# **1 Regulation of the Gas Industry § 5.01**

***Regulation of the Gas Industry* > *DIVISION I Evolution of the Gas Industry and the Regulatory Framework* > *CHAPTER 5 ENERGY POLICY ACT OF 2005, TITLE III SUMMARY AND ANALYSIS OF MAJOR PROVISIONS***

**Author**

**Marvin T. Griff, Thompson Hine LLP**

**Kerem Bilge, Thompson Hine LLP**

**§ 5.01 Title III—*Oil* and Gas**

1. **Scope**

Title III of the 2005 Energy Policy Act contains a wide-ranging mix of initiatives designed to ensure an adequate and growing supply of natural gas and ***oil*** resources for the United States. Of particular note are the Act’s modifications to Section 3 of the Natural Gas Act (NGA),[[1]](#footnote-2)1 which made clear that the Federal Energy Regulatory Commission (FERC) is the lead agency responsible for determinations related to the siting and approval of liquefied natural gas (LNG) import terminals, as well as other modifications that adopt a variety of production incentives designed to foster production from marginal or difficult-to-access gas and ***oil*** producing properties. In recognition of the energy market manipulation and deceptive practices that occurred in the early part of this millennium, Congress has substantially enhanced the FERC’s oversight of the natural gas marketing and trading business, and has given the FERC significantly increased penalty authority for violations of the NGA and the Natural Gas Policy Act (NGPA). Additionally, the Act provides the framework for the FERC to issue new rules to deter and penalize market manipulation and to promote natural gas market transparency—an initiative that the FERC has seized.[[2]](#footnote-3)2

1. **Petroleum Reserve and Home Heating *Oil***

Section 301 of the Act contains a number of ministerial changes to the Energy Policy and Conservation Act (EPCA).[[3]](#footnote-4)3 Most of the changes ensure that the existing law related to Domestic Supply Availability, including Domestic Supply,[[4]](#footnote-5)4 Strategic Petroleum Reserve,[[5]](#footnote-6)5 Authority to Contract for Petroleum Product Not Owned by the United States,[[6]](#footnote-7)6 and Northeast Home Heating ***Oil*** Reserve,[[7]](#footnote-8)7 remains in force and viable. One provision contained within Section 301 worth specific mention requires the Secretary of Energy, “as expeditiously as practicable, without incurring excessive cost or appreciably affecting the price of petroleum products to consumers,” to “acquire petroleum in quantities sufficient to fill the Strategic Petroleum Reserve to the 1,000,000,000-barrel capacity” that previously had been authorized. Section 160 was amended to include a similar provision that directed the Secretary of Energy to “develop, with public notice and opportunity for comment, procedures consistent with the objectives of this section to acquire petroleum for the Reserve.”[[8]](#footnote-9)8 Section 303 of the Act further requires the Secretary to complete a proceeding, no later than one year after the date of enactment of the Act, to select from previously considered sites, locations that would allow the Secretary to acquire the full 1,000,000,000 barrels. The Secretary must consider and give preference to the five sites previously assessed in the Draft Environmental Impact Statement, but other sites may also be considered to meet the full authorized volume.

1. **Natural Gas**

1. **LNG Import Facility Permitting, Construction, and Regulation**

The Act includes a number of changes designed to ensure that the FERC is the lead agency with respect to the review and approval of applications for LNG import terminals. In particular, the Act resolves any question that the FERC has the authority under the NGA to review and approve applications for the siting, construction, expansion, or operation of LNG terminals. Courts have applied the Act and held that state and local laws used to block the construction of an LNG terminal are preempted by FERC’s authority over LNG terminal approval.[[9]](#footnote-10)9 While the clear message from the Act is that the FERC will lead the way on LNG permitting, there are a number of provisions that ensure that states play a role in the process. Importantly, the Act does not remove the states’ existing authority to implement their delegated federal authority under the Federal Water Pollution Control Act (Clean Water Act),[[10]](#footnote-11)10 the Clean Air Act,[[11]](#footnote-12)11 and the Coastal Zone Management Act of 1972 (CZMA).[[12]](#footnote-13)12 Thus, states retain significant oversight over the approval of LNG terminals through these federal laws.[[13]](#footnote-14)13

1. **No Open Access for LNG Terminals—Codification of the FERC’s Hackberry Policy**

The FERC significantly shifted its policies related to LNG import terminals when it issued its decision in *Hackberry LNG Terminal, L.L.C.* (*Hackberry*).[[14]](#footnote-15)14 In *Hackberry*, the FERC determined that an applicant for a new LNG import terminal could operate that facility on a non-open-access, proprietary basis, thereby differentiating the FERC’s regulation of LNG import terminals from its regulation of interstate natural gas pipelines.[[15]](#footnote-16)15 While interstate pipelines are required to operate on an open-access basis, subject to extensive FERC regulation of rates, as well as terms and conditions of service, in *Hackberry*, the FERC determined that the project developer did not need to provide open-access to its new LNG terminal and determined that there was no “regulatory need to require a tariff and a rate schedule as a condition of approving the LNG terminal under Section 3.”[[16]](#footnote-17)16 The FERC determined that this policy shift could “provide incentives to develop additional energy infrastructure to increase much needed [gas] supply into the United States, while at the same time ensuring competitive commodity prices and an open-access interstate pipeline grid.”[[17]](#footnote-18)17 After *Hackberry*, the FERC consistently followed the non-open-access approach for the approval of new LNG import facilities.[[18]](#footnote-19)18

The Act codifies the *Hackberry* policy. Section 311(e)(3)(B)(ii) prohibited the FERC, before January 1, 2015, from conditioning an order on (1) “a requirement that the LNG terminal offer service to customers other than applicant, or any affiliate of the applicant, securing the order”; (2) “any regulation of the rates, charges, terms, or conditions of service of the LNG terminal”; or (3) “a requirement to file with the [FERC] schedules or contracts related to the rates, charges, terms, or conditions of service of the LNG terminal.”[[19]](#footnote-20)18.1 This provision terminates on January 1, 2030.[[20]](#footnote-21)19 The FERC has determined that it may, however, impose conditions on the “physical operation of the LNG terminal facilities.”[[21]](#footnote-22)20

The Act additionally recognized that there are existing LNG import terminals that offer open access service under prior FERC orders.[[22]](#footnote-23)21 The Act ensures that existing customers of those open access LNG import terminals will not be adversely affected by any order related to an expansion, modification, or change to an existing open access facility. The Act additionally requires the FERC to enter into a Memorandum of Understanding (MOU) with the Secretary of Defense to coordinate review of any LNG facility that may affect an active military installation and to obtain concurrence of the Secretary of Defense if any LNG authorization would affect the training or activities of an active military installation.[[23]](#footnote-24)22

1. **FERC Exclusive Jurisdiction Over Onshore LNG Terminal Siting**

When the FERC issued its *Hackberry* decision, no one questioned whether the FERC was the agency empowered to consider and rule on appropriateness of the siting and regulation of LNG import facilities that are onshore or in state waters.[[24]](#footnote-25)23 After *Hackberry*, a case involving a proposed LNG import terminal in California called the FERC’s regulatory primacy into question. Sound Energy Solutions (SES) filed an application with the FERC under Section 3 of the NGA for authority to site, construct, and operate an LNG terminal in Long Beach, California. The California Public Utilities Commission (CPUC) intervened and lodged a protest before the FERC, arguing that SES had to obtain a certificate of public convenience and necessity from the State of California before beginning to build its terminal. The FERC rejected that argument, citing previous case law and its own regulations, and pledged to “exercise its flexibility under NGA Section 3 to regulate the LNG import terminal as well as the pipeline facilities that will deliver gas into state regulated facilities downstream,” and concluded that “the LNG facilities proposed by SES cannot be regulated by the State.”[[25]](#footnote-26)24 The CPUC ultimately appealed that case to the United States Court of Appeals for the Ninth Circuit. At the time that the Act was passed, the SES appeal before the Ninth Circuit was pending.

The Act ended that uncertainty, as its proponents intended.[[26]](#footnote-27)25 The CPUC withdrew its appeal.[[27]](#footnote-28)26 Section 311(e)(1) made clear that “[t]he [FERC] shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal.”[[28]](#footnote-29)26.1 The FERC’s authority extends to both import and export terminals.[[29]](#footnote-30)27 Nevertheless, Congress attempted to create a procedural vehicle that would allow the states and localities to raise issues regarding LNG terminal siting.

1. **Codification of the NEPA Pre-Filing Process and State Advisory Role**

Prior to the Act, the FERC had implemented a voluntary, consultative process with LNG terminal applicants (as well as companies planning to build other natural gas infrastructure) called the National Environmental Policy Act (NEPA) pre-filing process.[[30]](#footnote-31)28 The purpose of the NEPA pre-filing process was to provide for FERC staff and other governmental and non-governmental stakeholder involvement early in the application process before a project sponsor filed a formal application with the FERC requesting authority to construct an LNG terminal or other natural gas project. The pre-filing process included the filing of drafts of the environmental resource reports, which accompany any application for authority to construct an LNG import facility, public outreach, and scoping meetings led by the FERC staff. This open process was expected to provide for open lines of communication between all who were interested in a project before an application was filed, thereby locking in the parameters of a project.

The Act codified the NEPA pre-filing process, required applicants for LNG terminals to comply with the process, and provided that the process must begin at least six months before a formal application for authorization to construct an LNG terminal is filed.[[31]](#footnote-32)29 The Act stated that the FERC should “encourage applicants to cooperate with State and local officials.”[[32]](#footnote-33)30 The FERC issued a final rule revising its regulations to implement the NEPA pre-filing process on October 7, 2005.[[33]](#footnote-34)31 Revised 18 C.F.R. § 157.21 provides a detailed description of the pre-filing process and the various requirements and milestones associated with the process.

1. **State Advisory Role**

Much of the debate surrounding what now has become Section 311 of the Act focused on the appropriate role for states and localities in the LNG import terminal approval process. Issues related to safety and security of LNG terminals have taken center stage since the terrorist activities that took place on 9/11. Politicians at the federal, state, and local levels began to conclude that LNG import facilities, as well as LNG tankers, were significant draws to terrorists. As a result, Congress sought to ensure that state and local governments would have a meaningful say in the LNG terminal approval process.

Section 311(d) of the Act provides a formal advisory role to states facing the installation of LNG import facilities. First, the governor of a state where an LNG terminal is proposed must designate a state agency “for purposes of consulting with the [FERC] regarding an application under section 3.”[[34]](#footnote-35)31.1 Then the FERC must “consult with such State agency regarding State and local safety considerations prior to issuing an order pursuant to section 3.”[[35]](#footnote-36)32 Each state agency may also furnish “an advisory report on State and local safety considerations to the [FERC] with respect to an application no later than 30 days after the application was filed with the [FERC].”[[36]](#footnote-37)33 The FERC does not have to take any particular action regarding the contents of that advisory report, except to “review and respond specifically to the issues raised by the State agency” regarding the state and local safety considerations outlined in the Act.[[37]](#footnote-38)34 The Act further allows a state commission to undertake safety inspections after a terminal is operational as long as the state commission follows federal regulations and guidelines. The state commission then may transmit any safety concerns to the FERC, which, in turn, must pass information about the alleged safety violations to other appropriate federal agencies.[[38]](#footnote-39)35 The appropriate federal agency must then take the action it considers appropriate and must notify the state commission of that action.[[39]](#footnote-40)36

1. **Development of Emergency Response Plan and Cost Sharing Plan**

In further recognition of the importance that safety issues have taken in the LNG terminal discourse, the Act requires the FERC to require LNG terminal operators to develop an “Emergency Response Plan” in consultation with the U.S. Coast Guard and state and local agencies.[[40]](#footnote-41)37 The FERC must approve the Emergency Response Plan before any final approval to begin construction.[[41]](#footnote-42)38 Thus, the Emergency Response Plan is not a prerequisite to receiving approval from the FERC for authorization under Section 3. The Emergency Response Plan must include a “cost-sharing plan,” which must “include a description of any direct cost reimbursements that the applicant agrees to provide to any state and local agencies with responsibility for security and safety” at the LNG terminal and near vessels that serve the terminal.[[42]](#footnote-43)39 The Act does not provide clear guidelines or requirements for determining which costs a terminal operator is responsible.

