most practical way to recover fair market value for the oil and gas deposits is through a royalty rate.

This line of reasoning could even be carried one step further: The Government could realize all of the fair market value through the royalty and/or rental and ignore any fair market value that might relate to the opportunity to search, particularly since there is much less value to a lease before it produces. Thus, the question of how fair market value is recovered can be considered separately from whether the lottery system should be used to assign leases.

Even today, royalties and rentals represent a much greater source of funds than either competitive bids or filing fees, as shown below:

1978 Receipts from Onshore Oil and Gas Leasing

	Competitive	Noncompetitive	Total
	(millions)		
Bids	$ 12.7	$	$ 12.7
Rentals	.1	55.6	55.7
Filing fees	-	29.7	29.7
Royalties	46.0	262.8	308.8
Total	$ 58.8	$ 348.1	$ 406.9

Thus, even a modest increase in royalties--as in S.1637, which, by standardizing royalty rates, could double the royalty on some noncompetitive leases--could substantially increase Federal receipts. If accompanied by a corresponding modest reduction in overriding royalties, the possible impacts could be as follows:

--It may be more palatable to producers, and particularly independents, than would competitive leasing, because there would be no increase in "front end" costs that might impair their ability to produce. Interior, however, feels that front-end costs represent an investment that the producer would like to recover, and therefore an incentive to diligence.

--There may not be any increase in producer costs and, hence, no reduced production if the increased Federal royalty is offset by a reduced overriding royalty.

--The objectionable speculator profit would be reduced, but there would still likely be adequate incentives for the legitimate and useful function provided by those who identify promising tracts and assign them to producers.

A better estimate of the potential of this possible alternative (and any adverse impacts) warrants more study, but it appears to merit consideration, particularly in light of S.1637's uncertain impact on revenues and production.

CONCLUSIONS

We believe that while S.1637 has several commendable features, it is nontheless based on insufficient data and analyses and poses such great uncertainties that it should not be enacted in its present form. While it does have features directed at improving diligence, its main thrust appears directed to assuring maximum "front-end" revenues to the Government at a time when efforts to stimulate increased production of oil and gas from domestic sources--and particularly from public lands--would seem of high priority.

While the bill's impact on production is difficult to forecast because of its vagueness in certain areas and also because of the latitude granted the Interior Department, it appears very likely that it could cause

--considerably less land under lease,

--delays in making land available for leasing, and

--less incentive and opportunity for independent oil companies and others to continue their traditional role of searching out and exploring lands for prospective oil and gas--in other words, less rather than more production.

In addition, it's not clear S.1637 will actually result in more total receipts to the Government. While any more competitive system would undoubtedly result in higher "front-end" receipts from certain leases, our analyses, as well as that of Interior's, suggested that a good deal--perhaps the majority--of lands put up competitively may not even be leasable under a competitive approach (at least not at so-called "fair market value"). Whether such receipts even offset lost filing fees remains to be seen. Interior's study forecasts significant increases in revenues from S.1637, but most of the increase stems from increased rental rates, not from the use of more competitive leasing. Such increases could be achieved under the present system without a major change in leasing procedures. In addition, our work indicated that lands actually having the most potential for new discovery may lie outside so-called "producing geologic provinces" and thus--ironically, under S.1637--would not be leased competitively by the Department of the Interior, as they presently interpret the bill.

In this study, we did not focus on various proposed regulatory changes designed to correct real or potential abuses in the current lottery-type system or to reduce the role and influence of "fly-by-night" brokers. These types of issues, however, were highlighted in a previous GAO study, and it appears the changes proposed are steps in the right direction--again indicating that certain improvements can be made administratively without a major overhaul of the present system.

On that note, we believe it is important to recognize that the present system, while certainly having flaws and inequities (which we have been quick to point out in our prior work), has basically succeeded in making an important contribution to domestic oil and gas production--mainly by making a good deal of land available and continually accessible for exploration and development. Thus, we believe caution should be exercised before making any sweeping changes to such a system. In addition, there ought to be a clear understanding and agreement--both in the administration and in the Congress--on the objectives sought and likely impacts to result.

In this connection, we noted that the last major study on this subject was completed in 1970 by Abt Associates for the Public Land Law Review Commission--before the Arab oil embargo, before current urgencies to increase domestic oil and gas supplies, and at a time when the focus of concern was more on protecting public lands and assuring a fair market value return to the public for the resources consumed. These latter issues are still important, but today the even greater challenge is how to achieve these and at the same time stimulate sufficient domestic exploration, development, and production to meet a national crisis.

We concur with Interior's desire to improve the minerals leasing management system (and any competitive system certainly has appealing features), but we do not believe S.1637 is the answer. It stands to reason that if production is a prime objective, a low-cost, easy access system which--coupled with diligence provisions, also helps assure fair market value return and environmental protection--is probably worth considering. Interestingly, we noted that maximizing production apparently is the reason the State of Wyoming maintains an all-noncompetitive system. Retaining a noncompetitive system,

enforcing existing and/or adding new diligence provisions, and enhancing access to presently restricted land may be the best way to achieve this.

Another way which we believe may warrant further consideration as a possible means of achieving both fair market value and optimum production is to retain a noncompetitive system, but achieve fair market value through land rental and adequate royalty rates. This, coupled with sufficient diligence and restrictions on overriding royalties, might achieve considerable increases in receipts without unduly affecting production quantities or the viability of the independent producer.

