

CRS Report for Congress

Energy Policy Reform and Revitalization Act of 2007, Title VII of H.R. 3221: Summary and Discussion of Oil and Gas Provisions

Updated February 29, 2008

Marc Humphries
Analyst in Energy Policy
Resources, Science, and Industry Division



Prepared for Members and
Committees of Congress

Energy Policy Reform and Revitalization Act of 2007, Title VII of H.R. 3221: Summary and Discussion of Oil and Gas Provisions

Summary

The conflict between environmental concerns and the need for increased domestic energy production from public lands continues to be a major policy issue. The Energy Policy Act of 2005 (EPAcT 2005, P.L. 109-58), enacted several provisions that were aimed at expediting the development of oil and gas on public lands. Title VII (The Energy Policy Reform and Revitalization Act of 2007), of H.R. 3221 (New Direction for Energy Independence, National Security, and Consumer Protection), most of which was originally introduced May 16, 2007, as H.R. 2337, would repeal or amend several of EPAcT's provisions related to oil and gas development on federal lands. Below are major provisions in H.R. 3221 related to oil and gas development on federal lands approved by the House Natural Resources Committee on June 13, 2007, by a vote of 26-22. The House approved H.R. 3221 on August 4, 2007, by a vote of 241-170. Selected provisions in Subtitle F — Additional Provisions, not included in the earlier version of H.R. 2337, are also discussed below. In a recent development, the House amended and passed (235-181) the Senate-passed version of energy policy legislation (H.R. 6) on December 6, 2007, but without the oil and gas provisions contained in Title VII of H.R. 3221 discussed below. Those oil and gas provisions in Title VII were not enacted into law (P.L. 110-140).

Subtitle A would repeal subsections 365(g) and 365(i) of EPAcT 2005 regarding recovery of permit processing costs. It would require the Secretary of the Interior to impose fees on the oil and gas industry to recover costs associated with the streamlining of permits during the pilot project established by EPAcT to improve federal permit coordination. A new 45-day deadline would be imposed for the consideration of applications for permits under section 366 of EPAcT 2005. Section 369 of EPAcT would be amended by removing two deadlines related to oil shale research and development and the preparation of a final environmental impact statement for commercial oil shale and tar sands leasing on public lands. H.R. 3221 would limit section 390 of EPAcT, which allows for a rebuttable presumption regarding the application of categorical exclusion under the National Environmental Policy Act (NEPA) for oil and gas exploration and development activities, and adhere to the regulations issued by the Council on Environmental Quality.

Subtitle B would require a minimum of 550 audits annually, and increase fines for royalty payment violations under the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). Surface owner protection would be enhanced under split estates where the federal government owned and leased minerals. Additional requirements for the protection of water resources are included and new fees would be assessed to lessees of federal lands. Onshore oil and gas reclamation requirements would become more stringent.

Provisions in Subtitle F would establish an Oil Shale Community Impact Assistance Fund and prohibit surface occupancy on federal leases on top of the Roan Plateau, Colorado.

Contents

Introduction	1
Oil and Gas Leasing on Public Lands	2
Legislation	3
Cost Recovery	3
Extension of Deadline for Consideration of Applications for Permits	4
Oil Shale and Tar Sands Leasing	4
NEPA Categorical Exclusions	4
Best Management Practices (BMP)	5
Audits	5
Fines and Penalties	5
Amendments to Federal Oil and Gas Royalty Management Act of 1982	5
Surface Owner Protection	5
Onshore Oil and Gas Reclamation and Bonding	6
Protection of Water Resources	6
Due Diligence Fee	6
Oil Shale Community Impact Assistance	6
Roan Plateau, Colorado	7

Energy Policy Reform and Revitalization Act of 2007, Title VII of H.R. 3221: Summary and Discussion of Oil and Gas Provisions