1. **Procedural Rules and Oversight**

The Act formally designates the FERC as lead agency with regard to review and approval of LNG terminals.[[43]](#footnote-44)40 This designation has two components. The first is one familiar to many practitioners: the FERC will be the lead agency for purposes of coordinating and complying with the NEPA.[[44]](#footnote-45)41 This designation puts into law what had been the established practice. The second provides: “Each Federal and State agency considering an aspect of an application for Federal authorization shall cooperate with the [FERC] and comply with the deadlines established by the [FERC].”[[45]](#footnote-46)42 The FERC is expressly given the authority to set the schedule for all federal authorizations, including those federal authorizations that are delegated to a state administrative agency. If any federal or state agency acting under delegated federal authority fails to meet the deadlines for completion of a proceeding covered by the FERC’s schedule, a project applicant is permitted to bring an action in the United States Court of Appeals for the District of Columbia Circuit to address the agency delay to issue, condition, or deny any permit required under federal law, other than the CZMA, and to seek an order from the court to require the delinquent agency to meet a court-imposed schedule.[[46]](#footnote-47)43

The Act also provides that the U.S. Court of Appeals for the circuit in which a facility subject to section 3 or section 7 is proposed to be constructed, expanded, or operated has jurisdiction over any civil action for review of an order or action of a federal agency other than the FERC, or action of a state agency acting under delegated federal authority.[[47]](#footnote-48)44 Thus, the appropriate court for merits-based appeals is different than the appropriate court for raising a failure to meet the FERC-imposed schedule and deadlines. To facilitate judicial review, the Act requires the FERC to maintain a consolidated record of all decisions made or actions taken by all federal agencies and state agencies acting under federally delegated authority.[[48]](#footnote-49)45 The consolidated record will be the record for all appeals or reviews under the CZMA,[[49]](#footnote-50)46 and for appeals or other review under the provisions established in the Act. If the court finds the record lacks sufficient information, it may remand to the FERC to further develop the record.[[50]](#footnote-51)47

1. **Federal and State Natural Gas Forums**

Section 317 of the Act requires the Secretary of Energy, in cooperation and consultation with the Secretary of Transportation, the Secretary of Homeland Security, the FERC, and the Governors of the Coastal States, to convene at least three forums on LNG. The forums must be in areas where LNG terminals are under consideration and should be designed to foster dialogue among federal, state and local officials, the general public, independent experts, and industry representatives. The forums’ purpose is to provide public education on the following: the role of LNG in meeting supply needs, the regulatory processes at the federal and state level related to the approval of LNG terminals, environmental requirements associated with the permitting of LNG terminals, and safety and security measures.[[51]](#footnote-52)48

1. **Market-Based Rates for New Natural Gas Storage Facilities**

Section 312 of the Act allows the FERC to take a light-handed approach to the regulation of the rates for new natural gas storage facilities. In the past, the FERC was willing to consider and approve the use of market-based rates for new storage facilities, but that decision was rooted in the FERC’s traditional regulatory approach and required applicants to prepare detailed market power analyses.[[52]](#footnote-53)49

Section 312 amended Section 7 of the NGA to expressly permit the FERC to approve the use of market-based rates for new natural gas storage projects, even if an applicant cannot prove that it lacks market power. The applicant must demonstrate and the FERC must determine that “market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services” and that “customers are adequately protected.”[[53]](#footnote-54)50 The FERC has emphasized that the storage project must create “new” capacity.[[54]](#footnote-55)51 If the FERC approves a company’s use of market-based rates, it must periodically review whether the market-based rate is “just, reasonable, and not unduly discriminatory or preferential.”[[55]](#footnote-56)52 When an applicant is unable to demonstrate a lack of market power, the FERC has discretion to deny market-based rate authority even if an applicant meets all other statutory requirements.[[56]](#footnote-57)53

1. **Production**

Subtitle C provides several definitional changes to related Acts including the Outer Continental Shelf Lands Act, the Deepwater Port Act of 1974, the Safe Drinking Water Act, and the Federal Water Pollution Control Act.[[57]](#footnote-58)54

1. **Naval Petroleum Reserve**

1. **Transfer of Jurisdiction and Control**

Section 331 transferred administrative jurisdiction and control over all public domain lands included within Naval Petroleum Reserve Numbered 2 located in ***Kern*** County, California,[[58]](#footnote-59)55 from the Secretary of Energy to the Secretary of the Interior.[[59]](#footnote-60)56 The Act states that the principal purpose of the lands subject to transfer is to provide for the ultimate economic recovery of the hydrocarbon resources, while preventing unnecessary degradation.[[60]](#footnote-61)57 Furthermore, the Act allows the Secretary of the Interior to dispose of the lands, or to allow for commercial or non-profit surface use of the lands, not to exceed 10 acres each, provided that such use does not materially interfere with the ultimate economic recovery of the hydrocarbon resources.[[61]](#footnote-62)58

1. **Funding Pre-Transfer Environmental Conditions**

Section 332 establishes a lease revenue account to fund any and all costs and expenses incurred by the United States for environmental investigations, remediation, compliance actions, response, waste management, impediments, fines or penalties, or any other costs or expenses of any kind arising from, or relating to, conditions existing on or below the Naval Petroleum Reserve Numbered 2 lands, or activities that occurred on the lands on or before the administrative jurisdiction and control transfer.[[62]](#footnote-63)59 In addition, lease revenue account funds are made available to the extent the Secretary of the Interior incurs transition costs associated with the transfer and leasing of the lands.[[63]](#footnote-64)60

The Act provides for funding of the lease revenue account from a pre-transfer source and a post-transfer source. For three years after the transfer of the lands, the lease revenue account was set to receive $500,000 per year from bonuses, rents, royalties, and interest charges associated with leases entered into before the transfer date.[[64]](#footnote-65)61 In addition, revenues derived from leases entered on or after the transfer date were set to be deposited into the lease revenue account.[[65]](#footnote-66)62 The Act prohibits the lease revenue account from exceeding $3 million.

The lease revenue account terminates upon the Secretary of the Interior certifying (1) that all pre-transfer environmental conditions on the Naval Petroleum Reserve Numbered 2 lands have been successfully completed, (2) that all costs associated with the environmental contamination have been paid in full, and (3) that all transition costs have been paid in full. Jurisdictional transfer activities are ongoing.[[66]](#footnote-67)63 Any funds remaining at the time the Secretary of the Interior certifies the termination of the lease revenue account are distributed in accordance with the Mineral Leasing Act.[[67]](#footnote-68)64

1. **Production Incentives**

1. **Three-Prong Approach**

Congress addressed production incentives in the Act primarily with a broad three-prong approach. Subtitle E of the Act (1) allows for the continuation of the royalty in-kind program; (2) provides a multitude of royalty reduction, suspension, and/or termination programs to encourage development and production activities; and (3) sets forth several scientific data collection, inventorying, sharing, and/or preservation programs. This subtitle also provides several financial assistance programs and addresses orphaned and abandoned wells.

1. **The Royalty In-Kind Program**

Section 342 set forth the policies and administrative procedures that the federal government must follow to request and accept royalty payments in-kind rather than in-value. The Secretary of the Interior has discretion to demand in-kind royalty payments.[[68]](#footnote-69)65 To request and receive royalty payments in-kind, the Secretary of the Interior must determine that “receiving royalties in-kind provides benefits to the United States that are greater than or equal to the benefits that are likely to have been received had royalties been taken in-value.”[[69]](#footnote-70)66

The Act prohibits any revenues from the sale of in-kind royalties to pay for federal government personnel, travel, or other administrative costs, except for those salaries and other administrative costs directly related to the royalty in-kind program.[[70]](#footnote-71)67

The Act also required the Secretary of the Interior to consult with the relevant government prior to conducting a royalty in-kind program, and to the extent allowed by federal law, the Secretary may delegate management of the program, or any portion thereof, to that particular state government.[[71]](#footnote-72)68 In addition, the Act required the Secretary to consult with each state where the royalty in-kind program has been instituted “to ensure, to the maximum extent practicable,” that the in-kind program is achieving benefits greater than or equal to those that would be received if royalties were taken in-value.[[72]](#footnote-73)69

The Act also established two preference provisions within the royalty in-kind program: one for small refineries and one for low-income assistance. First, the Act authorized the Secretary of the Interior to grant a preference to certain refineries for purchasing federal royalty volumes.[[73]](#footnote-74)70 To grant such a preference, the Secretary must find that “sufficient supplies of crude ***oil*** are not available in the open market to refineries that do not have their own source of supply for crude ***oil***.”[[74]](#footnote-75)71 These refineries may purchase the preference volumes for processing or for use, and such purchases may occur through a private sale.[[75]](#footnote-76)72 The Act required the federal government to sell royalty volumes at not less than market price.[[76]](#footnote-77)73 To the extent more than one refinery does not have its own source of supply and sufficient supplies are not available in the open market, the Act allowed the Secretary of the Interior to prorate the preferential volumes among such refineries.[[77]](#footnote-78)74

The Act also authorized the Secretary of the Interior to grant a preference “to any person, including any Federal or State agency, for the purpose of providing additional resources to any Federal low-income energy assistance program.”[[78]](#footnote-79)75 If the Secretary of the Interior grants such a preference, the Secretary must submit a report to Congress, within three years, that assesses the effectiveness of the preference and provides a specific recommendation as to the continuation of authority to grant preferences.[[79]](#footnote-80)76

1. **Marginal Properties**

Marginal wells contribute significantly to this nation’s energy resources. Two years before the Act’s passage, 400,000 marginal ***oil*** wells produced approximately 15% of the United States’ domestic ***oil*** production and 7% of the natural gas production.[[80]](#footnote-81)77 In excess of 313 million barrels of ***oil*** were produced from these wells.[[81]](#footnote-82)78

The Act provides for a reduction in royalty rates as an incentive for producers to keep marginal wells online. Congress established the initial standards and requirements for onshore marginal properties in the Act.[[82]](#footnote-83)79

The Act defines a marginal property as an onshore, unit, communitization agreement, or lease not within a unit or communitization agreement that produces, on average, less than 15 barrels of ***oil*** equivalent per day or 90 MMBtu of gas equivalent per day.[[83]](#footnote-84)80 For the Secretary of the Interior to trigger royalty relief, crude must trade[[84]](#footnote-85)81 under $15/barrel for 90 consecutive days and natural gas must trade[[85]](#footnote-86)82 under $2.00/MMBtu for 90 consecutive days.[[86]](#footnote-87)83 Once triggered, the royalty rate becomes the lesser of: (a) 5%; or (b) the statutory or regulatory relief provision applicable to the affected production.[[87]](#footnote-88)84 The royalty rate reduction incentive terminates if the property no longer meets the definition of “marginal,” or the spot price exceeds the thresholds mentioned above for 90 consecutive trading days.[[88]](#footnote-89)85

The Act required the Secretary of the Interior, within 18 months of enactment of the Act (March 2006), to develop the standards and requirements for marginal properties located in the Outer Continental Shelf.[[89]](#footnote-90)86 The Secretary may consider the following factors when developing the standards for marginal properties: (1) ***oil*** and gas prices and market trends, (2) production costs, (3) abandonment costs, (4) federal and state tax provisions and the effects of those provisions on production economics, (5) other royalty relief programs, (6) regional differences in average wellhead prices, (7) national energy security issues, and (8) other relevant matters, as determined by the Secretary.[[90]](#footnote-91)87

In the Act, Congress deferred to the Secretary of the Interior’s rulemaking authority for Outer Continental Shelf properties and authorized the Secretary of the Interior to prescribe different standards and requirements for onshore marginal property royalty relief.[[91]](#footnote-92)88 The Department of the Interior, through the Bureau of Land Management (BLM), subsequently recognized that onshore marginal property royalty relief is controlled by the Energy Policy Act 2005’s initial standards and requirements.[[92]](#footnote-93)89

1. **Gulf of Mexico’s Shallow and Deep Waters**

The Act provides royalty relief for both shallow and deep water wells. The Act required the Secretary of the Interior to issue regulations granting royalty relief[[93]](#footnote-94)90 to “ultra deep well” leases issued in the Gulf of Mexico shallow waters.[[94]](#footnote-95)91 Congress defined “shallow waters” as those waters less than 400 meters deep (approximately 1300 feet)[[95]](#footnote-96)92 and an “ultra deep well” as “a well drilled with a perforated interval, the top of which is at least 20,000 true vertical depth below the datum at mean sea level.”[[96]](#footnote-97)93 Despite the Act’s use of meters to measure the shallow water’s depth, the Act does not assign a unit of measurement (presumably, the 20,000 refers to feet).[[97]](#footnote-98)94

The Act also provides royalty relief for deep wells on leases issued in waters more than 200 meters deep, but less than 400 meters deep, and for wells located in water depths greater than 400 meters, all located within the same area of the Gulf of Mexico, as the ultra deep wells in shallow waters.[[98]](#footnote-99)95

In 2008, the Department of the Interior (DOI) exercised its rulemaking authority to provide royalty relief for Outer Continental Shelf properties, as follows: (i) additional royalty relief for certain ultra-deep wells on Outer Continental Shelf leases in shallow water in the Gulf of Mexico, and (ii) extension of existing and additional deep gas royalty relief to Outer Continental Shelf leases in deeper water than previously provided for.[[99]](#footnote-100)96 Additionally, the Department of the Interior’s Royalty Relief rule applied discretionary royalty relief procedures, used for deepwater leases in the Gulf of Mexico, to offshore Alaska leases.[[100]](#footnote-101)97