Because the ramifications of any changes can have far-reaching and hard-to-identify impacts, however, such alternatives require further analysis.

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In summary, we believe that legislation along the lines of S.1637 in its present state is not appropriate. If new legislation is considered, however, we believe it should be built on certain concepts. These include:

--A need for greater diligence authority than is presently exercised.

--Consolidation of leases too small for efficient exploration and development.

--Restrictions on excessive overriding royalties.

--Elimination of means to split up larger tracts.

--Recognition that the KGS concept may not be the most desirable means of identifying competitive tracts.

--Recognition that existing presale evaluations procedures do not provide an accurate measure of fair market value.

--Maintaining incentives for non-major producers.

--A clear definition of competition.

--Provision for reverting to noncompetitive leasing in circumstances where competitive bidding fails to achieve results.

--Evaluation of rental and royalty rates in terms of both return to the Government and effect on production.

In light of the significant, but difficult to identify, impacts that any major change to the present system can have, we believe that no legislation should be enacted unless supported by

--a clear statement of objectives,

--comprehensive and refined measures of its impact, and

--an accurate identification of the magnitude of problems in need of correction.

In the meantime, we believe certain changes can be made administratively, without a major overhaul of the present leasing system. These include certain proposed regulatory changes geared to correcting potential abuses in the current lottery system, which are discussed in our April 1979 report on that subject. 1/

If, because of the legal problems cited earlier, the noncompetitive leasing system is abolished, we suggest that our observations be considered in any deliberations on a more competitive system, in light of the problems and possible pitfalls we identified.

Relatedly, it appears that the perceived abuses of the lottery system relate to the specific system now in place--not the concept of noncompetitive leasing. Because of this and the uncertainties facing implementation of a competitive system, we suggest a comprehensive assessment of the extent of abuse within the present system and the potential for correcting them through regulatory or other changes.

1/"Onshore Oil and Gas Leasing--Who Wins The Lottery?" (EMD-79-41, Apr. 13, 1979).

AGENCY COMMENTS AND OUR EVALUATION

Time did not permit the Department of the Interior to comment formally on our draft report. However, we did meet and discuss the report with cognizant Interior Department officials, and we did attempt, where we considered appropriate, to reflect their views and suggestions in the final report.

Essentially, the officials with whom we spoke felt that our perception of the bill's intent was inaccurate, and that our report presentation did not recognize certain favorable aspects of S.1637. In their view, S.1637 was directed not only at achieving fair market value recovery, but also achieving increased production through diligence provisions. They said the bill contains several features consistent with the philosophy the GAO draft report expressed, and suggested this be acknowledged more clearly in the report. In addition, they felt our draft implied that it was undesirable to give the Interior Department any latitude in implementing Federal leasing policy.

We believe our perception of the bill's objectives is accurate. We agree that the bill does contain certain desirable provisions directed at increasing production by tightening controls over diligent development. We have attempted to recognize this in our final report but, in our view, the overriding theme and emphasis of S.1637--as well as its practical out-working--is on achieving greater fair market value recovery rather than on increasing production.

We also agree that it is desirable to give the Interior Department some latitude in implementing a leasing system. The proper amount of latitude is a matter for the Congress to decide, allowing Interior enough flexibility to function effectively but at the same time insuring a leasing system consistent with congressional objectives. We were attempting to point out that the broad latitude of certain provisions makes it difficult to gauge the likely impact, and that not presently knowing the predominant objectives of the Congress and the executive branch leaves little criteria against which to assess the provisions.

Other Interior Department comments were incorporated as appropriate. We were advised that Interior may later comment formally on our final report.

APPENDIX II

96TH CONGRESS
1ST SESSION

S. 1637

To establish competitive oil and gas leasing in favorable areas within producing geologic provinces.

IN THE SENATE OF THE UNITED STATES

AUGUST 2 (legislative day, JUNE 21), 1979

Mr. JACKSON (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To establish competitive oil and gas leasing in favorable areas within producing geologic provinces.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Oil and Gas Leasing Act of 1979."

SEC. 2. Subsections (a) through (c) and (e) of section 17 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain," approved February 25, 1920 (30 U.S.C. 226 (a) through (c) and (e)), are amended to read as follows:

"SEC. 17. (a)(1) Except as otherwise provided in this Act, the Secretary may lease lands which are favorable for the discovery of oil or gas within a producing geologic province only by competitive bidding. Competitive bidding shall be on the basis of cash bonus with a royalty of not less than 12½ per centum fixed by the Secretary in amount of value of the production saved, removed, or sold from the lease, or, at the discretion of the Secretary, on the basis of any other bidding system which will encourage competition and exploration, development and production of oil and gas.

"(2) The Secretary may lease lands for oil or gas outside of a producing geologic province or lands within a producing geologic province which are not favorable for discovery of oil or gas without competitive bidding.

"(b) Nothing in this section shall be construed to prevent the Secretary from leasing lands noncompetitively prior to identification of all those lands within a producing geologic province which are favorable for discovery of oil or gas.

"(c)(1) All leases issued under this section shall be for a tract not exceeding two thousand five hundred and sixty acres, as the Secretary may determine, unless the Secretary finds that a larger area is necessary to comprise a reasonable economic unit.

