The original documents are located in Box 33, folder "Outer Continental Shelf, 1976: Leasing Legislation (2)" of the Glenn R. Schleede Files at the Gerald R. Ford Presidential Library.

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MAY 11, 1976

ADMINISTRATION AMENDMENTS

TO

H.R. 6218

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*Amendment: Suspension, cancellation of lease, disapproval of development plan, and compensation

Strike Section 5(a)(2), page 58 line 18 through page 59 line 4, and substitute therefor the following:

(2) for the cancellation of any lease by the Secretary in his discretion, if (because of a high probability of severe harm or damage unanticipated in kind or degree by the Secretary at the time such lease was issued, arising from exceptional geologic conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances) the Secretary determines that operations under the lease would cause harm or damage sufficiently severe to be unacceptable after taking into consideration the advantages of continuing such operations, provided that no lease shall be cancelled under this paragraph unless operations under such lease shall have been under suspension by the Secretary, with due extension of lease term, continuously for a period of ten years, or for a lesser period upon request of the lessee, and provided further, that upon cancellation the lessee shall be entitled to receive such compensation as he shows to the Secretary is equal to the lesser of (A) the fair value of the cancelled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for clean-up or damages in the case of oil spill, and all other costs reasonably anticipated on the lease, or (B) the excess, if any, over the lessee's revenues from the lease, (plus interest thereon from date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement). The amount of such compensation shall be as agreed to by the lessee and the Secretary, or, if no such agreement can be reached, as determined by the United States Court of Claims in judicial proceedings pursuant to 28 U.S.C. 1491;

Strike Section 25(g)(1)(C), lines 13-24 on page 111, and substitute therefor the following:

(C) if (because of a high probability of severe harm or damage unanticipated in kind or degree by the Secretary at the time such lease was issued, arising from exceptional geologic conditions in the lease area, exceptional resource values in the marine or coastal environment,

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or other exceptional circumstances) the Secretary determines that the plan cannot be modified to reduce the potential for harm or damage sufficiently to make it acceptable after taking into consideration the advantages of development and production from the lease. If a plan is disapproved under subparagraph (C) of this paragraph, the term of the lease shall be duly extended, and at any time within ten years after said disapproval the lessee may reapply for approval of the same or a modified plan, and the Secretary shall approve, disapprove, or require modifications of the plan in accordance with this subsection. Upon expiration of such ten year period or at an earlier time upon request of the lessee, if the Secretary has not approved a plan, the Secretary may in his discretion cancel the lease, and the lessee shall be entitled to receive such compensation as he shows to the Secretary is equal to the lesser of (i) the fair value of the cancelled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for clean-up or damages in the case of an oil spill, and all other costs reasonably anticipated on the lease, or (ii) the excess, if any, over the lessee's revenues from the lease (plus interest thereon from date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement). The amount of such compensation shall be as agreed to by the lessee and the Secretary, or, if no such agreement can be reached, as determined by the United States Court of Claims in judicial proceedings pursuant to 28 U.S.C. 1491. The Secretary may, at any time within the ten year period described in subparagraph (C), require the lessee to submit a plan of development for approval, disapproval or modification; if the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been duly diligent in pursuing his obligations under the lease, and shall cancel such lease forthwith, without compensation, under the provisions of Section 5(c) of this Act.

Rationale

This amendment adds Secretarial authority to set the period of suspension of a lease and makes four key changes in the provisions now in the bill for lease cancellation, development plan disapproval, and compensation. (1) A lease may be cancelled only if operations have been under suspension, or the development plan under disapproval, for ten years, or a shorter period on request of the lessee. (2) The test for cancellation or disapproval allows a comparison of the hazard with the advantages of continued operations. (3) The hazards must have been unanticipated by the Secretary at the time the permit or lease was issued. (4) Compensation is for the value of the rights lost by the lessee, or restitution of the excess of his

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costs over his revenues, whichever is less, rather than return of his expenses on the lease. Each of these four changes corrects an unacceptable deficiency in the provisions now in the bill.

First, a lease should be cancelled only in an extreme case, after it has been clearly demonstrated by the passage of time that a hazard is unacceptable and that it cannot be reduced or removed. Under the provisions in the bill cancellation could be immediate, under the pressures of the moment, before any substantial period for consideration of remedies.

Second, no lease should be cancelled, or development plan disapproved, without full consideration of both the advantages and disadvantages of doing so. The provisions now in the bill would permit consideration of only the advantages.

Third, a lease should not be in jeopardy of cancellation because of a hazard which was anticipated at the time the lease was issued. Under the provisions now in the bill, a lease could be cancelled even though no new information had appeared, and even though a decision had been made to issue the lease in full anticipation of the hazard.

Fourth, compensation should be for the value of rights of which the lessee is deprived, or restitution of the excess of costs over revenues, whichever is less. In this way the lessee is held harmless from cancellation at minimum cost to the Treasury.

The compensation provisions now in the bill for cancellation following development plan disapproval are seriously defective, in that they would pay the lessee an amount which bears no relation whatever to either the values of which he is being deprived by cancellation, or the amount of just restitution for his operations on the lease. Furthermore, these provisions are inconsistent with those in the general cancellation clause of Section 5(a)(2).