1. ***Oil* and Gas Leasing in the National Petroleum Reserve in Alaska**

Section 347 of the Act revised and added significant provisions to the Naval Petroleum Reserves Production Act of 1976.[[101]](#footnote-102)98 The addition provides that each lease in the National Petroleum Reserve in Alaska is for an initial lease term of not more than 10 years, with automatic extension as long as ***oil*** or gas is produced (or capable of being produced) from the lease in paying quantities, or if Secretary-approved drilling or reworking operations are conducted on the leased land. Leases ineligible for automatic extension can be renewed as long as the lessee applies for renewal 60 days before the primary lease and certificates’ expiration. Additionally, the lessee must certify, and the Secretary must agree, that hydrocarbon resources have been discovered in such quantities that a prudent operator would hold the land for further development.[[102]](#footnote-103)99 The lessee also may renew its lease even if no such discovery has occurred if the lessee pays $100/acre renewal fee and provides evidence, and the Secretary agrees, that diligent exploration efforts have been made that warrant continuation and that continuation is intended.[[103]](#footnote-104)100 If no gas or ***oil*** is produced from the lease within 30 years after the issuance of the lease, the lease expires.[[104]](#footnote-105)101 The Act provides that no lease issued under Section 347 will expire if the lessee failed to produce for circumstances beyond its control.[[105]](#footnote-106)102

1. **Unitization Agreements**

The Act also provides for unitization of a pool, field, reservoir, or like area if the Secretary of the Interior determines unitization is in the public interest.[[106]](#footnote-107)103 In making this determination, the Secretary must consider, among other things, the extent to which the unit agreements will minimize the impact to surface resources of the leases and will facilitate consolidation of facilities.[[107]](#footnote-108)104 The Secretary must consult with and provide opportunities for participation by the State of Alaska in making the determination.[[108]](#footnote-109)105 The Secretary of the Interior is required to utilize a production allocation methodology for any unit that includes federal land in the Reserve and non-federal land based on the characteristics of each ***oil*** or gas pool, field, reservoir, or like area.[[109]](#footnote-110)106

1. **Exploration Incentives**

With respect to leases that take effect after the enactment of the Act, the Secretary of the Interior can provide exploration incentives to encourage the greatest ultimate recovery of ***oil*** and gas.[[110]](#footnote-111)107 If, in the Secretary of the Interior’s judgment, the Secretary believes it necessary to promote development or where a lease cannot be successfully operated under its terms, the Secretary may waive, suspend, or reduce rental fees or royalties.[[111]](#footnote-112)108 The Secretary of the Interior is required to consult with the State of Alaska and the North Slope Borough of Alaska and any applicable Regional Corporation.[[112]](#footnote-113)109

1. **North Slope Science Initiative**

Congress took steps to develop the Alaskan North Slope by further establishing the North Slope Science Initiative (Initiative). The Initiative’s purpose is to coordinate the collection of scientific data to understand better the terrestrial, aquatic, and marine ecosystems of the Alaskan North Slope.[[113]](#footnote-114)110 The minimum objectives focus on information needs and access to information regarding past and anticipated development of the North Slope, natural resource management, funding, scientific approach, and peer review.[[114]](#footnote-115)111

The Act provides for a panel of not more than 15 scientists and technical experts from a diverse group, including the ***oil*** and gas industry, subsistence users, Native Alaskan entities, conservation organizations, wildlife management organizations, and academia.[[115]](#footnote-116)112 Within three years, and then every year thereafter, the Secretary of the Interior must publish a report describing the Initiative’s studies and findings.[[116]](#footnote-117)113 The Act provides “such sums” of funds “necessary to carry out” the Initiative.[[117]](#footnote-118)114

1. **Orphaned, Abandoned, and Idled Wells**

At the time of EPAct 2005’s passage, the number of orphaned wells in the United States was estimated at 57,000.[[118]](#footnote-119)115 As the name suggests, these are wells that no longer produce or are idle without approval of the state, and for which the operators are unknown or have become insolvent.[[119]](#footnote-120)116 Within one year of the enactment of the Act, the Secretary of the Interior, in cooperation with the Secretary of Agriculture, was required to establish a program to remediate, reclaim and close orphaned, abandoned, or idled ***oil*** and gas wells.[[120]](#footnote-121)117 The program addressed cost recovery, financial assurances, and a means to priority rank the wells.[[121]](#footnote-122)118 During that same year, the Secretary of the Interior, also in cooperation with the Secretary of Agriculture, was required to submit to Congress a plan for carrying out the program.[[122]](#footnote-123)119

The Act requires the Secretary of the Interior to provide for an orphaned well reimbursement pilot program. Congress appropriated $5 million annually (of the $25 million annual appropriation for the orphaned, abandoned, and idled well total program addressed in Section 349 of the Act) for the fiscal years 2006-2010 to fund this two-prong reimbursement program.[[123]](#footnote-124)120

For new federally-owned land leases, the Secretary of the Interior may require the lessee to remediate, reclaim and close all orphaned wells on the leased land.[[124]](#footnote-125)121 For these newly leased lands, the Act requires the Secretary of the Interior to develop a program to reimburse the lessee for reasonable actual costs for requiring the lessee to remediate, reclaim and close such orphaned wells.[[125]](#footnote-126)122 The Act structured the reimbursement program to operate through a royalty credit against the federal share of royalties owed or “other means.”[[126]](#footnote-127)123 For unleased federal lands or for existing federally-owned land leases, the Secretary of the Interior may authorize the lessee to reclaim an orphaned well.[[127]](#footnote-128)124 Interestingly, the reimbursement provision relating to other federal lands or existing leases expressly calls for 100% reimbursement of reasonable actual costs of remediation, reclamation, and closing of the orphaned well, as opposed to the new lease provision which merely allows for reimbursement of reasonable actual costs.[[128]](#footnote-129)125

Finally, the Act also requires the Secretary of Energy to establish a program for providing technical and financial assistance to ***oil*** and gas producing states to ensure a practical and economical remedy for addressing environmental problems caused by orphaned or abandoned well sites.[[129]](#footnote-130)126 The program must cover well sites located on state or private lands. The program must include mechanisms to facilitate the identification of financial assurances, ranking criteria, remediation, best practices information and training, and funding of the state’s mitigation efforts on a cost-shared basis.[[130]](#footnote-131)127 Notwithstanding the $5 million annual appropriation for the reimbursement pilot program discussed above, Congress appropriated $25 million annually to address orphaned, abandoned, and idled wells.[[131]](#footnote-132)128

1. **Combined Hydrocarbon Leasing**

The Act amended Section 17(b)(2) of the Mineral Leasing Act[[132]](#footnote-133)129 to allow the Secretary of the Interior to separately lease any area that contains both tar sand and ***oil*** and/or gas.[[133]](#footnote-134)130 The bidding process, annual rental, and posting period for leases issued for tar sand is the same as that for ***oil*** and gas issued leases, except that the minimum acceptable bid for a tar sand lease is $2/acre.[[134]](#footnote-135)131 Importantly, the Act grants the Secretary of the Interior the right to waive, suspend, or alter any requirement that a permittee, prospecting for tar sand, exercise due diligence to promote any resource covered by a combined hydrocarbon lease.[[135]](#footnote-136)132

1. **Preservation of Geological and Geophysical Data**

In Section 351 of the Act, Congress sought to preserve geological and geophysical data by creating a national catalog of archived geological, geophysical, and engineering data, maps, well logs, and samples, and a system to archive such data. The Act also directs the Secretary to develop guidelines for the data archive system, such as an outline of the types of data and samples to be preserved.[[136]](#footnote-137)133 The Act also provides technical and financial assistance related to the archived materials.[[137]](#footnote-138)134 A year after enactment of the Act, the Secretary of the Interior submitted a plan to Congress for implementing the preservation program.[[138]](#footnote-139)135 The national catalog is accessible to the public, with regard given to confidentiality and proprietary data.[[139]](#footnote-140)136

The Act requires the Advisory Committee created by the National Geologic Mapping Act of 1992[[140]](#footnote-141)137 to advise the Secretary with respect to the preservation program.[[141]](#footnote-142)138 Congress appropriated $30 million annually for the fiscal years 2006–2010 to carry out the preservation program.[[142]](#footnote-143)139 The Act incorporates several funding limitation provisions. First, the Act expressly limits the federal share of the financial assistance to 50% of the cost of an activity. Second, the Act applies any private contributions to the non-federal share of the costs.[[143]](#footnote-144)140 Third, the Act requires the Secretary of the Interior to provide financial assistance to any state agency for archival facilities and for studies, technical understanding and interpretation assistance, and use of archived materials only to the extent appropriated funds are available.[[144]](#footnote-145)141 Moreover, Congress expressly stated that its intent was not for “States [to] use this section as an opportunity to reduce State resources applied to the [preservation] activities.”[[145]](#footnote-146)142

1. ***Oil* and Gas Lease Acreage Limitations**

Section 27(d)(1) of the Mineral Leasing Act[[146]](#footnote-147)143 limited any one person, company, or similar entity from holding more than 246,080 acres of ***oil*** and gas leases in any one state other than Alaska, except if the “acreage [is] held in special tar sand areas.” Section 352 of the Act broadened that exception to also allow a person, company, or similar entity to exceed that limit if the “acreage [is] under any lease any portion of which has been committed to a federally approved unit or cooperative plan or communitization agreement or for which royalty (including compensatory royalty or royalty in-kind) was paid in the preceding calendar year.”[[147]](#footnote-148)144

1. **Royalty Incentives for the Production of Natural Gas Hydrate Resources**

To encourage the production of natural gas from natural gas hydrate resources on the Outer Continental Shelf and federal lands in Alaska, the Act allows the Secretary of the Interior to conduct a rulemaking and to grant royalty relief for leases issued in the identified regions before January 1, 2016, and under which natural gas production from gas hydrate resources commences prior to January 1, 2018.[[148]](#footnote-149)145

The Act required the Secretary of the Interior to conduct a rulemaking and grant royalty relief if the Secretary determines that such relief would encourage production of natural gas from eligible leases from gas hydrate resources.[[149]](#footnote-150)146 The maximum suspension volume[[150]](#footnote-151)147 is 30 Bcf of natural gas per lease, and the suspension volume applies to any eligible production occurring on or after the date of publication of the advanced notice of proposed rulemaking.[[151]](#footnote-152)148 The royalty relief is in addition to any other royalty relief that does not specifically grant a gas hydrate production incentive.[[152]](#footnote-153)149 Limitations, based on market price, may be placed on the royalty relief granted.[[153]](#footnote-154)150

The Secretary of the Interior, after consulting the Secretary of Energy, must review other opportunities to enhance production of natural gas from gas hydrate resources on the Outer Continental Shelf and Alaskan federal lands and submit a report to Congress within one year of the enactment of the Act.[[154]](#footnote-155)151

1. **Enhanced Production Through Carbon Dioxide Injections**

Premised on Congress’ findings that approximately two-thirds of the original ***oil*** in place in the United States remains unproduced, and that use of carbon dioxide has the potential to increase ***oil*** and natural gas production, the Act provides royalty incentives for the use of carbon dioxide and other gas injection enhanced recovery techniques.[[155]](#footnote-156)152 If the Secretary of the Interior determines that the reduction of a royalty for certain leases would be in the public interest and promotes ***oil*** and natural gas production, the Secretary must conduct a rulemaking to provide for such reductions in royalty for the eligible leases.[[156]](#footnote-157)153

The Secretary of the Interior’s rulemaking authority is limited by volume and price. The suspension volume cannot exceed 5 million barrels of ***oil*** equivalent per lease, and such volumes must be applied to production occurring on or after the publication of any advance notice of the proposed rulemaking.[[157]](#footnote-158)154 Additionally, the Secretary of the Interior may place limitations on the amount of royalty reduction based on market price.[[158]](#footnote-159)155

Section 354(c) requires the Secretary of Energy to establish a competitive grant program for ***oil*** and gas producers to carry out carbon dioxide injection-enhanced recovery projects, while increasing the sequestration of carbon dioxide.[[159]](#footnote-160)156 The program applies to no more than 10 projects in the Williston Basin in North Dakota and Montana and one project in the Cook Inlet Basin in Alaska. In addition to limiting the number of projects that can be undertaken, the Act sets forth minimum project requirements that the grant applicants must fulfill.