"(2) Each lease that the Secretary issues under this section shall be for an initial period of five years and so long

thereafter as oil or gas is produced in paying quantities or drilling or well reworking operations as approved by the Secretary are conducted thereon. A lessee may, before the fourth anniversary of the lease, apply to extend the initial term for an additional period or periods not to exceed a total of five years. Each extension application shall include a detailed exploration plan for the extended term. The Secretary, in his discretion, may extend the initial term only if he finds that because of unusually adverse technical, environmental or economic conditions which are beyond the control of the lessee, the lessee cannot adequately explore the lease during the initial five-year term or any extended term. Nothing in this subsection shall be construed as affecting existing leases.

"(e) For purposes of this section—

"(1) the term 'producing geologic province' means an area, as determined by the Secretary, which contains known petroleum production and all portions of which have similar or comparable geologic history, comparable characteristics of deformation, similar stratigraphy, and similar or peculiar types of petroleum accumulation; and

"(2) the term 'lands favorable for discovery of oil or gas' means those lands which, in the opinion of the Secretary, may be valuable for oil or gas due to the geology of such lands, nearby discoveries or competi-

tive interest by two or more parties in such lands, *Provided,* That all lands within three miles of the boundary of a known geologic structure of a producing oil or gas field shall be considered favorable for the discovery of oil or gas.".

SEC. 3. Section 30(a) of the Act of February 25, 1920 (30 U.S.C. 187a) is amended by striking the third sentence and inserting in lieu thereof "(T)he Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond; *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment (1) of a separate zone or deposit under any lease, (2) of less than six hundred and forty acres, (3) containing an overriding royalty which exceeds limitations established by regulations, or (4) which the Secretary determines would create or maintain a situation inconsistent with the antitrust laws.".

SEC. 4. Section 27(l) of the Act of February 25, 1920 (30 U.S.C. 184(l)), as amended, is further amended by:

(l) adding after paragraph (2) a new paragraph (3), to read as follows:

"(3) The Secretary may refuse (1) to accept an otherwise qualified bid for, or (2) to issue a lease, or approve a sublease or assignment of, or (3) to renew, readjust, or extend any lease, sublease or assignment of, any minerals

other than coal subject to leasing under this Chapter if he determines that such lease, sublease, assignment, renewal readjustment or extension may create or maintain a situation inconsistent with the antitrust laws. The Attorney General may review, pursuant to regulations established by the Secretary after consultation with the Attorney General, the likely effects upon competition of transactions subject to this Chapter and make appropriate recommendations to the Secretary."; and

(2) by renumbering existing paragraphs (3) and (4) as (4) and (5), respectively.

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APPENDIX III

federal register

Friday
September 28, 1979

Part VI

Department of the Interior

Bureau of Land Management

Oil and Gas Leasing

APPENDIX III

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 3100]

Oil and Gas Leasing

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking sets forth changes in the simultaneous oil and gas leasing system. These changes are intended to resolve problems with the present system by reducing speculation, limiting the influence of filing services, and promoting development and exploration.

DATE: Comment by November 27, 1979.

ADDRESS: Send comments to: Director (650), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240. Comments will be available for examination in Room 5555 of the above address during regular business hours (7:45 a.m.—4:15 p.m.).

FOR FURTHER INFORMATION CONTACT: Charles Weller, Division of Onshore Energy Minerals, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240, 202–343–7753.

SUPPLEMENTARY INFORMATION: On June 4, 1979, the Secretary of the Interior announced that he would pursue regulatory changes to prevent abuses of the simultaneous oil and gas leasing system and to promote efficient exploration and development. This proposed rulemaking encompasses proposals announced by the Secretary, as well as others developed within the Bureau of Land Management.

The Wyoming State Office of the Bureau of Land Management currently uses a computer to conduct simultaneous oil and gas drawings. The expansion of this system and the automation of other State Offices is under consideration. This proposed rulemaking would permit an expansion of the existing automated system without regulatory change.

Filing Service Abuses

Within the framework of present regulations, most applicants employ agents, commonly known as filing services, which promise to provide assistance in participating in the simultaneous oil and gas leasing system.

Most filing services file their client's drawing entry cards directly with the Bureau of Land Management and use the service's address on the cards instead of the applicant's personal address. Typically, filing services rubberstamp the client's signature on the card or have the client send the cards to the filing service pre-signed.

The drawing entry card is the applicant's offer to lease. Leases are issued in the name of the drawing winner upon submittal of the first year's rental within 15 days after notification. The applicant is not required to sign the lease form.

The existing system has been abused by some filing services. Lease offers have been filed in the names of deceased persons. Drawing winners have been victimized by filing services which fail to pass on drawing results. Some services have advanced the first year's rental and obtained leases which have then been assigned without their client's knowledge. In these cases, it is believed, the assignment is often in accordance with a pre-existing contract between the filing service and an oil company or middleman.

The following proposed regulatory changes address these abuses:

(1) Only handwritten signatures would be proper on drawing entry cards. If a card is signed by anyone other than the applicant, the signature must reveal the name of both applicant and the signer, and the relationship between them.