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*Amendment : Congressional action on waiver of limitation on bonus bidding.

Section 205 (Section 8(a) (6) (C) (ii)) line 13, page 70

after the word "limitation" strike the words "if both the Senate and House of Representatives pass a resolution of approval" and insert in lieu thereof the words "unless disapproved by joint resolution of Congress."

On page 70, after line 16, add a new subparagraph (iii) as follows:

> "(iii) The Secretary shall experimentally offer tracts for lease under the systems authorized in subparagraphs (B), (C), (D), (E), (F), (G) or (H) of paragraph (1) of this section as necessary to gain information on the merits of these systems, provided that in the case of each experimental offering he determines that the value of the information expected to be gained is sufficient to warrant any likelihood of inefficient exploration or production, delay of development, reduction of return to the treasury, or addition to administrative cost."

Rationale

This amendment would permit the Secretary to exceed the 90 percent limit on use of the bonus-bid, fixed-royalty system unless, by joint resolution, Congress disapproved. At the same time, it would direct the Secretary to experiment with other authorized bidding systems, provided he determined that the value of the information to be gained was sufficient to warrant the risks involved.

Interior has no objection to being directed to experiment with new bidding systems, provided it is not forced to do so when the risks are excessive in comparison to the information to be gained. However, the present language of the bill would compel the offer of half-a-million acres or more per year under novel systems whose effectiveness is unproven, and it would offer no reasonable chance that the Secretary could obtain Congressional waiver of the requirement if later evidence made it appear unwise. The outcome of experiments is always uncertain, otherwise they would not be experiments. The costs of leasing a tract worth $100 million or more under an experimental system that turns out badly could be very high, and it is a serious mistake to take risks of this kind in the absence of a case-by-case finding that they are warranted.

The defect in the bill is especially serious in light of the likelihood that in Conference the 90 percent limitation could be reduced in compromise with the Senate provision, which is 50 percent.

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* Amendment : Information concerning lands within three miles of the seaward boundary of a State.

Section 205(f)(1)(B), lines 22 and 23, page 74

Strike subparagraph (B) and substitute therefor the following:

> "(B) all relevant information in his possession concerning the geographical and geological characteristics of such lands, subject to the provisions of Section 26 of this Act."

Rationale

The purpose of subsection 205(f) is to resolve problems created by possible drainage of oil and gas from under State lands. This amendment restricts the provision of information to the Governor under this subsection to data relevant to that purpose, and it conforms the section to the confidentiality requirement of Section 26. As presently written, the subsection requires that "all information" be provided, regardless of its relevance, whether the Secretary has it in his possession, or whether its provision is barred under the confidentiality rules of Section 26.

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* Amendment : Transmittal of information processed, analyzed, and interpreted by the Secretary

Section 26(d)(1)(B)

Page 115, line 21, insert after the word "section" the words:

", provided that the Secretary determines that such transmittal would not unduly damage the competitive position of the lessee or permittee who provided to the Secretary the information which the Secretary had processed, analyzed, and interpreted pursuant to Subsection (b)"

Rationale

This amendment applies the test of undue damage to the competitive position of lessee or permittee to information processed, analyzed, and interpreted by the Secretary after receipt from such lessees or permittees. The data received by the Secretary may be protected by the confidentiality provisions of subsection (c). The data produced by the Secretary by processing, analyzing, or interpreting such received information does not appear to be protected under subsection (c), even though transmittal of such secondary products could seriously compromise the confidentiality of the data received by the Secretary. The Secretary could protect the received data only by not doing processing, analysis or interpretation which if released, would compromise the received data. This amendment gives his discretion to protect the received data, so that he may, for purposes of carrying out his duties under the Act, do any processing, analysis, or interpretation without being required to transmit it if it would be damaging to the lessee's or permittee's competitive interest.

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*Amendment : State inspection of privileged information

Section 26(d)(2), page 116, lines 3-10

Strike all but the final sentence of paragraph (2) and substitute the following:

> "(2) The Secretary shall permit inspection by an appropriate State official designated by the Governor of any adjacent coastal State, at a regional location which the Secretary shall designate, of any privileged information received by the Secretary about leased lands and regarding any activity adjacent to such State, provided the Secretary determines that such inspection would not unduly damage the competitive position of a lessee."

Rationale

This amendment applies the test of undue damage to the competitive position of a lessee to the inspection of privileged information by States. This test was originally in Committee Print No. 2. The current language of the bill would provide no discretion to the Secretary concerning such inspection. This is particularly undesirable in the case of geological interpretations which the Secretary may have received from lessees, the confidentiality of which is of great importance, since they reveal information not merely about the lease tract, but in particular about the interpretive techniques practiced by the lessee. These interpretive techniques are trade secrets of extreme value, and the Secretary should be granted discretion to withhold them from inspection if he feels such inspection would be unduly injurious to the lessee's competitive position.

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*Amendment: Federal leases potentially draining State lands

Section 205(f), page 75, line 4 through page 76 line 3.