The Department of Energy (“DOE”), through its Office of Fossil Energy, continues to provide funding for carbon-capture projects. For example, on September 13, 2019, DOE announced approximately $110 million in federal funding to various carbon-capture projects for cost-shared research and development under three funding opportunity announcements.[[160]](#footnote-161)157 Among these projects, DOE granted funding of approximately $2.9 million towards a site-specific front-end engineering design (“FEED”) study for retrofitting the San Juan Generating Station, a 847 MW coal-fired plant in Waterflow, New Mexico, with carbon capture, utilization and storage technology.[[161]](#footnote-162)158

When evaluating and selecting the grant recipients the Secretary of Energy must consider each applicant’s previous experience with gas injection enhanced recovery projects. Moreover, the Secretary of Energy must give priority consideration to applications that “(i) are most likely to maximize production … in a cost-effective manner; (ii) sequester significant quantities of carbon dioxide … ; (iii) demonstrate the greatest commitment … to ensure funding for the proposed project and the greatest likelihood that the project will be maintained or expanded … ; and (iv) minimize any adverse environmental effects from the project.”[[162]](#footnote-163)159

The Act placed several restrictions on the grant program including: (1) the Secretary of Energy cannot provide more than $3 million in federal assistance to any applicant; (2) the Secretary of Energy must require cost-sharing; (3) any project funded by the grant program must begin construction within two years of the date of provision of the grant, but no later than December 31, 2010; (4) the Secretary of Energy cannot provide grant funds to any applicant for more than five years; and (5) the Secretary of Energy must establish procedures to ensure information and knowledge gained by the grant program participants is transferred among other participants and interested persons.[[163]](#footnote-164)160

1. **Assessment of Hawaii’s Dependence on *Oil***

Section 355 of the Act charged the Secretary of Energy with assessing the economic implications of Hawaii’s dependence on ***oil*** as the principal source of energy for the state.[[164]](#footnote-165)161 Included in its studies, the Secretary of Energy is required to look at both long- and short-term prospects for crude ***oil*** supply disruptions, as well as the associated price volatility and impact on the state’s economy.[[165]](#footnote-166)162 The Act also required, among other things, an analysis of the technical and economic feasibility of: (1) of increasing the contribution of renewable energy resources and of using LNG to displace residual fuel ***oil*** for generating electricity; and (2) using renewable energy sources for ground, marine, and air transportation energy applications to displace the use of refined petroleum products.[[166]](#footnote-167)163 The Secretary of Energy, along with state agencies and others, submitted a comprehensive report to Congress that satisfied all of Section 355’s study and analysis requirements.[[167]](#footnote-168)164

1. **The Denali Commission**

Congress appropriated up to $55 million annually for fiscal years 2006-2015 in order for the Denali Commission, established in 1998, to carry out energy programs in Alaska.[[168]](#footnote-169)165 These energy programs include energy generation and development, construction of energy transmission, replacement and cleanup of fuel tanks, construction of fuel transportation networks and related facilities, power cost equalization programs, and projects using coal as a fuel.[[169]](#footnote-170)166 The Act also required the Denali Commission meetings to be open to the public, unless the Commission votes to close the meeting for reasons outlined in 5 U.S.C. § 552b.[[170]](#footnote-171)167

1. **Comprehensive Inventory of Outer Continental Shelf *Oil* and Natural Gas Resources**

In an effort to understand the Outer Continental Shelf resources better, the Act directed the Secretary of the Interior to conduct an inventory and analysis of all Outer Continental Shelf ***oil*** and natural gas resources, including offshore Mexico and Canada.[[171]](#footnote-172)168 The report was submitted to Congress and is publicly available.[[172]](#footnote-173)169 It must be updated at least every five years. The Department of Interior’s Minerals Management Service issued the required inventory and analysis in 2006.[[173]](#footnote-174)170

As statutorily required, the analysis included the change in resource estimates with respect to gathering geological and geophysical data, initial exploration and full field development.[[174]](#footnote-175)171 It provided an estimate of the effect that understated inventories have on domestic energy investments, and identified and explained how legislative, regulatory, and administrative programs have restricted or impeded the development of these resources, as well as the extent such programs affect domestic supply.

Most recently, the Department of Interior’s Bureau of Ocean Energy Management, which was established upon the Department of Interior’s order separating Mineral Management Service into three new agencies,[[175]](#footnote-176)172 issued the 2018 update of the report.[[176]](#footnote-177)173 In the 2018 report, the Department of Interior’s Bureau of Ocean Energy Management found, among other things, that the total amount of technically recoverable resources in the outer continental shelf is estimated to equal to 127.23 billion barrels of ***oil*** (Bbo) and 576.40 trillion cubic feet of gas (Tcfg).

1. **Access to Federal Lands**

1. **Introduction**

As discussed above, Title III of the 2005 Energy Policy Act implements a wide range of incentives designed to promote adequate growth in the supply of natural gas and ***oil*** resources in the United States. Among the incentives set forth under the Act are improved access to federal lands and an overhaul of the permitting and management practices for public land ***oil*** and gas leasing. To this end, the Act required the Secretaries of the Interior and Agriculture to speed up the ***oil*** and gas lease application process and establish coordination of the leasing/permitting efforts of both Departments.[[177]](#footnote-178)174 The Act also established the ***Oil*** Shale, Tar Sands and Other Strategic Unconventional Fuel Act of 2005 to coordinate and facilitate development of unconventional fuel for research and potential commercial leasing on public lands.[[178]](#footnote-179)175

1. **Federal Onshore *Oil* and Gas Leasing and Permitting Practices**

The Act required the Secretary of the Interior to perform an internal review of current federal onshore ***oil*** and gas leasing and permitting practices.[[179]](#footnote-180)176 The review was required to examine the processes for: (1) accepting or rejecting offers to lease; (2) administrative appeals of decisions or orders of the Bureau of Land Management regarding federal ***oil*** and gas leases; (3) considering surface use plans of operation, including the timeframes in which the plans are considered and any recommendations for improving or expediting the process; and (4) identifying stipulations to address site-specific concerns and conditions, including those stipulations relating to environmental and resource-use conflicts. The Act required the review to be performed in consultation with the Secretary of Agriculture with regard to any National Forest System lands. The Secretaries of the Interior and Agriculture were required to submit a joint report to Congress no later than 180 days after enactment of the Act describing actions taken or plans to improve the federal onshore ***oil*** and gas leasing program.[[180]](#footnote-181)177 They subsequently reported that the Dixie National Forest lands could be made available for ***oil*** and gas leasing.[[181]](#footnote-182)178 The report provided a Reasonably Foreseeable Development Scenario (RFDS) that provided estimates of future ***oil*** and gas activity. The report identified leasing options, leasing alternatives, and environmental assessment.

1. **Management of Federal *Oil* and Gas Leasing Programs**

The Act called for timely action by the Secretaries of the Interior and Agriculture on ***oil*** and gas leases and applications for permits to drill on land otherwise available for leasing.[[182]](#footnote-183)179 Timely action includes ensuring “expeditious compliance” with applicable environmental and cultural resources laws,[[183]](#footnote-184)180 improving the collection, storage and retrieval of information related to leasing activities,[[184]](#footnote-185)181 and improving inspection and enforcement of ***oil*** and gas leasing activities.[[185]](#footnote-186)182 Appropriations are granted under Title III for these activities.[[186]](#footnote-187)183

The Secretary of the Interior was required to develop best management practices to ensure both timely action on leases and permit applications and improved administration of the onshore ***oil*** and gas leasing program under the Mineral Leasing Act.[[187]](#footnote-188)184 The Secretary of Agriculture was also required to propose regulations to establish specific timeframes for approving, disapproving and appealing resource management plans, lease applications, applications for permits to drill and surface use plans.[[188]](#footnote-189)185 In developing the best management practices, the Secretary of the Interior was required to consider any recommendations resulting from the internal review of ***oil*** and gas leasing and permitting practices, discussed above (*see* § 59.03[7][a]).

1. **Consultation Regarding *Oil* and Gas Leasing on Public Land**

The Act recognized the need for better coordination and consistency between public land ***oil*** and gas leases administered by the Department of the Interior and National Forest System ***oil*** and gas leases administered by the Department of Agriculture. As a result, the Secretaries of the Interior and Agriculture were required to enter into an MOU to establish coordinated administrative procedures and lines of authority for the timely processing of lease applications, drilling permit applications and surface use plans for ***oil*** and gas leases under their respective jurisdictions.[[189]](#footnote-190)186 The MOU was required to eliminate duplicative efforts in planning, data management, application tracking and environmental compliance.[[190]](#footnote-191)187 The MOU was also required to provide measures for ensuring that lease stipulations are coordinated, applied consistently between the agencies, and “only as restrictive as necessary to protect the resource for which the stipulations are applied.”[[191]](#footnote-192)188

1. **Estimates of *Oil* and Gas Resources Underlying Onshore Federal Land**

The Energy Act of 2000, among other things, required the Secretary of the Interior, in consultation with the Secretaries of Agriculture and Energy, to conduct an inventory of the estimates of ***oil*** and gas reserves of all onshore federal lands and to update it regularly.[[192]](#footnote-193)189 The Act amended Section 604 of the Energy Act of 2000 to require the Secretaries to focus on “resource” estimates instead of “reserve” estimates, which would appear likely to avoid complications related to whether the focus must be on proven reserves. The Act also requires that the inventory identify restrictions or impediments to the development of ***oil*** and gas resources, including delays in granting of leases, drilling permit applications, processing of environmental permits or production and post-lease restrictions.[[193]](#footnote-194)190 The Act eliminates authorization for appropriations to implement Section 604 of the Energy Act of 2000.[[194]](#footnote-195)191 The Departments of the Interior, Agriculture, and Energy conducted the required inventory, which built upon the prior inventories conducted pursuant to the Energy Act of 2000.[[195]](#footnote-196)192

1. **Pilot Project to Improve Federal Permit Coordination**

In its effort under the Act to streamline the ***oil*** and gas leasing and drilling permit application processes, Congress required the Secretary of the Interior to develop the Federal Permit Streamlining Pilot Project.[[196]](#footnote-197)193 Under an MOU with the Secretary of Agriculture, the EPA Administrator and the Chief of Engineers,[[197]](#footnote-198)194 the Secretary of the Interior is required to organize a team of personnel with particular expertise in permitting and regulatory matters under the Endangered Species Act of 1973,[[198]](#footnote-199)195 Federal Water Pollution Control Act (Clean Water Act),[[199]](#footnote-200)196 Clean Air Act[[200]](#footnote-201)197 and National Forest Management Act of 1976[[201]](#footnote-202)198 in certain designated Pilot Project field offices.[[202]](#footnote-203)199 The Pilot Project is intended to provide applicants with one-stop-shopping to streamline the application process and to generate coordinated review of proposed energy projects, planning and environmental analyses. In furtherance of that goal, the Act established a “BLM Permit Processing Improvement Fund” under Section 35 of the Mineral Leasing Act.[[203]](#footnote-204)200 Fifty percent of rentals received from leases in any state (excluding Alaska) must be allocated toward the fund to be appropriated by the Secretary of the Interior for coordinating and processing onshore ***oil*** and gas use authorizations on federal land under the jurisdiction of the Pilot Project field offices.[[204]](#footnote-205)201

1. **Deadline for Consideration of Applications for Permits**

The Act amended the Mineral Leasing Act (MLA)[[205]](#footnote-206)202 to establish a timeline under which the Secretary of the Interior must consider permit applications under the MLA. Under the new provisions to the MLA, a permit can be issued in no later than 30 days, furthering Congress’ intent to lessen the burden on those seeking to develop domestic ***oil*** and natural gas supplies. Under the new timeline, the Secretary of the Interior has 10 days after receipt of a permit application to notify the applicant as to whether the application is complete or whether information is missing.[[206]](#footnote-207)203 The notice must specify the information needed to complete the application. No later than 30 days after submittal of a complete permit application, the Secretary of the Interior must issue the permit if requirements under the NEPA and other environmental laws have been complied with, or defer acting on the application.[[207]](#footnote-208)204 If the permit is deferred, the Secretary must notify the applicant of any steps the applicant could take to be granted the permit, a list of actions the agency must take to comply with applicable laws, and a timeline showing deadlines for completing such actions.[[208]](#footnote-209)205 Upon deferral, the applicant has two years from the date of the receipt of the deferral notice to complete all the requirements specified.[[209]](#footnote-210)206 Once the requirements have been met, the Secretary of the Interior has no more than 10 days to issue a decision on the permit application.[[210]](#footnote-211)207 If the applicant fails to provide the specified information within two years of receipt of the notice, or if the applicant does not comply with applicable law, the Secretary must deny the permit.

