

What are "Significant" Revisions in the Five-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program?

M-36983

February 6, 1996

**Outer Continental Shelf Lands Act: Generally**

After the Secretary finalizes a five-year OCS program, adding a sale in a planning area in which no sales were scheduled would constitute a significant revision. Significant revisions require the full process prescribed in OCSLA section 18. This is the case even if a lease sale in the planning area had been analyzed as a NEPA alternative to the current program.

**Outer Continental Shelf Lands Act: Generally**

Whether a proposed revision to a five-year OCS program constitutes a significant revision depends on whether it significantly changes the potential for the discovery of oil and gas, increases the potential for environmental or other impacts in coastal areas, or changes the sharing of developmental benefits and environmental risks.



# United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240

**FEB 12 1996**

M-36983

## Memorandum

To: Director, Minerals Management Service

From: Solicitor

Subject: What are "Significant" Revisions in the Five-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program?

The five-year oil and gas leasing program required by section 18 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1344, is a "schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which [the Secretary] determines will best meet national energy needs . . . ." 43 U.S.C. § 1344(a). It is to be based on a consideration of factors outlined in section 18(a)(2), to obtain the balance described in section 18(a)(3), and to assure receipt of fair market value for the lands leased. See 43 U.S.C. § 1344(a)(2) through (4).

You have asked whether, once a five-year leasing program is completed and promulgated, the Secretary may add an additional planning area<sup>1</sup> without the full review required of the five-year program. In particular you ask whether a Secretary may add sales in areas analyzed in an alternative in the environmental impact statement (EIS) prepared on the five-year program under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, without undertaking the entire section 18 process.

After careful review of the applicable legal principles, I have concluded that the Secretary may not add an additional planning area without the full review required for the five-year program.

---

<sup>1</sup> MMS has divided the OCS into 26 broad planning areas for purposes of performing the comparative analyses required by section 18. See Outer Continental Shelf Draft Proposed Oil and Gas Leasing Program 1997 to 2002 (July 1995). The term "planning area" comports with the term "oil- and gas-bearing physiographic regions of the outer Continental Shelf," used in section 18(a)(2), which requires the Secretary to evaluate the timing and location of exploration, development and production of oil and gas among such regions based on eight enumerated criteria. 43 U.S.C. §§ 1344(a)(2)(A) through (H). See Natural Resources Defense Council, Inc., et al. v. Hodel, 865 F.2d 288, 300 (D.C. Cir. 1988).