Strike paragraphs (2), (3) and (4) of subsection (f), and insert in lieu thereof the following:

(2) In the case of any lease issued after the date of enactment of this Section on which production may in the Secretary's judgment drain oil or gas from State lands, the Secretary shall either

(A) seek to establish an agreement for unitary development and production of the Federal and State properties, whenever such State properties have been or are about to be leased or otherwise committed to development and production by the affected State; or,

(B) whenever the State has not or is not about to so commit such properties to development and production, (i) include a term in the lease making the lessee a party to any suit for equitable division of proceeds from the lease among the lessee, the State, and the Federal government, and (ii) initiate such suit whenever he finds that drainage from State lands is occurring, except that no such term shall be included, or suit initiated, unless the State agrees to insert a similar term and to initiate similar suits concerning its own properties, where oil or gas operations on State lands may drain Federal lands.

Rationale

This amendment fully protects States from loss of revenue by drainage, and at the same time, avoids the serious difficulties inherent in the "joint lease" concept now in the bill. For a State to become "lessor" of OCS lands, it would have to acquire rights over those lands, rights which it does not now possess under the Act. The joint lease concept therefore is tantamount to extending State jurisdiction beyond three miles. Furthermore, as now written, the procedure for joint leasing would have the effect of granting a State veto over leasing in the first three miles of Federal waters. A State could exercise this veto by (1) accepting the Secretary's offer to lease jointly and then (2) refusing to find the lease terms "mutually acceptable." In any case, since the lease is to wholly Federal lands, its terms should be a wholly Federal decision.

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* Amendment : Recommendations of Governors and Advisory Boards

Section 19(d), page 89

Strike lines 7-20 of page 89, and substitute therefor the following:

> "the Secretary shall fully consider such recommendations in light of national security, the desirability of obtaining oil and gas supplies in a balanced manner, and the policies, findings, and purposes of this Act. If the Secretary finds that he cannot accept such recommendations, he shall communicate, in writing, to such Board or such Governor the reasons therefor."

Rationale

The present language of the bill assumes that except in case of conflicts with national security or overriding national interst, wherever there is a disagreement between a Governor and the Secretary over the size, timing or location of a lease sale or over a development plan, the Governor is always right and the Secretary is always wrong. This is a fundamentally dangerous assumption for development decisions regarding a federally owned resource whose benefits are nationally distributed and which does not lie within the territorial boundaries of any State. It is the Secretary, responsible to the President, who has a National, not a regional viewpoint which enables him to balance the benefits and costs of one region against those of others. No Governor or regional group of Governors can be expected to judge such issues in a National perspective. Therefore, there should be no presumption that, after giving them full consideration in light of Federal policy as embodied in the Act, the Secretary must accept Governors' recommendations.

Given the protections available to coastal States under the Coastal Zone Management Act, which are reaffirmed and strengthened in this bill, and given Governors' full opportunity at important points to comment on OCS decisions, there is no need for the language this amendment removes.

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*Amendment ___: Baseline and monitoring studies.

Section 20, pages 89-92

Strike the following:

page 89, (a)(1), line 22 and 23, "of Commerce, in cooperation with the Secretary"

page 90, (a)(2), lines 10 and 11, "of Commerce"
(a)(3) in its entirety

page 91, (b), line 8, "of Commerce"

page 91, (c), line 19, "of Commerce"
line 25, "of Commerce"

page 92, line 2, "of Commerce"
line 6, "of Commerce"

page 92, (d), lines 11 and 12, "of Commerce, and "to the Secretary and"

At the end of Section 20, add the following new subsection:

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

Rationale

This amendment provides that responsibility for design and direction of baseline and monitoring studies would remain where it is now, in the Department of the Interior. However, it also directs the Secretary where practicable to execute such studies through the Department of Commerce.

The Committee's intent in this Section appears to be to utilize the scientific expertise of NOAA for baseline and monitoring studies. However, the present language of the bill does so at the cost of depriving the Secretary of the Interior of control over the content, timing, and coordination of those studies. Since the purpose of the studies is primarily to provide information for Interior's decision-making needs, it would be a serious mistake to remove them from Interior's control. This amendment would provide both for utilizing NOAA's scientific expertise and for control of content, coordination and timing by Interior.

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The amendment would also make clear that the Secretary of Commerce would utilize the expertise of its contractors in carrying out the studies if appropriate, and would clarify the Department of Commerce's authorization to do so under the Economy Act.

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* Amendment : Safety and health

Section 208 should be amended so as to delete the proposed new Section 21 of the Outer Continental Shelf Lands Act and to substitute the following:

"Section 21 Safety Regulations

(a) Upon the date of enactment of this section, the Secretary and the Secretary of the Department in which the Coast Guard is operating shall, in consultation with each other and other agency heads as appropriate, promptly commence a study of the adequacy of existing safety regulations, and of the technology, equipment, and techniques available for the exploration, production and development of natural resources, with respect to the Outer Continental Shelf. The results of this study shall be submitted to the Congress, together with a plan of action which each Secretary proposes to take, working alone and in consultation with the other, under their respective authorities under this or other Acts, to promote safety and health in the exploration, production and development of natural resources of the Outer Continental Shelf.

(b) In exercising their respective responsibilities for floating, temporarily fixed or permanently fixed structures for the exploration, production and development of the natural resources of the Outer Continental Shelf, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require the use of the best available and safest technology which the respective Secretary determines to be economically achievable, taking into account the incremental costs and benefits of utilizing such technology, wherever failure of equipment would have a significant effect on safety, health, or the environment, on all new drilling and production operations and, wherever practicable, on existing operations.