Introduction

The conflict between environmental concerns and the need for increased domestic energy production from public lands continues to be a major policy issue. The Energy Policy Act of 2005 (EPAcT 2005, P.L. 109-58) enacted several provisions that were aimed at expediting the development of oil and gas on public lands. Title VII (The Energy Policy Reform and Revitalization Act of 2007), of H.R. 3221 (New Direction for Energy Independence, National Security, and Consumer Protection) most of which was originally introduced May 16, 2007, as H.R. 2337, would repeal or amend several of EPAcT's provisions related to oil and gas development on federal lands. Below are major provisions in H.R. 3221 related to oil and gas development on federal lands approved by the House Committee on Natural Resources June 13, 2007 by a vote of 26-22 and approved by the House on August 4, 2007, by a vote of 241-170. Selected provisions in Subtitle F — Additional Provisions, not included in the earlier version of H.R. 2337, are also discussed below. (For a discussion of provisions in Subtitle E — Royalties Under Offshore Oil and Gas Leases, see CRS Report RS22567, *Royalty Relief for U.S. Deepwater Oil and Gas Leases*, by Marc Humphries, and for a discussion of renewable energy provisions in the bill, see CRS Report RL33831, *Energy Efficiency and Renewable Energy Legislation in the 110th Congress*, by Fred Sissine, Anne Gillis, and Mark Gurevitz.)

Significant amounts of technically recoverable oil and gas resources are estimated to be on federal public lands. The most recent study, required by the Energy Policy and Conservation Act (EPCA) of 2000,¹ concluded that on the 99.2 million acres of federal lands surveyed, there are an estimated 20.6 billion barrels of undiscovered technically recoverable oil resources and 182 trillion cubic feet of undiscovered technically recoverable natural gas. Further, the study found that 24% of the federal land surveyed is accessible under standard lease terms, 30% accessible with restrictions, and about 46% of federal land is not accessible under current law. The lands not accessible contain an estimated 51% of the oil and 27% of the natural gas undiscovered and technically recoverable.² Energy development on some of these lands has been restricted because they are considered environmentally sensitive or unique. Such restrictions include leasing with no surface occupancy, areas

¹ P.L. 106-469 §604 as amended by the Energy Policy Act of 2005, P.L. 109-58 §364.

² Scientific Inventory of Onshore Federal Lands' Oil and Gas Resources and the Extent and Nature of Restrictions or Impediments to Their Development, Departments of Interior, Agriculture, and Energy, 2006.

generally off-limits with the exception of directional drilling; leasing with timing limitations, which protect wildlife during certain times of the year; and leasing with controlled surface use, which requires a mitigation plan for specific areas under the lease.

Environmentalists have supported public land withdrawals³ and other restrictions because of concern that the Mining Law of 1872 and then the Mineral Leasing Act of 1920 provided inadequate environmental protection. Recently, ranchers and other groups have expressed similar concerns, specifically about the impact of energy development on water and land. Conversely, development supporters contend that numerous environmental laws are now in place to regulate oil and gas development on public lands. They note that the federal government must comply with the National Environmental Policy Act (NEPA) in leasing oil and gas and that the oil and gas industry must comply with applicable requirements of the Clean Water and Clean Air Acts, Safe Drinking Water Act, the Resource Conservation and Recovery Act, and state and federal reclamation standards, among other laws. The industry complains that environmental and other reviews often create long delays in drilling exploratory and production wells on leased lands. Industry sources claim some of these lease stipulations are so stringent that they constitute “de facto” closures to oil and gas development. However, development has proceeded under some of these stipulations.

Oil and Gas Leasing on Public Lands

Leasing of onshore federal public lands for oil and gas development is based on multiple-use/sustained yield Resource Management Plans (RMPs) developed by the Bureau of Land Management (BLM) in the Department of the Interior (DOI). In accordance with those land-use plans, tracts of public land with oil and gas potential are offered for competitive leasing each quarter. After a lease is awarded, a drilling permit is required for each exploratory or production well. Industry has long complained that this process is too lengthy.