Rubber stamped and mechanically affixed signatures have been accepted on drawing entry cards by the Bureau of Land Management since the Interior Board of Land Appeals' decision in *Mary I Arata* (4 IBLA 201 (1971)), and on statements of the qualifications of agents since the decision in *W. H. Gilmore* (41 IBLA 25 (1979)). Under the interpretation of present regulations found in these opinions it is possible for an offer to be filed, the qualifications of the offeror and his agent to be examined and a lease to be issued without an original signature on any document submitted to the Bureau of Land Management. The Interior Board of Land Appeals recognized that its holding in *Gilmore* "exposes the Department to another method by which the reasonable efforts of the Department to ensure fair play and compliance with the law can be made more difficult." However, the Board felt obliged to so hold under existing regulations while deploring "the proclivity of some leasing services to exploit every conceivable loophole in the letter of the regulations without any discernible regard for their spirit and intent."

This proposed regulation would specifically prohibit the use of rubber stamped and mechanically affixed signature. While the proposed requirement may work a hardship on filing services involved with mass filings, it is unlikely that a serious developer will apply for so many parcels as to make it inconvenient to sign a corresponding number of drawing entry cards.

(2) Only two types of filing would be proper, those signed and fully completed by the applicant and those signed and fully completed by an agent on the applicant's behalf. All cards must be signed within the filing period. These requirements would prevent agents from receiving pre-signed cards from their clients. Pre-signing reduces the value of the statements of qualifications contained on the card and fosters illegality. In one recent case, a pre-signed card was filed after the purported offeror had died, *Estate of Charles D. Ashley*, 37 IBLA 367 (1978).

(3) The return address used on the drawing entry card would be required to be the applicant's personal or business address. A filing service's address could not be used.

(4) Agents would be required to submit copies of all agreements which they maintain with their clients related to Federal leasing or leases.

(5) The lease form would replace the drawing entry card as the lease offer. The applicant would be required to personally sign the lease form.

(6) Payment of the first year's rental by anyone other than the applicant would be unacceptable.

(7) An agent would be held to have an undisclosed interest in any filing if it maintains an agreement with any party by which the agent will seek to induce an assignment of a lease which might result from the filing to such party. This proposed change in the regulation would outlaw "kick back" arrangements whereby an agent may have a prior agreement with a middleman to sell the lease (if won) to the middleman who in turn resells for a bigger profit to an oil company and the agent is "kicked back" a percentage of the profits.

(8) No lease could be assigned before it is issued. Nor could any agreement to assign a lease be made before the lease is issued, or before 60 days from the time the applicant is notified that his filing has priority, whichever is sooner. This proposed amendment to the regulation recognizes that some filing services exercise undue influence over their clients and may induce a transfer which is not in the client's best interests. It is a companion to the proposed provisions which would prohibit agents from having assignment agreements with oil companies or middlemen. The proposed rulemaking would allow all parties interested in obtaining the lease an equal opportunity to approach the

APPENDIX III

lessee within a specific timeframe. It would also recognize that no property right in a lease exists before it is issued and would remove from the Bureau of Land Management the administrative burden of accepting assignments where a lease does not issue to the proposed assignor.

(9) A bona fide purchaser would be on notice as to the contents of existing regulations and the contents of the case file of any lease which he acquires.

Promote Exploration and Development

In order to promote oil and gas exploration and development, the proposed rulemaking would allow for increased size and eliminate unnecessary consolidation steps.

The average lease size on Federal land is 850 acres. Tracts of this size do not generally justify efficient exploration since it is unlikely that the lease will overlie a complete reservoir. Nor do such tracts encourage efficient development. The migratory nature of oil and gas permits developers to drain the resources underlying other existing leases on the same reservoir. Such competing ownership interests promote inefficient drilling programs with excess wells, cramped spacing, and the resulting premature lowering of reservoir pressure and reduction of total production.

Larger tract size is desirable for efficient exploration and development. Currently 45 percent of Federal acreage is consolidated into exploration units (average 20,000 acres) and production units (average 10,000 acres). While the assembly of such units is necessary to the oil industry, it is often difficult, time-consuming and expensive due to the multitude of lessees which a developer may encounter. Suitable tracts are also assembled through assignment of leases but this method involves similar difficulties.

The proposed rulemaking would increase the maximum size of non-competitive leases from 2,560 acres to 10,240 acres. The Secretary would retain the discretion to issue leases for less than the maximum acreage. All of the acreage would be required to be within a 4 mile square as opposed to the present 6 mile square. Thus, future leases could be larger and at the same time, more compact. The rule of approximation, whereby odd size sections may be included in a lease in excess of the 2,560 acre limitation would be eliminated because it is cumbersome and unnecessary if there is a substantial increase in acreage.

Currently, simultaneous oil and gas drawings are held monthly. Under the proposed procedure, they would be held quarterly. Our research indicates that in some States as many as 70 percent of existing parcels could be combined with other parcels which become available within a three-month time period as opposed to about 20 percent on a monthly basis.

Together, these measures should attract people more interested in development than in speculation. It is expected, however, that the average lease size shall not change dramatically. Leases as small as 40 acres shall continue to be offered.

Miscellaneous

(1) Filing fees must be paid in U.S. currency, Post Office or bank money order, bank cashier's check, or bank certified check. A "Review of Simultaneous Oil and Gas Leasing Procedures" released by the Department of the Interior's Office of Audit and Investigation in June 1977, recommended that filing fees be paid by guaranteed remittances. The Bureau of Land Management disagreed at that time because the volume of dishonored checks was rather small. The situation has changed since the Bureau made its comments to that report. Now, at any given time, the Bureau has over $100,000.00 in dishonored checks from filing fees.