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

Section 208 should be further amended so as to delete the proposed new Section 22 of the Outer Continental Shelf Lands Act and to substitute the following:

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"Section 22 Enforcement of Environmental and Safety Regulations

(a) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall consult with each other regarding

the enforcement of environmental and safety regulations promulgated pursuant to this Act, and each may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal agency, for the enforcement of their respective regulations.

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

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

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

(c) The Secretary, the Secretary of the Department in which the Coast Guard is operating or their authorized representatives, upon presenting appropriate credentials to the owner or operator of a facility subject to Subsection (b), shall be authorized -

(1) to enter without delay any part of the facility; and

(2) to examine such documents and records as are pertinent to such an inspection.

(d) (1) The Secretary or the Secretary of the Department in which the Coast Guard is operating, as applicable, shall make an investigation and public report on each major fire and major oil spillage occurring as a result of operations conducted pursuant to this Act. For the purpose of this subsection, the term 'major oil spillage' means any discharge from a single source of more than two hundred barrels of oil over a period of thirty days or of more than fifty barrels over a single twenty-four-hour period. In addition, such Secretary may make an investigation and report of any lesser oil spillage.

(2) In any investigation conducted pursuant to this subsection, the Secretary of the Department in which the Coast Guard is operating shall have the power to subpoena witnesses and to require the production of books, papers, documents, and any other evidence relating to such investigation."

Section 208 should be further amended, in conformity with the above amendments, as follows:

page 100, lines 3 and 4 - strike the present text and insert "his own behalf against any person, including the United"

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page 100, lines 10-13, delete

page 100, lines 14 and 15 - delete the present text and insert "(2) No action may be commenced under subsection (a)(1) of this section - "

page 101, lines 1-9 - delete

page 104, line 16 - strike the words "Secretary of Labor"

page 105, line 5 - strike the words "Secretary of Labor"

page 105, line 13 - delete the words "occupational or public"

Rationale

Section 21 and 22 of the reported bill contain a number of provisions which are objectionable and the proposed amendment includes the changes necessary to make these sections acceptable.

First, the present allocation of agency responsibility for safety and health on the OCS has been developed over time and is fundamentally satisfactory. This bill would alter in either undesireable or uncertain manner the present jurisdictional pattern. The amendment makes clear that present Labor, Coast Guard, Environmental Protection Agency and Interior responsibilities would continue.

Second, section 21 (c)(1) of the bill provides that no new safety regulation shall reduce the degree of safety or protection to the environment afforded by safety regulations previously in effect. Environmental regulations frequently must be promulgated on the basis of incomplete information. This provision as written would not allow revision based on better information, if the revision would reduce the degree of protection. If applied to new regulations, such a provision might discourage promulgation of desireably strong regulations based on incomplete information. In any event, the fact that the increment of protection provided by existing regulations was extremely costly to the Nation, if that were the case, could not be considered. The proposed amendment permits the Secretary to consider whether the incremental costs incurred are buying enough additional protection to make them worthwhile.

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The amendment also makes clear that the appropriate Secretary's judgment is to be determinative on the question of economic achievability of technology required by section 21 (a)(2) (which has been included in the proposed amendment as section 21(b)). The Administration is of the view the appropriate Secretary should consider the cost to the lessee and indirectly to others of requiring the technology, in relation to the advantage of the increased safety resulting from its use. The legislative history should clearly reflect that this is intended.

Several serious problems occur in the section 22 enforcement provisions. Section 22 (g) contains detailed requirements which are both extremely

burdensome and inconsistent with section 15, which requires an annual report calling for only a summary of enforcement activities. Traditional oversight procedures can provide sufficient check on enforcement activities, if the summary in the annual report is insufficient. There is no need for reporting the number of violations alleged by a particular person. The meaning of "proven violations" is unclear.

Section 22(c)(1) requires physical observations at least twice a year on all installations. The proposed amendment changes this to once a year, which is adequate for regular visits in view of the provision for periodic inspections in section 22(c)(3) of the bill (section 22(c)(2) of the proposed amendment) and of current and planned Coast Guard regulations for facilities.

The Administration opposes compensation to lessees whose leases are cancelled after repeated violations of safety regulations. Section 22(h) of the bill is unclear in this regard. In deleting section 22(h), it is intended that cancellation be in accordance with revised section 5(c) and (d) of the OCS Lands Act (which would be added by section 204 of the bill) which do not provide for compensation.

If this amendment is adopted, amendments 10, 11, 12, 13 and 14 are unnecessary.

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* Amendment : No reduction in safety or protection to the environment

Section 21(c)(1)

page 94, on line 16

Delete the period at the end of the sentence and add ", unless the Secretary shall compare the two regulations and find that the difference between them in costs to the Nation is sufficient to justify the difference between them in the degree of safety or protection to the environment."

Rationale

The current language of the bill says that no new safety regulation shall reduce the degree of safety or protection to the environment afforded by safety regulations previously in effect. Environmental regulations frequently must be promulgated on the basis of incomplete information. This provision as writtenwould not allow revision based on better information, if the revision would reduce the degree of protection. The fact that the increment of protection provided by the existing regulations was extremely costly to the Nation, if that were the case, could not be considered. The proposed amendment permits the Secretary to consider whether the incremental costs incurred by the Nation are buying enough additional protection to make them worthwhile.