One of the major reasons for past delays in the issuance of drilling permits cited by both BLM and the Independent Petroleum Association of Mountain States (IPAMS) is the need to rewrite outdated RMPs because the surface disturbance anticipated under approved activities may exceed the limits in the old plan. This may occur because of increased natural gas leasing and development. In these cases, oil and gas leases may have been awarded under an old RMP that must be revised before a drilling permit can be issued. According to the BLM, there are several such plans currently being revised.

³ Under 43 U.S.C.A. §1702(j), FLPMA defines a withdrawal as “withholding an area of Federal land from settlement, sale, location or entry under some or all of the general land laws for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of federal land from one department, bureau or agency to another department, bureau or agency.”

In 2001 testimony before the House Committee on Resources, IPAMS asserted that rewriting RMPs can take as long as three years, when less than a decade earlier the average time was less than one year. The Association contended that the usefulness of an RMP had dropped to seven years, when in the past they may have been in place for as long as 20 years.⁴ The rapid pace of coalbed methane (CBM) development, in particular, has generated new land use concerns that some argue have not been previously incorporated in the RMPs. Environmentalists contend that 20-year-old plans are not a good basis for land management decisions.

In April 2003, BLM announced new strategies to expedite the Application for Permit to Drill (APD) process. These include processing and conducting environmental analyses on multiple permit applications with similar characteristics, implementing geographic area development planning for an oil or gas field or an area within a field, establishing a standard operating practice agreement that identifies surface and drilling practices by oil and gas operators, allowing for a block survey of cultural resources, promoting consistent procedures, and revising relevant BLM manuals.⁵ Under EAct requirements, the BLM implemented its final rule for processing APDs on April 6, 2007 (see *Federal Register*, v. 72, no. 44, p. 10308, March 7, 2007).

Legislation

Below is a summary of selected provisions in Title VII of H.R. 3221 (New Direction for Energy Independence, National Security, and Consumer Protection Act) related to oil and gas development on federal lands. The House approved H.R. 3221 on August 4, 2007, by a vote of 241-170. However, in a recent development, the House amended and passed (235-181) the Senate-passed version of energy policy legislation (H.R. 6) on December 6, 2007, but did not include the oil and gas provisions contained in Title VII discussed below. Those oil and gas provisions in Title VII were not part of the final bill (H.R. 6) enacted into law (P.L. 110-140).

Cost Recovery. Section 7101. Repeals subsections 365(g) and 365(i) of EAct 2005. Under section 365, a federal permit streamlining pilot project program was established to improve federal permit coordination. Under section 365(g) a BLM Permit Processing Improvement Fund was established to receive the federal portion of the rental revenue. Rental revenues from energy leases on federal lands averaged about \$58 million annually over the last four years.

EAct section 365(i), also proposed for repeal, prohibits the Secretary of the Interior from raising permit fees during operations of the pilot program. H.R. 3221 would require the Secretary to impose fees on the oil and gas industry to recover costs associated with the streamlining of permits during the pilot program. The

⁴ Testimony of Marc W. Smith, Independent Petroleum Association of Mountain States (IPAMS), Public Lands Advocacy, before the U.S. House Committee on Resources, Subcommittee on Energy and Mineral Resources, March 7, 2001.

⁵ DOI/BLM Instruction Memorandum No. 2003-152, Application for Permit to Drill (APD) Process Improvement #1 — Comprehensive Strategies, April 14, 2003.

Committee-passed bill would require an interim fee of \$1,700 per application until the Secretary establishes a permanent fee.

Extension of Deadline for Consideration of Applications for Permits. Section 7102. Section 366 of EPOA 2005 gives the Secretary 10 days after receiving an application for a permit to drill (APD) to notify the applicant that the application is complete or missing information, then 30 days to either issue the permit or defer the decision. Previously, the law required a 35-day window to make a decision, but the average turnaround time was much longer — 137 days according to the Independent Petroleum Association of Mountain States (IPAMS). H.R. 3221 would require 45 days for the Secretary to act on an APD. Opponents of the current law argue that a 30-day deadline is arbitrary, creates a rushed process, and approves APDs at an alarming rate without appropriate attention on inspection and enforcement. Supporters of current law counter that the new requirements help expedite development of domestic oil and gas on federal lands and are consistent with the Bush Administration's National Energy Plan. According to the BLM's Automated Fluid Minerals Support System (AFMSS), the number of APDs approved increased from about 4,000 in FY2004 to nearly 8,000 in FY2006.