(2) The time periods allowed for the filing of entry cards and the submittal of the first year's rental would be expanded from 5 to 15 days and from 15 to 30 days respectively. These changes are designed to overcome the difficulties which applicants experience in meeting existing time periods. The extension of the filing period would be made possible by the shift to quarterly drawings.

(3) Only one person could be listed as the applicant on a drawing entry card. This revision is designed to aid the Bureau of Land Management administratively in alphabetizing drawing entry cards and in locating specific cards on microfilmed records. All persons who would have entered their names as joint applicants under present procedures will be treated as other-parties-in-interest.

(4) Revocable trusts would be prohibited from participation in simultaneous oil and gas leasing. By law, the Bureau of Land Management must approve all transfers of lease interests and assure that the transferee is qualified to hold a lease. A power of revocation allows a lease to be transferred by operation of law without consideration by the Bureau. Existing revocable trusts would be granted two years in which to dispose of currently held leases.

(5) Corporate filers would be required to submit a list of corporate officers so that the Bureau of Land Management can verify that no officer is illegally filing in his own name or on behalf of the corporation.

Decisions of the Interior Board of Land Appeals have identified illegal multiple filings in situations where a corporation has filed for a parcel in its own name and a corporate officer has filed for that same parcel. This proposed rulemaking would make clear that an illegal interest exists when two or more corporate officers file as part of any relationship by which the corporation will benefit from any lease, if issued, regardless of whether the corporation files in its own name.

(6) The Mineral Leasing Act of 1920 provides that associations of citizens of the United States may hold interests in Federal leases. The proposed rulemaking would require that associations and partnerships provide complete lists of their members or partners to assure compliance with other provisions of this Act.

(7) The practice of allowing statements of qualifications to be placed on file with the Bureau of Land Management in lieu of submitting such statements with each drawing entry card would be expanded to include the qualifications of corporations, associations, partnerships, trusts, guardianships, and agents.

(8) Any parcel for which ten or fewer drawing entry cards are received or which is posted three times, and for which no lease issues, would be dropped from the lists of lands available for simultaneous leasing and would become available for lease by regular offer under 43 CFR 3111. By this means, the Bureau of Land Management would remove parcels for which little or no serious interest is shown rather than carry them on the simultaneous lists indefinitely.

It is determined that publication of the proposed rulemaking does not require a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, and that the proposal does not constitute a significant rule requiring preparation of a regulatory analysis under 43 CFR Part 14 and Executive Order 12044.

The principal author of this document is Charles Weller, Division of Onshore Energy Resources, Bureau of Land Management.

PART 3100—OIL AND GAS LEASING

Under the authority of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 181 et seq.), and related laws, it is

proposed to amend Part 3100, Group 3100, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations, as follows:

§ 3100.0–5 [Amended]

1. Section 3100.0–5(d) is deleted.

2. Section 3100.5–3 is amended to read as follows:

§ 3100.5–3 Period of option.

Except as provided in § 3112.4–4 of this title, and option taken on a lease application or offer may be for a period of time until issuance of the lease and 3 years thereafter. Where options are sought for longer periods, an application shall be filed with the authorized officer of the Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application.

3. Section 3101.1–1 is amended to read as follows:

§ 3101.1–1 Availability of lands.

All lands subject to disposition under the Act which are known or belived to contain oil or gas may be leased by the Secretary of the Interior. When lands are located within the known geologic structure of a producing oil or gas field prior to the actual issuance of a lease, they shall be leased only by competitive bidding and in units of not more than 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ percent. Leases for not to exceed 10,240 acres entirely within an area of four miles square or within an area not exceeding four surveyed sections in length or width measured in cardinal directions, may be issued for all other land subject to the Act to the first qualified applicant at a royalty of 12½ percent. Lands not subject to leasing under these regulations:

(a) National parks and monuments.

(b) Indian reservations.

(c) Incorporated cities, towns, and villages.

(d) Naval petroleum and oil shale reserves.

(e) Lands acquired under the Act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

(f) Lands within 1 mile of naval petroleum or helium reserves shall not be leased unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

4. Section 3102.1 is revised to read as follows:

§ 3102.1 Who may hold interests.

(a)(1) Mineral leases may be acquired and held only by citizens of the United States; associations (including partnerships) of such citizens, corporations organized under the laws of the United States or of any State or territory thereof, or municipalities.

(2) Aliens may acquire and hold interests in leases only through stock ownership, stock holding and stock control; and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States.

(3) A mineral lease shall not be acquired or held by one considered a minor under the laws of the State in which the lands are located, but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf.

(b)(1) A lease or interest therein shall not be cancelled it such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. In any action by the Government, the purchaser has the burden of proving his bona fides. All purchasers are on notice as to all pertinent regulations and all information contained in a lease's case file.

(2) Prompt action shall be taken to dismiss as a party to any proceedings with respect to a violation of any provision of the Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781), a person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(3) *Suspension.* If during any such proceeding a party thereto files a waiver of his rights under his lease to drill or to assign his interest thereto, or if such rights are suspended by order of the Secretary pending a decision, payment of rentals and the running of time against the term of the lease of leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

5. Section 3102.2 and §3102.2–1—3102.2–7 are revised to read as follows:

§ 3102.2 Statements of qualifications.

§ 3102.2–1 Individuals.

A statement as to citizenship and compliance with the acreage limitations set forth in § 3101.1–5 of this title shall be manually signed in ink by the offeror or applicant or its agent and shall be submitted to the proper Bureau of Land Management office with each offer, or with each drawing entry card if leasing is in accordance with subpart 3112 of this title.