If amendment #9 is adopted, this amendment is unnecessary.

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*Amendment: Best available technology

Section 21(a)(2), on page 93, line 12, before the words "economically achievable" insert the words "which the Secretary determines to be".

Rationale

This amendment will make it clear that the Secretary's judgment is to be determinative on the question of economic achievability. The Administration has a further concern, however, that conflicting interpretations of that term may exist. It is therefore the Administration's position that it will oppose enactment of this provision unless Conference Committee report language clearly indicates that the Secretary may consider the cost to the lessee and indirectly to others of requiring the technology, in relation to the advantage of the increased safety resulting from its use.

If amendment #9 is adopted, this amendment is unnecessary.

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Amendment: Report of safety violations

Strike subsection 22(g), pages 98 and 99.

Rationale

The annual report required by Section 15 calls for only a summary of enforcement activities. The detailed requirements of Section 22(g) are inconsistent with Section 15, and in addition would be extremely burdensome. The traditional oversight procedure can provide sufficient check on enforcement activities, if the summary in the annual report is insufficient. There is no need for reporting the number of violations alleged by a particular person. The meaning of "Proven violations" is unclear. Proven by whom, an agency finding or by successful collection of a penalty?

If amendment #9 is adopted, this amendment is unnecessary.

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Amendment: Enforcement of regulations

Section 22, page 96, lines 20-22.

Strike existing paragraph (1) and insert in lieu thereof

(1) physical observation, at least once each year, of all fixed installations

Rationale

Mobile drilling rigs are currently regulated by the Coast Guard and are subject to periodic inspection as vessels. The Coast Guard is currently preparing regulations for other types of semi-permanent drilling rigs, such as jack-up rigs. With the provision for periodic, unannounced inspection in clause (3), once a year is adequate for regular visits.

If amendment #9 is adopted, this amendment is unnecessary.

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Amendment ___: Compensation for lease cancelled because of safety violations

Section 22(h)

page 93, line 23

Add the following sentence after the period of line 23:

"Cancellation of a lease pursuant to this subsection shall not entitle a lessee to any compensation."

Rationale

No compensation should be provided for any lease cancelled after repeated violations of safety regulations. Although, that appears to be the intent, the subsection should explicitly so provide.

If amendment #9 is adopted, this amendment is unnecessary.

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*Amendment: Secretarial authority to regulate

Section 5(a). On line 10, page 57, between the first and second sentences of the subsection, insert the following sentence:

> The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall apply to all operations conducted under a lease issued or maintained under the provisions of this Act.

Rationale

The sentence to be inserted comes verbatim from the present OCS Lands Act, Section 5(a)(1). It forms the primary basis on which, over the past 22 years, judicial and regulatory action have defined the authority of the Secretary to regulate leasing operations for environmental protection of the OCS. Retaining the sentence will provide assurance that no loss of previous regulatory authority will occur, and in particular will prevent large-scale automatic application of State law which might otherwise occur.

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*Amendment : Leasing program consistency with State coastal zone programs

Section 208, Section 18(e)(5)

page 87, line 1

Insert after "consistency" the words "to the maximum extent practicable"

Rationale

The Coastal Zone Management Act requires that Federal agency programs be consistent "to the maximum extent practicable" with approved State CZM programs. The proposed amendment would make it clear that the OCS leasing program is to have applied to it the same consistency requirement to which other Federal programs affecting the Coastal Zone are subject. This amendment conforms the language of Section 18(e)(5) to that used in Section 25 concerning development plans.

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* Amendment : Coast Guard authority to mark obstructions

Section 203(f)

page 56, line 14

strike "shall" and insert in lieu thereof, "may"

Rationale

This will restore the status quo, leaving the Coast Guard with discretionary authority to mark obstructions to navigation. This is consistent with existing Coast Guard authority for all other aids to navigation. In many cases, due to the close proximity of OCS structures, not all such structures need be marked. In fact, marking them all can confuse the navigator. In addition, a mandatory duty to mark will expose the government to damage claims under the FTCA.

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* Amendment ___: Modifications of development and production plans

Section 25(g), page 111. On lines 2, 3 and 4 and again on lines 11 and 12, delete the phrase "or with any valid exercise of authority by the State involved or any political subdivision thereof"

Rationale

This deletes language conditioning modification or disapproval of a D&P plan with "any valid exercise of authority by the State involved or any political subdivision thereof." This language was incorporated from the Senate bill. It is inappropriate in the House bill, because the D&P plan as voted by the Committee contains no information on facilities outside Federal jurisdiction. (Such information is to be included in an accompanying statement, not in the plan itself). Therefore, the plan or modifications of the plan cannot be inconsistent with an exercise of State or local authority since no such authority exists on the OCS. Retaining this language could only create a question of whether the intent of Congress was to grant State and local authority outside the 3-mile line.

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*Amendment: Impact aid

Strike Title IV of the bill in its entirety, and substitute the Administration bill, H.R. 11792, or such provisions as are found acceptable by the President in Amendments to the Coastal Zone Management Act already in conference.