1. **Fair Market Value Determinations for Linear Rights-of-Way Across Public Lands and National Forests**

The Act requires the Secretaries of the Interior and Agriculture to use the same fair market value rent of linear rights-of-way across public lands and National Forests.[[211]](#footnote-212)208 The fair market value rent will be determined in accordance with 43 C.F.R. Subpart 2806. As required, the Secretary of the Interior updated 43 C.F.R. Subpart 2806 to reflect revision of the per acre rental fee zone value schedule by state, county, and type of linear right-of-way use that reflect current values of land in each zone.[[212]](#footnote-213)209

1. **Energy Right-of-Way Corridors on Federal Land**

Section 368 of the Act requires energy right-of-way corridors on federal land to be designated within the 11 contiguous western states, as defined by the Federal Land Policy and Management Act,[[213]](#footnote-214)210 by the Secretaries of Agriculture, Commerce, Defense, Energy and the Interior, in consultation with the FERC, the states, tribal or local units of government, affected utility industries and other interested persons. The corridors were required to be designated within two years of enactment of the Act.[[214]](#footnote-215)211 Energy right-of-way corridors on federal land within other states were required to be designated within four years of enactment.[[215]](#footnote-216)212 The Act requires the Secretaries, agencies and other interested parties to establish procedures to expedite applications for the construction or modification of pipeline and transmission facilities over the designated corridors and to ensure additional corridors are promptly identified and designated as necessary.[[216]](#footnote-217)213 The agencies were required to consider the need for upgraded and new electricity transmission and distribution facilities to improve reliability, relieve congestion and enhance the capability of the national grid to deliver electricity.[[217]](#footnote-218)214

To further these ambitious objectives, the Act required the Secretaries of Energy, Interior, Agriculture and Defense to enter into an MOU to facilitate the designation of corridors for ***oil***, gas, and hydrogen pipelines and electricity transmission and distribution facilities on federal land.[[218]](#footnote-219)215 The MOU is intended to coordinate all applicable federal authorizations and environmental reviews related to a proposed or existing utility facility.[[219]](#footnote-220)216 The MOU is required to include provisions that: (1) establish a unified right-of-way application form and administrative procedure for processing the applications, including lines of authority, application process steps, and a timeline for application processing; (2) provide for coordinated planning in granting rights-of-way and use of right-of-way stipulations to achieve consistency; and (3) provide for an agreement among the affected federal agencies to prepare a single environmental review document to be used as the basis for all federal authorization decisions.[[220]](#footnote-221)217 In 2009, the Department of Interior implemented the energy right-of-way provision by designating 119 corridors in eleven western states as Section 368 corridors.[[221]](#footnote-222)218 It is important to note that Section 368 does not provide authority for actual siting activity. Rather, it essentially authorizes national coordination of energy project siting activity.[[222]](#footnote-223)219 The Department of Interior, U.S. Department of Agriculture, and Department of Energy developed a Section 368 corridor study, and the DOI instructed its state directors to review and update designated Section 368 corridors periodically so that the corridors are effectively used.[[223]](#footnote-224)220

1. ***Oil* Shale, Tar Sands, and Other Strategic Unconventional Fuels Act of 2005**

Section 369 of the Act enacts the ***Oil*** Shale, Tar Sands, and Other Strategic Unconventional Fuels Act of 2005 (Unconventional Fuels Act or UFA). Congress declared that ***oil*** shale, tar sands and other unconventional fuels are strategically important resources that should be developed to reduce dependence on foreign ***oil*** supplies. Therefore, the UFA established a leasing program for research and development of ***oil*** shale and tar sands,[[224]](#footnote-225)221 and required the completion of a programmatic environmental impact statement for a commercial leasing program for ***oil*** shale and tar sands resources on public lands, with an emphasis on the most geologically prospective lands within Colorado, Utah and Wyoming.[[225]](#footnote-226)222 The Secretary of the Interior completed the study and issued new regulations establishing a leasing program.[[226]](#footnote-227)223 In developing the leasing program, the Secretary, in consultation with others, evaluated the interest of states in developing ***oil*** shale and tar sands resources.[[227]](#footnote-228)224 The Act authorized the Secretary of the Interior to conduct a lease sale of public land with ***oil*** shale and tar sands resources subject to sufficient support and interest in a state.[[228]](#footnote-229)225

The UFA delegates a variety of functions and responsibilities to federal agencies. The Office of Petroleum Reserves under the Department of Energy is charged with the primary tasks of creating and implementing a commercial strategic fuel development program, evaluating the strategic importance of unconventional sources of strategic fuels to the security of the United States, and promoting and coordinating federal government actions to develop strategic fuels to address the energy supply needs of the United States.[[229]](#footnote-230)226 The Office of Petroleum Reserves will also work with a Task Force composed of the Secretaries of Energy, the Interior, and Defense, the governors of affected states, and representatives of local governments in affected areas to provide, in part, recommendations on strategic unconventional fuel development.[[230]](#footnote-231)227 The Department of the Interior will serve as the lead agency for coordination of the permit review process,[[231]](#footnote-232)228 carry out an assessment of ***oil*** shale and tar sands resources in designated geographic areas,[[232]](#footnote-233)229 facilitate land exchanges to recover ***oil*** shale and tar sands,[[233]](#footnote-234)230 identify and prioritize public lands containing deposits of ***oil*** shale and tar sands, and establish royalty rates for leases.[[234]](#footnote-235)231 The Department of Energy is charged with identifying technologies for the development of ***oil*** shale and tar sands, including possible technical, regulatory compliance and cost-sharing assistance for those technologies identified,[[235]](#footnote-236)232 and updating the 1987 technical and economic assessment of domestic heavy ***oil*** resources prepared by the Interstate ***Oil*** and Gas Compact Commission.[[236]](#footnote-237)233 The Department of Defense is authorized to enter into agreements to procure fuel produced from coal, ***oil*** shale and tar sands (defined as “covered fuels”), if clean fuel requirements can be met, and to develop a strategy for using covered fuels.[[237]](#footnote-238)234 The UFA also authorizes appropriations to carry out its provisions, as necessary.[[238]](#footnote-239)235

1. **Finger Lakes Withdrawal**

The Act withdrew all federal land within the Finger Lakes National Forest in the State of New York from all forms of entry, appropriation, or disposal under public land laws and from disposition under all laws relating to ***oil*** and gas leasing.

1. **Reinstatement of Leases**

The Act implemented two adjustments to the provisions under the Mineral Leasing Act[[239]](#footnote-240)236 pertaining to reinstatement of leases terminated for failure to pay the full amount of rental on or before the anniversary date of the lease.[[240]](#footnote-241)237 First, it provided a 120-day window following enactment of the Act for ***oil*** and gas lessees to file a petition to have their lease reinstated where the lease was terminated for failure of a lessee to pay the full amount of rental on or before the anniversary date of the lease during the period beginning on September 1, 2001, and ending on June 30, 2004.[[241]](#footnote-242)238 The lessee was also required to comply with the necessary requirements, most notably payment of back leases and back royalties, and certify that the lessee did not receive a notice of termination by 13 months before the date of termination.[[242]](#footnote-243)239 Second, the Act amended § 31(d)(2) of the Mineral Leasing Act to extend the period of time for lessees to petition for reinstatement of leases terminated *after* enactment of the Act. For those petitions, the petition was required to be filed on or before the earlier of: (1) 60 days after receipt of the termination notice; or (2) 24 months after termination of the lease.[[243]](#footnote-244)240 For petitions on leases terminated *before* enactment of the Act, and that were not filed in the 120-day window specified above, the petition was required to be filed on or before the earlier of: (1) 60 days after receipt of the termination notice; or (2) 15 months after termination of the lease.[[244]](#footnote-245)241

1. **Sense of Congress Regarding Development of Minerals Under Padre Island National Seashore**

The Act clarified Congress’ understanding that the United States owns only the surface estate of certain lands constituting the Padre Island National Seashore, and that ownership of the ***oil***, gas, and other mineral interests in the subsurface estate are held by the State of Texas and private parties.[[245]](#footnote-246)242

1. **Livingston Parish Mineral Rights Transfer**

Section 102 of Public Law 102-562 was enacted to resolve adverse claims and title confusion arising from certain private land claims in Livingston Parish, Louisiana predating the Louisiana Purchase.[[246]](#footnote-247)243 At that time, title was conveyed with exception and reservation of all mineral rights in the land. Section 374 of the Act requires that, within one year of enactment, the United States Geological Survey (USGS) was required to conduct and publish an assessment of all ***oil*** and gas resources underlying certain lands in Livingston Parish.[[247]](#footnote-248)244 Upon a finding by the Secretary of the Interior that it is unlikely that economically recoverable ***oil*** and gas resources are present on the lands, the Secretary was required to convey all rights to ***oil*** and gas within 180 days.[[248]](#footnote-249)245 All remaining mineral rights are to be conveyed under the Act to all holders of a right, title, or interest to any portion of such mineral rights under Louisiana law no later than 180 days after enactment of the Act.[[249]](#footnote-250)246 The USGS coordinated with the Bureau of Land Management (BLM) to implement Section 374. The BLM issued land patents conveying surface rights to qualified claimants, and the United States reserved ***oil*** and gas interests. In total, 25 land patent cases were resolved pursuant to Section 374.[[250]](#footnote-251)247

1. **Miscellaneous Provisions Under Title III—*Oil* and Gas**

1. **Deadline for Decision on Appeals of Consistency Determination Under the Coastal Zone Management Act of 1972**

Section 381 of the Act amended the Coastal Zone Management Act of 1972 (CZMA)[[251]](#footnote-252)248 to shorten the time period for issuing a decision in the appeal of a consistency determination to the Secretary of Commerce.[[252]](#footnote-253)249 Prior to the amendment, the Secretary had up to 90 days from publication of the notice closing the decisional record to issue a final decision in the appeal or publish a notice in the Federal Register detailing why a decision could not be issued within the 90-day period. Under the amended CZMA, the time period is shortened to 60 days.[[253]](#footnote-254)250 Additionally, if a notice was published explaining why a decision was not issued, the CZMA previously provided the Secretary up to 45 days from the date of publication to issue the decision. Under the amended CZMA, that time period is shortened to 15 days.[[254]](#footnote-255)251 The new provisions also provide for a stay to the closing of the decisional record.[[255]](#footnote-256)252

1. **Appeals Relating to Offshore Mineral Development**

The Act provides that, for any federal administrative agency proceeding that is an appeal or review under Section 319 of the CZMA[[256]](#footnote-257)253 related to federal authorization of an energy project, the lead federal permitting agency for the energy project will maintain a consolidated record of decisions made and actions taken by the lead agency or other federal and state administrative agencies. The consolidated record will serve as the initial record for the Section 319 appeal.[[257]](#footnote-258)254

1. **Royalty Payments Under Leases Under the Outer Continental Shelf Lands Act**

The ***Oil*** Pollution Act of 1990[[258]](#footnote-259)255 provided compensation in Section 6004(c) to the State of Louisiana and lessees for net drainage of ***oil*** and gas resources in certain leases. Section 383 of the Act provides royalty relief for Section 6004(c) lessees with leases issued under the Outer Continental Shelf Lands Act.[[259]](#footnote-260)256 A lessee with royalty payments due and payable in the period beginning on October 1, 2006, may withhold from payment any royalty due and owing to the United States under the Outer Continental Shelf Lands Act for offshore ***oil*** or gas production from a covered lease tract[[260]](#footnote-261)257 if, on or before the date that the payment is due, the lessee makes a payment to the state of 44 cents for every $1 of royalty withheld.[[261]](#footnote-262)258 The lessee’s relief from payment of royalties ends on the date that the Secretary of the Treasury publishes a certification that the total amount of the royalty withheld by the lessee equals certain pre-determined dollar amounts, plus interest.[[262]](#footnote-263)259

1. **Coastal Impact Assistance Program**

The Act amended the Coastal Impact Assistance Program under Section 31 of the Outer Continental Shelf Lands Act.[[263]](#footnote-264)260 The Program provides funding to Producing States[[264]](#footnote-265)261 and Coastal Political Subdivisions[[265]](#footnote-266)262 from qualified Outer Continental Shelf revenues[[266]](#footnote-267)263 collected from ***oil*** and natural gas activities on the Outer Continental Shelf. The Act amended the payment provision to provide appropriations of $250 million to Producing States and Coastal Political Subdivisions for each of the fiscal years 2007–2010.[[267]](#footnote-268)264 The funding provided under the Program has limited use. Under the Act, Program funds may be used for coastal and wetland conservation, protection or restoration projects; mitigation of damage to fish, wildlife or natural resources; marine, coastal or conservation management plans; mitigation of impacts on the Outer Continental Shelf on onshore infrastructure and public service needs; and associated planning assistance and administrative costs.[[268]](#footnote-269)265 To receive disbursements, each state governor must submit to the Secretary of the Interior a coastal state assistance plan. The plan is to include input from public participation and outline how Program funding will be used, a state agency acting as representative on behalf of the Program, implementation measures for use of the funds, and a contact person and description of funding uses in coastal political subdivisions.[[269]](#footnote-270)266

1. **Study of Availability of Skilled Workers**

The Act required the Secretary of Energy to enter into an arrangement with the National Academy of Sciences to conduct a study of the short-term and long-term availability of skilled workers to meet the energy and mineral security requirements of the United States.[[270]](#footnote-271)267 The study was required to include an analysis of the need for and availability of workers for the ***oil***, gas and mineral industries, the availability of skilled workers at entry and senior levels, and recommendations for actions needed to meet future labor requirements.[[271]](#footnote-272)268 The Secretary of Energy and the National Academy of Sciences developed and published the report, which identified emerging workforce trends in domestic energy and mining industries.[[272]](#footnote-273)269

1. **Great Lakes *Oil* and Gas Drilling Ban**

The Act prohibits any federal or state permit or lease to be issued for new ***oil*** and gas slant, directional, or offshore drilling in or under one or more of the Great Lakes.[[273]](#footnote-274)270

1. **Federal Coalbed Methane Regulation**

The Energy Policy Act of 1992 set forth a list of states, referred to as the Affected States, in which either disputes exist over the ownership rights of coalbed methane or various hindrances slow the development of coalbed methane gas. The Act provides that any state currently on the list of Affected States established under Section 13368(b) of the Energy Policy Act of 1992[[274]](#footnote-275)271 must be removed from the list if, not later than three years after the date of enactment of this Act, the state takes or has taken prior to the date of enactment, any of the actions required for removal as set forth under Section 1339(b).[[275]](#footnote-276)272

1. **Alternate Energy-Related Uses on the Outer Continental Shelf**

The Act added a provision to the Outer Continental Shelf Lands Act[[276]](#footnote-277)273 providing the Secretary of Energy with authority to grant a lease, easement or right-of-way on the Outer Continental Shelf for activities not otherwise authorized under this Act, the Deepwater Port Act of 1974,[[277]](#footnote-278)274 the Ocean Thermal Energy Conversion Act of 1980,[[278]](#footnote-279)275 or other applicable law. With the exception of areas where activity is prohibited by a moratorium, lease activities must either: (1) support exploration, development, production or storage of ***oil*** or natural gas; (2) support transportation of ***oil*** or natural gas, excluding shipping activities; (3) produce or support production, transportation, or transmission of energy from sources other than ***oil*** and gas; or (4) use, for energy-related purposes or for other authorized marine-related purposes, facilities currently or previously used for activities authorized under the Act.[[279]](#footnote-280)276 The Secretary of Energy establishes the royalties and payments for any lease, easement, or right-of-way,[[280]](#footnote-281)277 and provides coordination and consultation with affected state and local communities.