§ 3102.2–2 Trustees and guardians.

(a) Revocable trusts may not participate in Federal oil and gas leasing. Revocable trusts which hold Federal oil and gas leases shall dispose of such holdings within 2 years of the effective date of this regulation.

(b) If the offeror or applicant is a guardian or trustee filing on behalf of a ward or beneficiary, the offer or drawing entry card shall be accompanied by a certified copy of the court order, or other document, establishing the relationship and authorizing the guardian or trustee to fulfill all obligations of the lease or arising thereunder. A statement as to the citizenship or beneficiary of the offeror or applicant and each ward and as to compliance with the acreage limitations set forth in § 3101.1–5 of this title shall be manually signed in ink by the offeror or applicant and shall accompany each offer, or each drawing entry card if leasing is pursuant to subpart 3112 of this title.

§ 3102.2–3 Associations including partnerships.

An association which seeks to lease shall submit with its offer or drawing entry card, if leasing is in accordance with subpart 3112 of this title, a certified copy of its articles of association or partnership, together with a statement showing: (a) that it is authorized to hold oil and gas leases; (b) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (c) a complete list of all its partners or members together with a statement as to their citizenship. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth citizenship and compliance with the acreage limitations of § 3101.1–5 of this title, shall also be furnished.

§ 3102.2–4 Corporations.

A corporation which seeks to lease shall submit with its offer, or drawing entry card, if leasing is in accordance

with subpart 3112 of this title, a statement showing: (a) The State in which it is incorporated; (b) that it is authorized to hold oil and gas leases and that the officer executing the offer or drawing entry card is authorized to act on behalf of the corporation in such matters; (c) a complete lists of corporate officers; (d) the percentage of voting stock and of all the stock owned by aliens; and (e) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation. A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth the stockholder's citizenship and compliance with the acreage limitations of § 3101.1–5 of this title shall also be furnished.

§ 3102.2–5 Agents.

(a) General. Any person, association or corporation which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall, not later than 15 days from the filing by a participant receiving such assistance of an offer, or drawing entry card if leasing is pursuant to subpart 3112 of this title, furnish the proper Bureau of Land Management office with a certified statement as to any understanding, and a certified copy of any written agreement or contract under which any services related to Federal leasing or leases are authorized to be performed on behalf of such participant. Such agreement or understanding might include, but is not limited to: a power of attorney; a service agreement setting forth duties and obligations; a brokerage agreement; or authority to sign offers or drawing entry cards. Where a uniform agreement is entered into with several offerors or applicants, a single copy of the agreement or the statement of understanding may be filed with the proper office together with a list setting forth the name and address of each such offeror or applicant.

(b) *Attorney-in-fact.* If the power of attorney specifically limits the authority of the attorney-in-fact to file offers to lease or drawing entry cards for the sole and exclusive benefit of the principal and not on behalf of any other person in whole or in part, and grants specific authority to the attorney-in-fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required by the Act and the regulations, and the principal agrees therein to be bound by such representations of the attorney-in-fact and waives any and all defenses which may be available to the principal to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney, then the requirement that statements shall be executed by the offeror or applicant shall be dispensed with and such statements executed by the attorney-in-fact shall be acceptable as compliance with the provisions of the regulations.

§ 3102.2–6 Sole party in interest.

(a) A statement, manually signed in ink by the offeror or applicant and stating whether the offeror or applicant is the sole party in interest in the offer or drawing entry card, shall accompany each such offer or drawing entry card. The names of all other parties in interest shall be set forth in such statement.

(b) A statement, manually signed in ink by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer or drawing entry card. Such statement or agreement shall be accompanied by statements, manually signed in ink by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of § 3101.1–5 of this title.

§ 3102.2–7 General.

Where statements of the qualifications of corporations, associations, trusts, guardianships or agents have been placed on file with the Bureau of Land Management, a reference to the serial number assigned to such statements may be made on subsequent offers and drawing entry cards in lieu of resubmittal. This section is applicable to grants of authority only if the duration of the grant is specifically set forth. Amendments to statements of qualifications shall be filed promptly, and in no event shall an offer or drawing entry card be filed if such statements are not current.

6. Section 3102.3 is amended to read as follows:

§ 3102.3 Other showings of qualifications.

The applicant or agent may be required to submit additional information to the Bureau of Land Management to show compliance with the regulations of this part and the Mineral Leasing Acts.

§§ 3102.4–3102.7 [Removed]

7. Sections 3102.4 through 3102.7, inclusive, are deleted in their entirety.

§ 3102.8 [Amended]

8. Section 3102.8 is amended by changing the section number to § 3102.2–8 and inserting the words "or applicant" after the word "offeror" wherever it occurs, and by inserting the words "or drawing entry card" after the word "offer" wherever it occurs.

§ 3102.9 [Amended]

9. Section 3102.9 is amended by changing the section number to § 3102.2–9.

10. Section 3103.1–1 is amended to read as follows:

§ 3103.1–1 Form of remittance.

Cash, money order, check, certified check, bank draft or bank cashier's check, except as provided in § 3112.2–2 of this title.

11. Section 3110.1–3 is amended to read as follows:

§ 3110.1–3 Acreage limitation.