Rationale

The Administration has proposed a comprehensive impact aid bill for all Federal energy developments. Its provisions should be enacted instead of those in H.R. 6218, unless the President finds acceptable the bill resulting from conference committee action now proceeding on H.R. 3981.

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Amendment ___: Retroactivity of development and production plan provisions

Section 25(a)(1), line 19, page 106

After the word "Act" insert the words "in a region of the Outer Continental Shelf in which no oil or gas development or production took place before January 1, 1975"

Rationale

The clear intent of the Committee was to make the provisions of Section 25 retroactive to undeveloped leases in all frontier areas, but as now worded, they are also retroactive to hundreds of leases issued in recent years in developed regions of the Gulf of Mexico. This amendment would limit retroactivity to frontier areas, and avoid a large unnecessary workload of plan submission and review.

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Amendment : Prohibition of leasing of areas not included in the leasing program.

Section 18(c)(4), line 21, page 85

Strike "June 30, 1977" and insert in lieu thereof "a date eighteen months following the enactment of this Section"

Rationale

The procedures in the bill for drawing up and approving the leasing program may take well over a year to complete. The date of June 30, 1977, after which leasing could not proceed without an approved program, was incorporated without discussion from the Senate bill, and is now clearly impractical. If not changed, it would cause substantial delays in the leasing schedule.

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Amendment : Principles for preparation of the OCS leasing program

Section 208, Section 18(a), page 82, line 3

On line 3, after the word "which" insert the words "he determines."

Section 208, Section 18(a)(1), page 82, lines 9 and 10

On lines 9 and 10 strike the words "all of the."

P. 83 insert on line 14 after the word "states" and also on line 17 before the semicolon the words: "which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration"

P. 83, line 22, insert after the word "has" the words: "or is likely to have"

Rationale

The leasing program required by the bill is primarily informational in nature. It is intended to inform Congress, the States and the general public of the long-range plans of the Secretary. The changes in wording in this amendment remove possible sources of delaying litigation based on alleged failure to present the program that will "best" meet national energy needs, or to consider "all of the" environmental values of the OCS. It is impossible to determine what plan is absolutely "best," or to agree on a list of economic, social and environmental values that includes them "all."

The amendment is also intended to:

- Make it clear that while a perfectly equitable sharing of benefits and risks among regions is impossible, given the distribution of oil and gas deposits among OCS regions, the distribution of those risks and benefits should be examined in determining the leasing program.

- Provide that the Secretary need not review all laws, goals, and policies of affected States nor all policies and plans promulgated by States pursuant to the Coastal Zone Management Act. He would have to consider these laws, goals, policies, and plans identified by Governors as relevant.

- Provide that potential capability as well as current capability in the industry to expeditiously explore, develop and produce shall be considered.

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Amendment: Regulations required to be prescribed by the Secretary

Strike paragraphs 5(a)(6), (7) and (8) on page 59, and renumber subsequent paragraphs accordingly.

Rationale

Paragraphs 5(a)(6), (7) and (8) require issuance of regulations for annual reports, safety regulations, and the leasing program. Such regulations are unnecessary. The bill obliges the Secretary himself to issue the reports and the program; he need exert no regulatory authority to do so. It is not clear why he should be directed to issue regulations for the issuance of regulations, as (7) requires.

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Amendment: Attorney General and FTC review

Section 205(c), page 74, line 4.

After the word "information" insert the words "available to the Secretary".

Rationale

This section of the bill requires thirty-day notice to the Attorney General and FTC of proposed lease issuance or extension, along with transmission of such information as they may require. If this requirement is to delay leasing for no more than 30 days in the normal case, the information should be limited to that information available to the Secretary.

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*Amendment: Issuance or extension of leases under due diligence requirement

Strike Section 205(d), page 74, lines 9-11.

Rationale

Section 205(d) bars issuance or extension of a lease if the applicant has not been duly diligent on other leases. This provision is unnecessary, since other provisions require diligence on each lease individually. In addition, it is unworkable, since it may lead to cancellation of a lease held jointly by several parties, one of whom was not duly diligent on a different lease held by himself or with entirely different partners. This presents constitutionality problems with respect to those part-owners of the cancelled lease who have been guilty of no lack of diligence elsewhere.

Diligence requirements should be applied only lease-by-lease, not lessee-by-lessee.

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Amendment: Required Regulations for Subsurface Storage

Section 5(a)(12), page 60 ---

Line 3, Delete the semicolon at the end of the line and add "other than by the United States Government;"

Rationale

Storage in salt domes on the OCS is one alternative being considered in connection with the Strategic Petroleum Reserve program mandated by sections 151 to 166 of the Energy Policy and Conservation Act and administered by the FEA. Obviously no such venture would be undertaken without extensive review by, and the continuing cooperation of, the Department of the Interior. However, it may not be desirable to have government storage facilities subject to regulations which will presumably be designed for private parties, as would seem to be the case in the absence of this amendment.

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Amendment: Limitations on Export

Section 28, pages 122-123 ---

Line 8, Delete subsections (b),(c) and (d) and strike "(a)" from line 3.

Rationale

While it may be desirable to apply the Export Administration Act of 1969 to exports of oil and gas, additional requirements such as the requirement of findings by the President described in subsection (b) and Congressional review thereof as allowed by subsection (c) constitute an undesirable restriction on the exercise of executive powers and normal operation of the Export Administration Act of 1969.