The Act also provides for a coordinated Outer Continental Shelf mapping initiative. The initiative is to be coordinated with several federal agencies, and designed to establish an interagency, comprehensive digital mapping initiative. The maps must include indications on the Outer Continental Shelf of federally-permitted activities; obstructions to navigation; submerged cultural resources; undersea cables; offshore aquaculture products; and any area designated for the purpose of safety and national security, environmental protection, or conservation and management of living marine resources.[[281]](#footnote-282)278

1. ***Oil* Spill Recovery Institute**

The Act extends funding for the ***Oil*** Spill Recovery Institute. Previously, the funding termination provisions in the ***Oil*** Pollution Act of 1990[[282]](#footnote-283)279 triggered termination of funding with a set date. The provisions were rewritten so that funding terminates “one year after the date on which the Secretary, in consultation with the Secretary of the Interior, determines that ***oil*** and gas exploration, development, and production in the State of Alaska have ceased.”[[283]](#footnote-284)280

1. **NEPA Review**

The Act provided five categorical exclusions to the NEPA for activities conducted pursuant to the Mineral Leasing Act for the purpose of exploration and development of ***oil*** or gas. The excluded activities include: (1) individual surface disturbances of less than five acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to the NEPA has been previously completed; (2) drilling an ***oil*** or gas well at a location or well pad site where drilling has occurred previously within five years of the date of spudding the well; (3) drilling an ***oil*** or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling and was approved within five years of the date of spudding the well; (4) placement of a pipeline in an approved right-of-way corridor where the corridor was approved within five years of the date of placement; and (5) maintenance of a minor activity, other than any construction or major renovation of a building or facility.[[284]](#footnote-285)281

1. **Refinery Revitalization**

1. **Introduction**

The Act provided authority for the EPA Administrator to enter into a refinery permitting cooperative agreements with the governor of a state to streamline the environmental permitting process and assist states in hiring personnel to complete state permitting reviews.[[285]](#footnote-286)282

1. **Findings and Definitions**

Under the Act, Congress concluded that it is in the national interest to increase petroleum refining capacity for gasoline, heating ***oil***, and various petrochemical products to bring more supply to the market.[[286]](#footnote-287)283 At the time of the Act, demand for refined petroleum products exceeded the supply, resulting in increased imports projected to grow from 7.9% to 10.7% of total refined product by 2025.[[287]](#footnote-288)284 Refiners are subject to significant environmental and other regulatory requirements and face several new requirements over the next decade, including requirements under the Clean Air Act.[[288]](#footnote-289)285 The Act calls for better coordination between federal and state regulatory agencies for siting, permitting and construction of new refineries in an effort to meet the demand in the United States for refined products.[[289]](#footnote-290)286

1. **Federal-State Regulatory Coordination and Assistance**

Upon the request of a governor of a state, the Act authorizes the EPA Administrator to enter into a cooperative agreement with a state for permitting of a new refinery.[[290]](#footnote-291)287 The agreement is to recognize steps, including a timeline, that are needed to streamline the consideration of federal and state environmental permits for a new refinery. The Administrator is authorized to accept a consolidated application from the refiner for all permits required from the EPA, enter into an MOU with other federal agencies to coordinate consideration of refinery applications and permits for the facility, and enter into a MOU with the state to coordinate concurrent review of federal and state permit applications.[[291]](#footnote-292)288 The Administrator also has authority to provide technical and legal assistance to the state, as well as financial assistance to hire additional personnel in relevant fields to assist in consideration of refinery permits.[[292]](#footnote-293)289

Regulation of the Gas Industry

Copyright 2024, Matthew Bender & Company, Inc., a member of the LexisNexis Group.