An offer may not include more than 10,240 acres. The lands in the offer shall be entirely within an area of 4 miles square or within an area not exceeding four surveyed sections in length or width. No offer may be made for less than 640 acres of public domain land except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan has been approved as to form by the Director of the Geological Survey or where the land is surrounded by lands not available for leasing under the Act.

§ 3111.1–1 [Amended]

12. Section 3111.1–1(e)(2) is deleted. Paragraphs (e)(3)–(5) are renumbered (e)(2)–(e)(4).

13. Subpart 3112 is revised as follows:

Subpart 3112—Simultaneous Filings

Sec.

APPENDIX III

§ 3112.1 Parcels.

§ 3112.1-1 Availability of lands.

All lands which are not within a known geological structure of a producing oil or gas field and are covered by canceled or relinquished leases, leases which automatically terminate for non-payment of rental pursuant to 30 U.S.C. 188, or leases which expire by operation of law at the end of their primary or extended terms are subject to leasing only in accordance with this subpart.

§ 3112.1-2 Posting of notice.

At 10 a.m. on the third Monday of January, April, July, and October, or the first working day thereafter if the office is not officially open on the third Monday, a list of the lands for which drawing entry cards shall be accepted shall be posted in the proper Bureau of Land Management State Office. The list shall include a notice stating that such lands are subject to the filing of drawing entry cards from the time of such posting, until 10 a.m. on the fifteenth working day thereafter. The available lands shall be described in leasing units identified by parcel numbers. The lands shall also be described in accordance with § 3101.1-4 of this title, by subdivision, section, township and range if the lands are surveyed or officially protracted; or if unsurveyed, by metes and bounds. The list shall include a statement as to, and a copy of, any standard or special stipulation applicable to each parcel. Copies of the posted notice may be purchased by mail or over the counter from the proper office.

§ 3112.2 How to file.

§ 3112.2-1 Simultaneous oil and gas drawing entry card.

(a) In order to participate in a drawing each applicant shall file a Simultaneous Oil and Gas Drawing Entry Card approved by the Director in the Bureau of Land Management office specified in the posted notice.

(b) The drawing entry card shall be manually signed in ink and fully completed by the applicant or manually signed in ink and fully completed by an agent on behalf of the applicant. Cards signed by an agent shall be rendered in a manner to reveal the name of the principal, the name of the agent and their relationship. (Example: Smith, agent for Jones; or Jones, principal, by Smith, agent.) Machine or rubber stamped signatures shall not be used.

(c) Only one person's name may appear as applicant on any drawing entry card. The card shall be dated at the time of signing. The date shall reflect that the card was signed within the filing period.

(d) The drawing entry card shall include the applicant's personal or business address. All communications relating to leasing shall be sent to that address and it shall constitute the applicant's address of record for the purpose provided in § 3112.4-2 of this title. The applicant shall not use the address of any other person, association, corporation or other entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system.

(e) The parcel applied for shall be identified by the proper parcel number, including the State prefix as shown on the posted notice.

(f) An applicant shall file only once for each parcel in the posted list.

§ 3112.2-2 Filing fees.

Each filing shall be accompanied by a $10 filing fee. The filing fee shall be paid in U.S. currency, Post Office or bank money order, bank cashier's check or bank certified check, made payable to the Bureau of Land Management. Checks drawn on foreign banks shall not be accepted. A single remittance is acceptable for a group of filings. Failure to submit sufficient fees to cover all filings shall render unacceptable the entire group of filings submitted with that remittance. Such filings shall be returned to the applicant in accordance with § 3112.5-1 of this title. An uncollectible remittance covering the filing fee(s) shall result in disqualification of all filings covered by it. In such a case, the amount of the remittance shall be a debt due to the United States which shall be paid before the applicant is permitted to participate in any future drawing.

§ 3112.2-3 Qualifications.

Drawing entry cards shall be accompanied by the evidence of qualifications to hold Federal oil and gas leases set forth in Subpart 3102 of this title.

§ 3112.3 Drawing procedures.

§ 3112.3-1 Drawing results.

(a) Three drawing entry cards shall be drawn or otherwise selected for each numbered parcel. The order in which they are drawn shall fix the order in which the successful applicant shall be determined. Where only 2 cards are filed for a particular parcel, both shall be drawn to determine their priority. A single filing shall automatically be considered the successful card.

(b) The result of the drawing shall be posted in the Bureau of Land Management office where the drawing was held.

(c) All unsuccessful applicants shall be notified by the return of their filings or in writing.

(d) Drawing winners shall be notified in accordance with § 3112.4-2 of this title.

§ 3112.4 Lease issuance

§ 3112.4-1 Lease form.

A lease for any parcel on the posted list shall be issued on a form approved by the Director subject to the stipulations specified in such list.

§ 3112.4-2 Execution of leases and payment of first year's rental.

A lease may be issued to the first applicant qualified to receive a lease. The lease agreement shall be forwarded to the prospective lessee for signing, together with a request for payment of the first year's rental. Only the personal hand-written signature of the prospective lessees in ink shall be accepted. The first year's rental shall be paid by the applicant. Payment by anyone other than the applicant is unacceptable. The executed lease form and the applicant's rental payment shall be received in the proper Bureau of Land Management office within 30 days from the date of receipt of notice or the applicant's filing shall be rejected. Timely receipt of the executed lease and rental constitutes the applicant's offer to lease.

§ 3112.4-3 Acceptance of lease offer.