Oil Shale and Tar Sands Leasing. Section 7103. Section 369 of EPOA promotes the research and development of oil shale, tar sands, and other strategic unconventional fuels in the United States. H.R. 3221 would amend section 369 by removing a 180-day deadline for making land available for research and development purposes and an 18-month deadline for a final programmatic environmental impact statement. It would require an Oil Shale and Tar Sands Leasing and Development Strategy and an alternative approaches report. Opponents of current law contend that extraction technology is not proven and may be years away from commercial-scale deployment. The Administration states that section 369 does not require the Secretary to conduct a commercial lease sale but rather to establish a framework for future commercial lease sales including the preparation of "final" regulations for a leasing program.

NEPA Categorical Exclusions. Section 7104. This would limit the rebuttable presumption in EPOA section 390 for categorical exclusion (CX) of certain oil and gas exploration and development activities under NEPA and adhere to regulations issued by the Council on Environmental Quality (CEQ). The rebuttable presumption applies to, among other things, individual surface disturbance of less than 5 acres totaling no more than 150 acres per lease with a completed NEPA analysis, or oil and gas drilling where previous drilling has occurred within five years prior to the date of spudding the well, and placement of a pipeline within a corridor approved within the previous five years. Opponents of the current law argue that it allows for certain oil and gas development activities to be categorically excluded from NEPA reviews even under "extraordinary circumstances," such as unique geographic characteristics and wilderness status.⁶ This section, opponents argue, would require BLM to consider extraordinary circumstances before granting a CX. In addition, opponents claim that the CXs reduce or eliminate public comment from

⁶ Fact Sheet - H.R. 2337, The Energy Policy Reform and Revitalization Act of 2007, The Wilderness Society, et al., June 2007.

the process. According to DOI, categorical exclusions are limited, and when BLM uses a prior NEPA analysis to approve a permit, it doesn't sacrifice environmental safeguards or exclude the application of other environmental protection measures.

Best Management Practices (BMP). Section 7105. This provision would amend BMP guidelines for oil and gas development on federal lands and require BLM to allow for public and state wildlife agency review and comment before waivers are granted. Supporters of this provision claim that current BLM guidelines allow for too many waivers of lease stipulations put in place to protect the environment. The Administration claims that this provision would hinder field staff who apply BMP on a case-by-case basis. And, in some cases, public comment and review might be “overly burdensome and inefficient.”⁷

Audits. Section 7201. This section would require the MMS to conduct a minimum of 550 audits annually of oil and gas leases beginning in FY2009. MMS currently conducts random and targeted audits and compliance reviews to enforce rules and regulations of lease terms.⁸ According to the MMS, audits and compliance reviews were completed on 72.5% of revenues in FY2006, up from 46% of revenues in FY2003. For every dollar spent on compliance reviews from FY2003 through FY2005 it collected \$3.27, and for every dollar spent on audits during the same period it collected \$2.06, according to MMS.⁹ A DOI Inspector General report concluded that compliance reviews should only be used in conjunction with audits to assure more comprehensive enforcement.

Fines and Penalties. Section 7202. This section would increase fines and penalties related to oil and gas royalty payment violations under the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA).

Amendments to Federal Oil and Gas Royalty Management Act of 1982. Sections 7211-7215. These provisions would amend various sections of FOGRMA, including several definitions, estimated payments, interest on amount of underpayment, obligation period, tolling agreements, and liability for royalty payments.