**End of Document**

1. 115 U.S.C. § 717b. [↑](#footnote-ref-2)
2. 2Chapter 14 of this Treatise, “FERC Compliance and Enforcement Developments Affecting the Energy Industry,” contains further information on FERC’s enforcement responsibilities pursuant to the Act. [↑](#footnote-ref-3)
3. 342 U.S.C. § 6201 *et seq.* [↑](#footnote-ref-4)
4. 442 U.S.C. §§ 6212a–6217. [↑](#footnote-ref-5)
5. 542 U.S.C. §§ 6231–6247b. [↑](#footnote-ref-6)
6. 642 U.S.C. §§ 6249–6249c. [↑](#footnote-ref-7)
7. 742 U.S.C. §§ 6250–6250e. [↑](#footnote-ref-8)
8. 842 U.S.C. § 6240(c). [↑](#footnote-ref-9)
9. 9Weaver’s Cove Energy, LLC v. Rhode Island Coastal Resources Management Council, 589 F.3d 458, 474 (1st Cir. 2009) (preempting application of a state law that delayed and was being applied to block final licensing of an LNG terminal); AES Sparrows Point LNG, LLC v. Smith, 527 F.3d 120, 122, 127 (4th Cir. 2008) (preempting a local zoning law that would have blocked construction of an LNG facility); Dominion Transmission v. Myersville Town Council, 982 F. Supp. 2d 570, 577 (D. Md. 2013) (“[T]he field of NGA’s preemptive power was extended to the construction and siting of natural gas facilities by a 2005 amendment.”). Courts have historically recognized the general preemptive power of the Natural Gas Act. *See* Schneidewind v. ANR Pipeline Co., 485 U.S. 293, 300 (1988); Transcontinental Gas Pipe Line Corp. v. State ***Oil*** & Gas Bd., 474 U.S. 409, 425 (1986); Northern Natural Gas Co. v. State Corp. Comm’n, 372 U.S. 84, 89 (1963); Maryland v. Louisiana, 451 U.S. 725, 749–752 (1981); Exxon Corp. v. Eagerton, 462 U.S. 176, 184 (1983). [↑](#footnote-ref-10)
10. 1033 U.S.C. § 1251 *et seq*. [↑](#footnote-ref-11)
11. 1142 U.S.C. § 7401 *et seq*. [↑](#footnote-ref-12)
12. 1216 U.S.C. § 1451 *et seq*. [↑](#footnote-ref-13)
13. 1315 U.S.C. § 717b(d) (providing a savings clause for local laws and regulations promulgated pursuant to enumerated federal laws). *See* Joseph T. Kelliher, Chairman, Federal Energy Regulatory Commission, Editorial, *Energy Bill Expands State Inspection Powers*, Wall St. J., Aug. 8, 2005, at A11 (“In addition to applicable state and local laws, the states have federal authority delegated to them under the Coastal Zone Management Act, the Clean Air Act and the Federal Water Pollution Control Act (Clean Water Act). These authorities remain unchanged, and under any of those federal statutes, the states can effectively veto a proposed LNG facility regardless of any FERC decision under the Natural Gas Act.”). [↑](#footnote-ref-14)
14. 14Hackberry LNG Terminal, L.L.C., 101 FERC ¶ 61,294 (2002), *order issuing certificates & on reh’g*, 104 FERC ¶ 61,269 (2003). [↑](#footnote-ref-15)
15. 15Hackberry LNG Terminal, L.L.C., 101 FERC ¶ 61,294, at P 3 (2002), *order issuing certificates & on reh’g*, 104 FERC ¶ 61,269 (2003). [↑](#footnote-ref-16)
16. 16Hackberry LNG Terminal, L.L.C., 101 FERC ¶ 61,294, at P 3, 26 (2002), *order issuing certificates & on reh’g*, 104 FERC ¶ 61,269 (2003). [↑](#footnote-ref-17)
17. 17Hackberry LNG Terminal, L.L.C., 101 FERC ¶ 61,294, at P 3, 26 (2002), *order issuing certificates & on reh’g*, 104 FERC ¶ 61,269 (2003). [↑](#footnote-ref-18)
18. 18*See, e.g.,* Freeport LNG Development, L.P., 107 FERC ¶ 61,278 (2004); Sabine Pass LNG, L.P., 109 FERC ¶ 61,324 (2004); Corpus Christi LNG, L.P., 111 FERC ¶ 61,081 (2005); Golden Pass Terminal LP, 112 FERC ¶ 61,041 (2005); Ingleside Energy Center, LLC, 112 FERC ¶ 61,101 (2005). [↑](#footnote-ref-19)
19. 18.115 U.S.C. § 717b(e)(3)(B)(ii). [↑](#footnote-ref-20)
20. 192005 Energy Policy Act § 311(e)(3)(C). [↑](#footnote-ref-21)
21. 20Southern LNG Inc., 131 FERC ¶ 61,155, at P 13 n.14 (2010) (stating that NGA § 3(e)(3)(B)(ii)(II) does not limit the FERC’s authority to constrain trucking import and export operations at LNG terminals). [↑](#footnote-ref-22)
22. 21*See* 2005 Energy Policy Act § 311(e)(4). [↑](#footnote-ref-23)
23. 222005 Energy Policy Act §§ 311(f)(2)–(3). [↑](#footnote-ref-24)
24. 23The regulation of LNG import facilities located offshore and beyond state waters is covered by the Deepwater Port Act of 1974 (DPA), as amended by the Maritime Transportation Security Act of 2002. 33 U.S.C. § 1503 (2005). Regulatory authority under the DPA is shared by the United States Department of Transportation’s Maritime Administration and the U.S. Coast Guard, which is now part of the Department of Homeland Security. [↑](#footnote-ref-25)
25. 24Sound Energy Solutions, 106 FERC ¶ 61,279, at P 26 (2004). [↑](#footnote-ref-26)
26. 25*See* The Energy Policy Act of 2005: Hearings Before the Subcommittee on Energy and Air Quality of the House of Representatives Committee on Energy and Commerce, 109th Cong. 31 (2005) (statement of Cynthia A. Marlette, General Counsel, Federal Energy Regulatory Commission) (“The Commission currently is involved in litigation in the U.S. Court of Appeals for the 9th Circuit with respect to the scope of its authority to site LNG terminal facilities. Legislation could end regulatory uncertainty by clarifying the Commission’s authority in this area. A single federal agency should have the statutory authority to determine whether a specific proposal for LNG infrastructure development is in the public interest.”); Joseph T. Kelliher, Chairman, Federal Energy Regulatory Commission, Editorial, *Energy Bill Expands State Inspection Powers*, Wall St. J., Aug. 8, 2005, at A11 (“What the energy bill does is affirm the Federal Energy Regulatory Commission’s long-standing exclusive Natural Gas Act authority to authorize LNG import terminals. This was challenged by the California Public Utilities Commission in a case now pending before the Ninth Circuit. This lawsuit threatened to bring the development of LNG import facilities to a standstill, which is why Congress acted. By affirming FERC’s authority under the Natural Gas Act, the legislation resolves the regulatory uncertainty created by the commission’s challenge to FERC’s established authority. In short, the new law maintains the status quo that existed before the legal challenge.”). [↑](#footnote-ref-27)
27. 26Californians for Renewable Energy, Inc. v. FERC, Nos. 04-73650, 04-75240 (9th Cir. Oct. 6, 2005) (construing CPUC response as motion for voluntary dismissal and dismissing). [↑](#footnote-ref-28)
28. 26.12005 Energy Policy Act § 311. [↑](#footnote-ref-29)
29. 272005 Energy Policy Act § 311; *see* Sabine Pass Liquefacation, LLC et al., 139 FERC ¶ 61,039, at P 27 (2012) (recognizing the Commission’s authority to approve or deny applications for LNG import and export facilities). [↑](#footnote-ref-30)
30. 28*See* 18 C.F.R. § 157.21 (providing procedures for pre-filing process under Section 7 of the Natural Gas Act); *see also* 18 C.F.R. § 153.12 (noting that the procedures included in Section 157.21 also would apply to Section 3 applicants); *Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities*, Order No. 665, at P 3 n.4 (2005) (*Pre-Filing Rule*) (noting that FERC had implemented additional staff guidance to make the process workable in past). [↑](#footnote-ref-31)
31. 292005 Energy Policy Act § 311(d). [↑](#footnote-ref-32)
32. 302005 Energy Policy Act § 311(d). [↑](#footnote-ref-33)
33. 31*Pre-Filing Rule*, Order No. 665. The regulations describing the procedure are now included in 18 C.F.R. § 157.21 (applying specifically to NGA § 7 projects); 18 C.F.R. § 153.12 notes that the regulations included in § 157.21 apply to projects under Section 3, such as LNG terminals. [↑](#footnote-ref-34)
34. 31.12005 Energy Policy Act § 311(d). [↑](#footnote-ref-35)
35. 32State and local safety considerations include: “(1) the kind and use of the facility; (2) the existing and projected population and demographic characteristics of the location; (3) the existing and proposed land use near the location; (4) the natural and physical aspects of the location; (5) the emergency response capabilities near the facility location; and (6) the need to encourage remote siting.” 2005 Energy Policy Act § 311(d). [↑](#footnote-ref-36)
36. 332005 Energy Policy Act § 311(d). [↑](#footnote-ref-37)
37. 342005 Energy Policy Act § 311(d). [↑](#footnote-ref-38)
38. 352005 Energy Policy Act § 311(d). [↑](#footnote-ref-39)
39. 362005 Energy Policy Act § 311(d). [↑](#footnote-ref-40)
40. 372005 Energy Policy Act § 311(d). [↑](#footnote-ref-41)
41. 382005 Energy Policy Act § 311(d). [↑](#footnote-ref-42)
42. 392005 Energy Policy Act § 311(d). [↑](#footnote-ref-43)
43. 402005 Energy Policy Act § 313(a). [↑](#footnote-ref-44)
44. 412005 Energy Policy Act § 313(a). [↑](#footnote-ref-45)
45. 422005 Energy Policy Act § 313(a). [↑](#footnote-ref-46)
46. 432005 Energy Policy Act § 313(b) (providing for new NGA provisions included at 15 U.S.C. § 717r(d)(2)–(3)). [↑](#footnote-ref-47)
47. 442005 Energy Policy Act § 313(b) (providing for new NGA provisions included at 15 U.S.C. § 717r(d)(1)). [↑](#footnote-ref-48)
48. 452005 Energy Policy Act § 313(a). [↑](#footnote-ref-49)
49. 462005 Energy Policy Act § 313(a). *See also* 16 U.S.C. § 1451. [↑](#footnote-ref-50)
50. 472005 Energy Policy Act § 313(a). [↑](#footnote-ref-51)
51. 482005 Energy Policy Act § 317. [↑](#footnote-ref-52)
52. 49*E.g.,* Starks Gas Storage, 111 FERC ¶ 61,105, at P 35, *reh’g denied*, 111 FERC ¶ 61,484 (2005). [↑](#footnote-ref-53)
53. 50*Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, at P 102 (2006) (implementing 2005 Energy Policy Act § 312); 18 C.F.R. § 284.505 (regulations required by 2005 Energy Policy Act § 312); Mississippi Hub, 132 FERC ¶ 61,011, at P 21 (2010) (approving application to charge market-based rates after finding that statutory criteria were satisfied); Northern Natural Gas Co., 134 FERC ¶ 61,247 (2011) (denying application to charge market-based rates after finding that statutory criteria were not satisfied). [↑](#footnote-ref-54)
54. 51Northern Natural Gas Co., 143 FERC ¶ 61,044, at P 7 (2013) (determining that storage capacity is “new” when it is above an applicant’s currently-certified working gas level), *aff’d*, Northern Natural Gas Co. v. FERC, 700 F.3d 11 (D.C. Cir. 2012). [↑](#footnote-ref-55)
55. 522005 Energy Policy Act § 312. [↑](#footnote-ref-56)
56. 53Northern Natural Gas Co., 134 FERC ¶ 61,247, at P 19 (2011). [↑](#footnote-ref-57)
57. 542005 Energy Policy Act §§ 321–323. [↑](#footnote-ref-58)
58. 55Located north of Los Angeles and Ventura Counties. [↑](#footnote-ref-59)
59. 562005 Energy Policy Act § 331(a). The Act excludes two portions of the Naval Petroleum Reserve Numbered 2 from the transfer: (1) a portion authorized for disposal under Section 3403(a) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 and (2) a 220-acre surface estate conveyed to the City of Taft, California. 2005 Energy Policy Act § 331(b). The federal government reserved all mineral rights to such land, without surface use or occupancy rights. 2005 Energy Policy Act § 333(d). [↑](#footnote-ref-60)
60. 572005 Energy Policy Act § 331(c)(1). [↑](#footnote-ref-61)
61. 582005 Energy Policy Act § 331(c)(2). [↑](#footnote-ref-62)
62. 592005 Energy Policy Act § 332(a)–(b). The lease revenue account must fund all costs and expenses related to investigations, remediation, compliance actions, response, waste management, impediments, fines or penalties related to surface or subsurface conditions that existed prior to the land transfer, as well as any future remediation necessary as a result of any pre-transfer activities. 2005 Energy Policy Act § 331(b). [↑](#footnote-ref-63)
63. 602005 Energy Policy Act § 331(b)(2). [↑](#footnote-ref-64)
64. 612005 Energy Policy Act § 331(c). [↑](#footnote-ref-65)
65. 622005 Energy Policy Act § 331(c). [↑](#footnote-ref-66)
66. 63Department of Energy, Office of Fossil Energy, Naval Petroleum Reserves: Divestment Activities (online resource sheet, last accessed May 2020), *available at* http://energy.gov/fe/services/petroleum-reserves/naval-petroleum-reserves. [↑](#footnote-ref-67)
67. 64The Mineral Leasing Act provides that “all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as ‘miscellaneous receipts.’ ” Mineral Leasing Act, 30 U.S.C. § 191. Otherwise, the funds are paid, in part, to the state treasuries and, in part, to the reclamation fund. Mineral Leasing Act, 30 U.S.C. § 191. [↑](#footnote-ref-68)
68. 652005 Energy Policy Act § 342(b); *see* Termination of the Royalty-in-Kind (RIK) Eligible Refiner Program, 75 Fed. Reg. 15,725 (Mar. 30, 2010) (terminating the RIK Eligible Refiner Program at the discretion of the Secretary of the Interior). [↑](#footnote-ref-69)
69. 662005 Energy Policy Act § 342(d). [↑](#footnote-ref-70)
70. 672005 Energy Policy Act §§ 342(b)(4)–(5). [↑](#footnote-ref-71)
71. 682005 Energy Policy Act § 342(g). [↑](#footnote-ref-72)
72. 692005 Energy Policy Act § 342(g). [↑](#footnote-ref-73)
73. 702005 Energy Policy Act § 342(h)(1). [↑](#footnote-ref-74)
74. 712005 Energy Policy Act § 342(h)(1). [↑](#footnote-ref-75)
75. 722005 Energy Policy Act § 342(h)(1). [↑](#footnote-ref-76)
76. 732005 Energy Policy Act § 342(h)(1). [↑](#footnote-ref-77)
77. 742005 Energy Policy Act § 342(h)(2). [↑](#footnote-ref-78)
78. 752005 Energy Policy Act § 342(j). [↑](#footnote-ref-79)
79. 762005 Energy Policy Act § 342(j)(2). *See also* Government Reports Elimination Act of 2014, Pub. L. No. 113-188, § 1101 (eliminating the reporting requirements set forth in § 342(e) of the 2005 Energy Policy Act). [↑](#footnote-ref-80)
80. 77The Energy Policy Act of 2005: Hearings Before the Subcommittee on Energy and Air Quality of the House of Representatives Committee on Energy and Commerce, 109th Cong. 3-5 (2005) (prepared Statement of Victor Carrillo, Chairman, Texas Railroad Commission). [↑](#footnote-ref-81)
81. 78The Energy Policy Act of 2005: Hearings Before the Subcommittee on Energy and Air Quality of the House of Representatives Committee on Energy and Commerce, 109th Cong. 3-5 (2005) (prepared Statement of Victor Carrillo, Chairman, Texas Railroad Commission). [↑](#footnote-ref-82)
82. 792005 Energy Policy Act § 343(a). [↑](#footnote-ref-83)
83. 802005 Energy Policy Act § 343(a). The most recent three months of production are used for calculating the average daily production rates. 2005 Energy Policy Act § 343(a). [↑](#footnote-ref-84)
84. 81Defined as the West Texas Intermediate (WTI) spot price at Cushing, Oklahoma. [↑](#footnote-ref-85)
85. 82Defined as the natural gas price at Henry Hub, Louisiana. [↑](#footnote-ref-86)
86. 832005 Energy Policy Act § 343(b). [↑](#footnote-ref-87)
87. 842005 Energy Policy Act § 343(c). [↑](#footnote-ref-88)
88. 852005 Energy Policy Act § 343(d). [↑](#footnote-ref-89)
89. 862005 Energy Policy Act § 343(e)(2). If the Secretary of the Interior determines that it is not practicable to issue such regulations, the Secretary must provide a report to Congress explaining that determination. 2005 Energy Policy Act § 343(e)(2). [↑](#footnote-ref-90)
90. 872005 Energy Policy Act § 343(e)(4)(A)–(H). [↑](#footnote-ref-91)
91. 882005 Energy Policy Act § 343(e)(1). [↑](#footnote-ref-92)