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* Amendment: Citizens Suit Provision

Section 23(a)(1), page 100 ---

1. lines 1-2, Delete the words "or can be".

2. line 6, Between the words "agency" and "for", insert "(to the extent permitted by the Eleventh Amendment to the Constitution)".

3. lines 7-9, Strike the comma at the end of line 7 and change the remainder of this phrase to read "the issuance of which by the Secretary under this Act is not discretionary; and".

Rationale

This section is apparently modelled after similar provisions in the Clean Air Act, the Safe Drinking Water Act and the Federal Water Pollution Control Act.

Point 1. None of the citizen's suit provisions in the three aforementioned acts contains the phrase "or can be". Its inclusion here may raise questions on the issues of standing and ripeness which could lead to nuisance suits.

Point 2. All three of the aforementioned acts contain the suggested parenthetical phrase. Its omission here could support an inference which is presumably not intended.

Point 3. The effect of this change is to omit the reference to permits and leases and limit the reference to regulations to those which are not discretionary. Inclusion of permits and leases could be read to suggest that third parties have a private cause of action as a result of an alleged violation in some provision in a permit or lease. While it may be desirable to allow private citizens to sue on the basis of, or to prevent a violation of, the Act or regulations required by the Act, it appears unwise and unnecessary to treat leases and permits in the same fashion. An adversely affected plaintiff can presumably sue on the basis of the facts creating that situation whether or not the action causing such harm is also a violation of a permit, lease or discretionary regulation.

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*Amendment : On-structure stratigraphic testing

Section 206, Section 11(g)

Strike subsection 11(g), page 79

Rationale

This amendment would strike the subsection directing the Secretary to offer permits for on-structure stratigraphic tests in frontier areas. The Administration strongly opposes this requirement. Such tests, whenever allowed, should be carried out in the locations which, all things considered, best serve the purposes of the oil and gas leasing program. Requiring them to be placed on-structure would increase unacceptably the pressure for follow-on government exploration in the event of a discovery, which would not be in the public interest. It also ignores the success of the past program of off-structure drilling, which has attracted industry applicants and has served the interests of all parties in enhancing the level of pre-sale geologic knowledge.

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Amendment : Lease period extension

New Section 8(b)(2)

page 72, lines 10 and 11, strike "be extended" and insert in lieu thereof "if the Secretary so provides in the terms of the lease, be subject to extension."

Rationale

Extension for a second 5-year period would be allowed only if necessary to encourage exploration and development in areas of usually deep water or adverse weather conditions. Both of those situations are known prior to offering the leases. The present language makes any lease which can meet these undefined criteria subject to such extension, potentially leading to many applications likely to be acted upon by OCS area supervisors acting under delegation from the Secretary.

Since the situations permitting extension can be known in advance of lease offering the proposed amendment provides that the Secretary, prior to a lease sale, will decide which leases will include terms allowing later extension for a second 5-year period if the area supervisor acting under Secretarial delegation later finds that the lessee has exercised due diligence.

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Amendment : Precluding development plan approval because baseline and monitoring study incomplete

Section 20(a)(3)

page 90, line 21, strike "in itself," line 22, strike the period at the end of the sentence and add: ", unless the Secretary, in his discretion, shall find such failure to be an appropriate basis for such preclusion."

Rationale

The required studies are, to the extent practicable, to be designed to predict biological impacts of the development and production activities. Therefore, they will require substantial study efforts, going far beyond establishing and monitoring baselines, leading to predictive capabilities. These new study requirements are likely to lead to substantial delays in OCS development unless it is clear that not completing them is not a ground for delaying development by litigation. On the other hand, the Secretary should have discretion to delay approval temporarily if he thinks that more baseline information should be available before initiating development. As now worded, the bill would appear to prohibit the Secretary from delaying D&P plan approval if the only reason were an unfinished baseline study, even if the Secretary felt that the study was important enough to wait for.

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Amendment ___: Compensation for development plan disapproved because of failure to demonstrate compliance with applicable Federal law

Section 25(g)(1)

page 111 line 7 after "law," add:

"Provided, that the lessee shall not be entitled to compensation because of such disapproval."

Rationale

Compensation should not be provided in instances in which a lessee's development plan is disapproved because he fails to demonstrate that he can comply with the requirements of the Act and other applicable Federal law. The proposed amendment makes this point explicitly.

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Amendment ___: Revision of development plans

Section 25(h)

page 112 in line 13 strike "or" and in line 15 after the comma insert "or is otherwise not inconsistent with the provisions of this Act."

Rationale

The current language does not allow the Secretary to approve revisions which are merely for the convenience of the lessee or which are in the lessee's economic interest although short of "avoiding substantial economic hardship". The Secretary should have discretion to make any such revisions which are consistent with protection of the marine and coastal environments so long as they are not contrary to the public interest.

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Amendment ___: Reimbursement for data reproduction

Section 26(a)(1)(C)(i)

page 113, line 22, insert "or permittee" after the word "lessee"

page 113, line 23, insert "or permittee" after the word "lessee"

Rationale

Permittees as well as lessees are required to provide the Secretary with access to all data obtained. They should receive reimbursement for reproducing such data, if lessees are to receive such reimbursement.