Surface Owner Protection. Section 7221. Under current law, there are specific policies and procedures that must be followed by the mineral estate holder in order to develop minerals in “split estate situations.” Minerals owned by the federal government under lands held privately creates a “split-estate.” Under current law, for oil and gas, a federal lessee must meet one of the following conditions: a

⁷ Statement of Herri Bisson, Deputy Director, Bureau of Land Management, and Walter Cruickshank, Deputy Director, Minerals Management Service, Before the House Committee on Natural Resources on H.R. 2337, The Energy Policy Reform and Revitalization Act of 2007, May 23, 2007, p. 12.

⁸ According to MMS, compliance reviews help determine the “reasonableness” of the company-reported production and royalty data on federal lands. Audits, on the other hand, provide an in-depth analysis of company reports and follow “Government Auditing Standards” to help uncover any violations of lease terms or laws.

⁹ Ibid., p. 13.

surface agreement; written consent or a waiver from the private surface owner for access to the leased lands; payment for loss or damages; or the execution of a bond not less than \$1,000.¹⁰ About 11% of the public lands are under the split-estate category. However, in Wyoming 50% of the lands are split-estate and in Montana about 57%.¹¹

Under section 7221, exploration and drilling may not be authorized by the Secretary of the Interior unless there is a written “post-lease” surface use agreement between the surface owner and the lessee (operator) on federal lands in cases where the subsurface is owned by the federal government and the surface owned privately. The agreement shall include limits on surface use, accommodations for the operator’s right to develop oil and gas resources, reclamation of the site, and compensation for damages. Procedures for an agreement would be established, which include notification of the surface owner by the operator interested in making an agreement and a time frame within which to reach an agreement. Surface owner participation in bond levels and inspections, among other things, would be required, but under certain circumstances the Secretary could authorize the operator to conduct oil and gas development without an agreement. Further, the surface owner could petition the Secretary for payment as a result of damages resulting from the operators.

Onshore Oil and Gas Reclamation and Bonding. Section 7222. This section would amend section 17 of the Mineral Leasing Act (30 U.S.C. 226) by establishing new and more stringent reclamation requirements and a reclamation bond.

Protection of Water Resources. Section 7223. This section would amend section 17 of the Mineral Leasing Act (30 U.S.C. 226) to require an operator to replace any water supply that became contaminated or interrupted because of oil and gas development. A water management plan consistent with state water laws would be required to protect the quality and quantity of water affected by the operator.

Due Diligence Fee. Section 7224. A due diligence fee of \$1/acre per year (on top of the current rental rate of \$1.50/acre per year for years 1-5 and \$2/ acre per year each year thereafter) would be established for lands leased for oil, gas, and coal but not in production for the year. Supporters of this provision see this fee as an incentive to get lands in production.

Oil Shale Community Impact Assistance. Section 7601. An Oil Shale Community Impact Assistance Fund, administered by the Secretary of the Interior, would be established. A portion of the revenue from commercial oil shale leases would be deposited into the Fund. Royalty payments into the Fund from commercial oil shale leases would be limited to ten years after the first payment. Funds, subject to appropriations, would be paid to the county in which the oil shale lease was

¹⁰ This information was provided in a BLM Instructional Memorandum, No. 2003-131. Also see 43 CFR 3104, 43 CFR 3814 and 48 FR 48916 (1983) for further details.

¹¹ Public Lands, Onshore Federal and Indian Minerals in Lands of the U.S., Appendix 7, Sie Ling Chiang, Bureau of Land Management, DOI, December 1, 2000.

located and would be used for planning, construction, and maintenance of public facilities.

Roan Plateau, Colorado. Section 7604. Leases on top of Plateau on federal lands designated as Naval Oil Shale Reserves 1 and 3 would contain a prohibition of surface occupancy for oil and gas development. Congress would require a report from the Secretary of the Treasury detailing amounts received from leases in the Naval Oil Shale Reserves 1 and 3. A report from the Secretary of the Interior would also be required by Congress detailing amounts spent on environmental cleanup activities, further actions, and estimated costs of remaining cleanup needs.