The signature of the authorized officer on the lease shall constitute the acceptance of the lease offer and the issuance of the lease by the United States. A lease cannot issue if, prior to the time the lease is signed by the authorized officer, any of the lands are determined to be within a known geological structure of a producing oil or gas field (30 U.S.C. 226(b)).

§ 3112.4-4 Restriction on transfer.

No lease or interest therein may be transferred or assigned prior to issuance of the lease as evidenced by the signing of the lease by the authorized officer on behalf of the United States as provided in § 3112.4-3 of this title. No agreement or option to transfer or assign such lease or interest therein shall be made or given prior to lease issuance or 60 days from the applicant's receipt of priority, whichever comes first. The existence of such an agreement or option shall result in rejection of a filing or cancellation of the lease.

§ 3112.5 Unacceptable filings.

(a) Drawing entry cards shall be examined prior to the drawing and the card or written notice shall be returned to the filer together with the filing fee if the card is:

(1) Received prior to the beginning of the simultaneous filing period;

(2) Received after the closing of the filing period;

(3) Accompanied by an unacceptable remittance or insufficient filing fees;

(4) Filed in the wrong office; or

(5) If the parcel number is omitted from the card, not included on the current list, or deleted by the Bureau of Land Management.

(b) Failure to identify a filing as unacceptable prior to the drawing does not bar rejection after the drawing for the reasons listed in this section or for any reason set forth in § 3112.8 of this title.

§ 3112.6 Adjudication.

§ 3112.6-1 Rejection.

Rejection is an adjudicatory process which follows the drawing. Filing fees for rejected filings are the property of the United States and shall not be returned.

(a) *Improper filing.* Any entry card which is not filed in accordance with § 3112.2 of this title shall be rejected.

(b) *Unqualified applicants.* The drawing entry card of any applicant who is unqualified or has not filed or caused to be filed all evidence of qualification required by Subpart 3102 of this title shall be rejected.

(c) the authorized officer shall reject any drawing entry card filed in accordance with:

(1) Any agreement, scheme or plan which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein;

(2) Any agreement entered into prior to the drawing between any individual, association or corporation and the applicant obligating the applicant to transfer any interest in any lease which may issue as a result of such filings to such party. Such agreements include but are not limited to, committing the applicant to use the services of such party when assigning or transferring the lease or any interest therein, with or without a fee, or entitling such party to any interest or benefit from the assignment or transfer of the lease or any interest therein whether or not such party is instrumental in securing the assignment or transfer;

(3) Any agreement, plan or scheme between any individual, association or corporation which provides to another any assistance in participating in the simultaneous oil and gas leasing system and any potential assignee whereby such individual, association or corporation will seek to induce an assignment of any lease to such potential assignee;

(4) Filings by members of an association (including a partnership) or officers of a corporation, under any arrangement, agreement, scheme, or plan whereby the association or corporation has an interest in more than a single filing; or

(5) Separate filings by a trustee or guardian in its own behalf and on behalf of one or more beneficiaries on the same parcel or, separate filings by a trustee or guardian on behalf of two or more beneficiaries on the same parcel.

(d) *Illegal interests.* The authorized officer shall reject all filings which are made in accordance with any illegal agreement, plan, scheme or arrangement and shall take other appropriate actions including investigations for prosecution under 18 U.S.C. 1001.

§ 3112.6-2 Cancellation of leases.

In the event a lease has been issued on the basis of a filing which properly should have been rejected, action shall be taken to cancel the interests in that lease unless the rights of a bona fide purchaser, as provided for in § 3102.1(b) of this title, intervene. The Government may take action to cancel regardless of whether information showing the filing was rejectable is obtained or was available before or after the lease was issued.

§ 3112.7 Availability of lands not leased through drawing.

(a) Where, during the filing period, 10 or fewer cards are received for any parcel and no lease issues as a result of such filings, the lands in such parcels shall become available for lease in accordance with subpart 3111 of this title.

(b) Where more than 10 drawing entry cards are received for a particular parcel and all successful applicants for that parcel are rejected for any reason, the lands in such parcel shall be reposted for lease under the simultaneous drawing procedure.

(c) If a parcel is made available 3 times on the posted list and no lease issues as a result of such posting, the lands in such parcels shall become available for lease in accordance with subpart 3111 of this title.

September 19, 1979.

Guy R. Martin,

Assistant Secretary of the Interior.

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DICK CHENEY
WYOMING

Congress of the United States
House of Representatives
WASHINGTON, D.C. 20515

May 21, 1979

Dear Mr. Staats:

As you know, the President declared in his April 5, 1979, energy message that in order to meet the nation's growing demand for energy,

> "We will step up exploration and production of oil and gas on federal lands."

I agree with the President's objective, but I believe there may currently be significant obstacles in the way of achieving that objective. I have two questions I would like the General Accounting Office to address:

1. What are the major problems facing the oil and gas industry as it looks to the public lands as a source of additional energy? Are some or all of these problems caused by government action? What steps might be taken to correct these problems?

2. What effect would a change in the current oil and gas leasing system from a simultaneous to a competitive leasing system have on the competitive structure of the oil and gas exploration, development and production industries?

It may be that you have previously considered some or all of these questions; if so, I would not ask that your review cover old ground. I would, however, appreciate any information you could supply on these issues.

Best regards,

Dick Cheney
Member of Congress

The Honorable Elmer Staats
Comptroller General of the United States
General Accounting Office
441 G Street, N.W.
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