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Amendment : Price at which leases under so-called "Phillips System" are awarded

Section 205(a) Section 8(a)

page 64, lines 21 through 24, and page 65, lines 5 through 8, delete the words "at a price which is equal to the average price per share of the highest responsible qualified bids tendered for not more than 100 per centum of the lease area" in each case where they occur and insert in their place "on the basis of the value of the bid per share"

Delete all from line 10, page 66 through line 2, page 68 and insert in lieu thereof: "(5)(A) In the event bids are accepted for less than 100 per centum of the lease area offered under such subparagraph (G) or (H), the Secretary may re-offer the unleased portion for such period of time as he determines to be reasonable."

page 68, line 3, change (C) to (B)

page 68, line 8, change (D) to (C)

Rationale

Requiring bidders to pay more than they bid, if they bid less than the average, could cause serious administrative problems for this bidding system. Many such bidders would drop out. Re-offer of the remaining shares at the average price might or might not result in sale of 100 percent of the working interest. While this problem could also arise under the Phillips plan as originally conceived, it is far less likely to do so.

The Committee apparently felt, in adopting the average-price language, that it was somehow unfair to lessees to sell a one percent interest to different people at different prices. However, this is a business phenomenon that occurs regularly, and is a generally accepted practice wherever auctions or bargaining take place. No unfairness, either actual or apparent, exists as long as participants are aware of the rules by which the sale will be conducted, and can adjust their bidding strategies accordingly.

The Phillips plan, as originally conceived, is promising enough to warrant experimentation. However, the bill as now written would handicap it seriously.

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Amendment: Requiring an EIS on any structure where there has been no previous development

Section 25(d)(2)

Page 109, line 5, strike "structure, area, or region" and insert in lieu thereof "frontier area"

Rationale

The bill would require preparation of one EIS prior to major development in any structure, area, or region of the OCS where there has been no previous development. The existing language of the bill could be interpreted to require preparation of an EIS on each and every structure except those where development could clearly not be called "major". In an OCS area with many small structures this could involve many EIS's. This amendment would clarify the Committee's intent that at least one EIS per frontier area be written at the D&P plan stage.

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Amendment ___: Definition of "affected State"

Section 201(g)(5)

page 47, line 16

insert "which was extracted from the outer Continental Shelf" following "oil or gas"

Rationale

This amendment is intended to make it clear that the risk of serious damage from an oilspill has to be associated with OCS development, similar to the limitations in the previous clauses. As written it could include risk of damage from oil from other sources.

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Amendment ___: Use of proper term for "structures"

Section 203(a)

page 53, line 6

strike out "structures" and insert in lieu thereof "installations and other devices" so that the proposed bill will read ", and all installations and other devices permanently or temporarily attached to the seabed,"

Rationale

Although the use of the term "structures" improves on existing language, the term used in article 5 of the 1958 Convention on the Continental Shelf is "installations and other devices" . This change will clarify that the United States is asserting the broadest authority over mobile rigs, semi-submersibles etc., while they are in the drilling mode, and will clarify the Coast Guard's authority over foreign vessels used for OCS work.

NOTE:

If adopted, conforming amendments should be made as follows:

page 53, line 23
page 55, line 10
page 55, line 23
page 56, line 3
page 56, line 8
page 56, line 15
page 56, line 17 - insert "installation" in lieu of "structure"

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Amendment ___: Requiring increased production in shortage or emergency

New Section 8(b)(5)

Delete page 73, lines 5 through 11

This subsection requires leases to "contain a provision that the Secretary shall, in the absence of any applicable rule or order issued by the President and under conditions defined in applicable regulations prescribed by the Secretary, have the right to require increased production under such lease for purposes of dealing with emergency shortages of oil and gas or other national emergencies."

Rationale

The language neither provides for compensation nor makes it clear that compensation is not to be provided for lost production resulting from producing under Secretarial order. Since the new Section 5(f)(2) requires the lessee to produce at rates which assure the "maximum rate of production which is efficient and safe," production under this provision would presumably be beyond that rate, causing reservoir damage or diminished production over the life of the reservoir. Including this provision in the lease term may perhaps avoid the constitutional problem of taking without compensation since the rights transferred in the lease would be limited by the lessee's acceptance in advance of the Secretary's right to require such production. However, legality aside, lessees damaged by the exercise of such authority could argue that it is inequitable to impose such damages on them while not similarly treating oil and gas producers on onshore Federal lands, oil and gas producers on private or State lands, or coal or other energy producers whose products could be substituted for oil or gas in shortages or emergencies.

Without compensation, all lessees will discount lease bids to reflect the uncertain probabilities and costs of this power being exercised.

With compensation the Government, if it were to exercise the authority, would be enmeshed in thousands of suits seeking to recover damages which would be very hard to fairly determine.

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OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO Glenn Schleede

Take necessary action	☐
Approval or signature	☐
Comment	☐
Prepare reply	☐
Discuss with me	☐
For your information	☐
See remarks below	☐

FROM Norman Hartness NH DATE 6/2/76

REMARKS

This is the document we discussed over the telephone. Please note that the amendments preceded by an asterisk are required amendments in the Administration's view. Those not so preceded are other amendments which we think are desirable.

DCS.

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