92. 89Promotion of Development, Reduction of Royalty Rates for Stripper Well and Heavy ***Oil*** Properties, 75 Fed. Reg. 61624–01 (Oct. 6, 2010) (deferring to EPAct’s statutory standards and requirements, but recognizing the Secretary of the Interior’s authority to issue royalty relief regulations different from those provided by Congress); ***Oil*** and Gas Leasing: Onshore ***Oil*** and Gas Operations—Fees, Rentals, and Royalty, 71 Fed. Reg. 71187–02 (Dec. 8, 2006) (providing notice of the termination of the stripper well royalty reductions program, replaced by EPAct’s Marginal Property Production Incentives Program). [↑](#footnote-ref-93)
93. 90Suspension volumes must not be less than 35 Bcf. 2005 Energy Policy Act § 344(a)(2). [↑](#footnote-ref-94)
94. 912005 Energy Policy Act § 344(a)(1). [↑](#footnote-ref-95)
95. 922005 Energy Policy Act § 344(a)(1). [↑](#footnote-ref-96)
96. 932005 Energy Policy Act § 344(a)(3). [↑](#footnote-ref-97)
97. 94Geoffrey Health, Dep’t of the Interior, *Royalty Relief and Incentives*, 1 Rocky Mountain Mineral Law Foundation Paper No. 10A, at n. 8 (2007). [↑](#footnote-ref-98)
98. 952005 Energy Policy Act §§ 344(b), 345. [↑](#footnote-ref-99)
99. 96Royalty Relief: Ultra-Deep Gas Wells and Deep Gas Wells on Leases in the Gulf of Mexico; Extension of Royalty Relief Provisions to Leases Offshore of Alaska, 73 Fed. Reg. 69490–01 (Nov. 18, 2008) (codified at 30 C.F.R. Ch. II § 203). For further reference, see *Reorganization of Title 30:* *Bureaus of Safety and Environmental Enforcement and Ocean Energy Management*, 76 Fed. Reg. 64432–01, at § 203.1 (Oct. 18, 2011). [↑](#footnote-ref-100)
100. 97Royalty Relief: Ultra-Deep Gas Wells and Deep Gas Wells on Leases in the Gulf of Mexico; Extension of Royalty Relief Provisions to Leases Offshore of Alaska, 73 Fed. Reg. 69490–01 (Nov. 18, 2008) (codified at 30 C.F.R. Ch. II § 203). [↑](#footnote-ref-101)
101. 982005 Energy Policy Act § 347 (amending 42 U.S.C. § 6501 *et seq*.); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-102)
102. 992005 Energy Policy Act § 347 (amending 42 U.S.C. § 6508); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-103)
103. 1002005 Energy Policy Act § 347 (amending 42 U.S.C. § 6508); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-104)
104. 1012005 Energy Policy Act § 347 (amending 42 U.S.C. § 6508); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-105)
105. 1022005 Energy Policy Act § 347 (amending 42 U.S.C. § 6508); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-106)
106. 1032005 Energy Policy Act § 347 (amending 42 U.S.C. § 6508); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-107)
107. 1042005 Energy Policy Act § 347 (amending 42 U.S.C. § 6508); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-108)
108. 1052005 Energy Policy Act § 347 (amending 42 U.S.C. § 6508); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-109)
109. 1062005 Energy Policy Act § 347 (amending 42 U.S.C. § 6508); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-110)
110. 1072005 Energy Policy Act § 347 (amending 42 U.S.C. § 6508); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-111)
111. 1082005 Energy Policy Act § 347 (amending 42 U.S.C. § 6508); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-112)
112. 1092005 Energy Policy Act § 347 (amending 42 U.S.C. § 6508); ***Oil*** and Gas Leasing; National Petroleum Reserve—Alaska, 73 Fed. Reg. 6431 (Feb. 4, 2008) (amending 43 C.F.R. Pt. 3130 to align administrative procedures with EPAct 2005). [↑](#footnote-ref-113)
113. 1102005 Energy Policy Act § 348(a). [↑](#footnote-ref-114)
114. 1112005 Energy Policy Act § 348(b). The specific minimum objectives include: (1) identify and prioritize information needs for inventory, monitoring, and research activities; (2) develop an understanding of information needs; (3) focus on prioritization of natural resource management and ecosystem information; (4) coordinate ongoing and future inventory, monitoring, and research activities to minimize duplication of effort, and share financial resources and expertise; (5) identify priority needs and develop a funding strategy; (6) provide a consistent approach to high caliber science; (7) maintain and improve access to research and knowledge; and (8) ensure through peer review that science is of the highest technical quality. 2005 Energy Policy Act §§ 348(c)(1)–(8). [↑](#footnote-ref-115)
115. 1122005 Energy Policy Act § 348(d). [↑](#footnote-ref-116)
116. 1132005 Energy Policy Act § 348(e). This reporting requirement was not affected by the Government Reports Elimination Act of 2014. [↑](#footnote-ref-117)
117. 1142005 Energy Policy Act § 348(f). [↑](#footnote-ref-118)
118. 115The Energy Policy Act of 2005: Hearings Before the Subcommittee on Energy and Air Quality of the House of Representatives Committee on Energy and Commerce, 109th Cong. 3-5 (2005) (prepared Statement of Victor Carrillo, Chairman, Texas Railroad Commission). [↑](#footnote-ref-119)
119. 116The Energy Policy Act of 2005: Hearings Before the Subcommittee on Energy and Air Quality of the House of Representatives Committee on Energy and Commerce, 109th Cong. 3-5 (2005) (prepared Statement of Victor Carrillo, Chairman, Texas Railroad Commission). [↑](#footnote-ref-120)
120. 1172005 Energy Policy Act §§ 349(a), (f). [↑](#footnote-ref-121)
121. 118Instruction Memorandum from the Assistant Director of Minerals & Realty Management, Department of the Interior, to Alaska State Director, *Federal Reimbursement for Orphaned Well Reclamation—Section 349(f) of the Energy Policy Act (EPAct)*, (Feb. 15, 2008) (establishing procedure for a pilot program for orphaned wells on Federal lands in Alaska). [↑](#footnote-ref-122)
122. 1192005 Energy Policy Act § 349(d). [↑](#footnote-ref-123)
123. 1202005 Energy Policy Act § 349(h). [↑](#footnote-ref-124)
124. 1212005 Energy Policy Act § 349(f)(1). [↑](#footnote-ref-125)
125. 1222005 Energy Policy Act § 349(f)(1). [↑](#footnote-ref-126)
126. 1232005 Energy Policy Act § 349(f)(1). [↑](#footnote-ref-127)
127. 1242005 Energy Policy Act § 349(f)(2); Instruction Memorandum from the Assistant Director of Minerals & Realty Management, Department of the Interior, to Alaska State Director, *Federal Reimbursement for Orphaned Well Reclamation—Section 349(f) of the Energy Policy Act (EPAct)* (Feb. 15, 2008) (establishing procedure for a pilot program for orphaned wells on Federal lands in Alaska). [↑](#footnote-ref-128)
128. 125*Compare* 2005 Energy Policy Act § 349(f)(1)(B), *with* 2005 Energy Policy Act § 349(f)(2)(B). [↑](#footnote-ref-129)
129. 1262005 Energy Policy Act § 349(g); The Department of Energy entered into a cooperative agreement with the Interstate ***Oil*** and Gas Compact Commission to plan the implementation relevant provisions of EPAct 2005 Section 349. For detailed information on the requirements of the technical and financial assistance program see ***Oil*** *& Natural Gas Technology, Final Report, Technology’s Impact on Production*, Submitted by IOGCC to DOE (Mar. 17, 2010). [↑](#footnote-ref-130)
130. 1272005 Energy Policy Act § 349(g)(3). [↑](#footnote-ref-131)
131. 1282005 Energy Policy Act § 349(h). [↑](#footnote-ref-132)
132. 12930 U.S.C. § 226(b)(2). [↑](#footnote-ref-133)
133. 1302005 Energy Policy Act § 350(a). [↑](#footnote-ref-134)
134. 1312005 Energy Policy Act § 350(a). [↑](#footnote-ref-135)
135. 1322005 Energy Policy Act § 350(a). [↑](#footnote-ref-136)
136. 1332005 Energy Policy Act § 351(d) [↑](#footnote-ref-137)
137. 1342005 Energy Policy Act § 351(b). [↑](#footnote-ref-138)
138. 1352005 Energy Policy Act § 351(c); United States Geological Survey, Implementation Plan for the National Geological and Geophysical Data Preservation Program (Oct. 10, 2006). [↑](#footnote-ref-139)
139. 1362005 Energy Policy Act § 351(e). [↑](#footnote-ref-140)
140. 13743 U.S.C. § 31a *et seq*. [↑](#footnote-ref-141)
141. 1382005 Energy Policy Act § 351(f). [↑](#footnote-ref-142)
142. 1392005 Energy Policy Act § 351(k). [↑](#footnote-ref-143)
143. 1402005 Energy Policy Act §§ 351(g)(3)–(4). [↑](#footnote-ref-144)
144. 1412005 Energy Policy Act §§ 351(g)(1)–(2). [↑](#footnote-ref-145)
145. 1422005 Energy Policy Act § 351(i). [↑](#footnote-ref-146)
146. 14330 U.S.C. § 184(d)(1). [↑](#footnote-ref-147)
147. 1442005 Energy Policy Act § 352. [↑](#footnote-ref-148)
148. 1452005 Energy Policy Act §§ 353(a)–(b); The Department of the Interior proposed a rulemaking in 2006, but withdrew it five months later. Gas Hydrate Production Incentives, 71 Fed. Reg. 11559 (Proposed Mar. 8, 2006) (Withdrawn on Aug. 4, 2006). The agency has not made an additional rulemaking proposal under EPAct 2005 §§ 353(a)–(b). [↑](#footnote-ref-149)
149. 1462005 Energy Policy Act § 353(b)(3). [↑](#footnote-ref-150)
150. 147Royalty suspension volume means a volume of production from a lease that is not subject to royalty under the provisions of this part. 30 U.S.C. § 203. [↑](#footnote-ref-151)
151. 1482005 Energy Policy Act § 353(b)(3). [↑](#footnote-ref-152)
152. 1492005 Energy Policy Act § 353(b)(3). [↑](#footnote-ref-153)
153. 1502005 Energy Policy Act § 353(b)(4). [↑](#footnote-ref-154)
154. 1512005 Energy Policy Act § 353(e). [↑](#footnote-ref-155)
155. 1522005 Energy Policy Act § 354(a). [↑](#footnote-ref-156)
156. 1532005 Energy Policy Act § 354(b). [↑](#footnote-ref-157)
157. 1542005 Energy Policy Act § 354(b)(4). [↑](#footnote-ref-158)
158. 1552005 Energy Policy Act § 354(b)(5). [↑](#footnote-ref-159)
159. 1562005 Energy Policy Act § 354(c); The Secretary of Energy established the competitive grant program. Funding Opportunity Announcement DE-PS26-06NT15430, Enhanced ***Oil*** and Natural Gas Production Through Carbon Dioxide Injection, 71 Fed. Reg. 4903 (Proposed Jan. 30, 2006) (posted as an available grant on Feb. 1, 2006). The grant is no longer available. Informal *Correspondence with The Department of Energy, National Energy Technology Laboratory* and *Office of Fossil Energy* (2020) (on file with the author). [↑](#footnote-ref-160)
160. 157*See* U.S. Department of Energy Announces $110M for Carbon Capture, Utilization and Storage, *available at* https://www.energy.gov/articles/us-department-energy-announces-110m-carbon-capture-utilization-and-storage (last accessed July 9, 2020). [↑](#footnote-ref-161)
161. 158FOA 2058: Front-End Engineering Design (FEED) Studies for Carbon Capture Systems on Coal and Natural Gas Power Plants, *available at* https://www.energy.gov/fe/foa-2058-front-end-engineering-design-feed-studies-carbon-capture-systems-coal-and-natural-gas (last accessed July 9, 2020). *See also* New Mexico Tech Gets $17M DOE Grant to Study San Juan Carbon Sequestration, *available at* https://www.enchantenergy.com/new-mexico-tech-gets-17m-doe-grant-to-study-san-juan-carbon-sequestration/ (last accessed July 9, 2020). [↑](#footnote-ref-162)
162. 1592005 Energy Policy Act §§ 354(c)(4)(A)–(B). [↑](#footnote-ref-163)
163. 1602005 Energy Policy Act §§ 354(c)(5)–(6). [↑](#footnote-ref-164)
164. 1612005 Energy Policy Act § 355(b). [↑](#footnote-ref-165)
165. 1622005 Energy Policy Act § 355(b). [↑](#footnote-ref-166)
166. 1632005 Energy Policy Act § 355(b). [↑](#footnote-ref-167)
167. 164Department of Energy, Report to Congress: Assessment of Dependence of State of Hawaii on ***Oil*** (Dec. 2008). [↑](#footnote-ref-168)
168. 1652005 Energy Policy Act § 356. [↑](#footnote-ref-169)
169. 1662005 Energy Policy Act § 356(b). [↑](#footnote-ref-170)
170. 1672005 Energy Policy Act § 356(c). [↑](#footnote-ref-171)
171. 1682005 Energy Policy Act § 357. [↑](#footnote-ref-172)
172. 169Minerals Management Service, Department of the Interior, Report to Congress: Comprehensive Inventory of U.S. OCS ***Oil*** and Natural Gas Resources (Feb. 2006). [↑](#footnote-ref-173)
173. 170Minerals Management Service, Department of the Interior, Report to Congress: Comprehensive Inventory of U.S. OCS ***Oil*** and Natural Gas Resources (Feb. 2006). [↑](#footnote-ref-174)
174. 1712005 Energy Policy Act § 357(a); Minerals Management Service, Department of the Interior, Report to Congress: Comprehensive Inventory of U.S. OCS ***Oil*** and Natural Gas Resources (Feb. 2006). [↑](#footnote-ref-175)
175. 172U.S. Department of the Interior, Secretarial Order 3299, “Establishment of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue,” issued May 19, 2010, *available at* https://www.doi.gov/sites/doi.gov/files/elips/documents/archived-3299\_-establishment\_of\_the\_bureau\_of\_ocean\_energy\_management\_the\_bureau\_of\_safety\_and\_environmental\_enforcement\_and\_the\_office\_of\_natural\_resources\_revenue.pdf (last accessed July 9, 2020). [↑](#footnote-ref-176)
176. 173Bureau of Ocean Energy Management, Department of the Interior, Report to Congress: Comprehensive Inventory of U.S. OCS ***Oil*** and Natural Gas Resources: 2018 Update, *available at* https://www.boem.gov/sites/default/files/***oil***-and-gas-energy-program/Resource-Evaluation/Resource-Assessment/Comprehensive-Inventory-Report-2018-Delivered-to-Congress.pdf (last accessed May 31, 2020). [↑](#footnote-ref-177)
177. 1742005 Energy Policy Act § 362(b). [↑](#footnote-ref-178)
178. 1752005 Energy Policy Act § 369. [↑](#footnote-ref-179)
179. 1762005 Energy Policy Act § 361. [↑](#footnote-ref-180)
180. 1772005 Energy Policy Act § 361(b). Under § 361(b) of the Act, the report issued to Congress is required to include a description of actions taken under Section 3 of Executive Order No. 13,212, 42 U.S.C. § 13201 (2003). Section 3 of Executive Order 13,212 established an Interagency Task Force within the Department of Energy to, in part, “monitor and assist the agencies in their efforts to expedite their reviews of permits or similar actions, as necessary, to accelerate the completion of energy-related projects (including pipeline safety projects), increase energy production and conservation, and improve the transmission of energy.” [↑](#footnote-ref-181)
181. 178US Department of Agriculture and US Department of the Interior, ***Oil*** and Gas Leasing on Lands Administered by the Dixie National Forest, Final Environmental Impact Statement (Aug. 2011). [↑](#footnote-ref-182)
182. 1792005 Energy Policy Act § 362. [↑](#footnote-ref-183)
183. 180The Secretary of the Interior must comply with environmental review requirement under NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C). 2005 Energy Policy Act § 362(a)(1)(A). [↑](#footnote-ref-184)
184. 181The Secretary of the Interior must also improve consultation and coordination with the states and the public. 2005 Energy Policy Act § 362(a)(1)(B). [↑](#footnote-ref-185)
185. 1822005 Energy Policy Act § 362(c). [↑](#footnote-ref-186)
186. 1832005 Energy Policy Act § 362(d). [↑](#footnote-ref-187)
187. 18430 U.S.C. § 181 *et seq.*; 2005 Energy Policy Act § 362(b)(1)(A); Instruction Memorandum from Director of Bureau of Land Management, Department of the Interior, to All Field Officials, Integration of Best Management Practices into Application for Permit to Drill Approvals and Associated Rights-of-Way (Nov. 8, 2006). The Bureau of Land Management provides technical and informational resources related to its Best Management Practices. Those resources are located on the “***Oil*** and Gas” section of the U.S. Department of the Interior, Bureau of Land Management website, *available at* http://www.blm.gov/wo/st/en/prog/energy/***oil***\_and\_gas/best\_management\_practices.html. [↑](#footnote-ref-188)
188. 1852005 Energy Policy Act § 362(b)(3). [↑](#footnote-ref-189)
189. 1862005 Energy Policy Act § 363. [↑](#footnote-ref-190)
190. 1872005 Energy Policy Act § 363(b). [↑](#footnote-ref-191)
191. 1882005 Energy Policy Act § 363(b)(3)(C). [↑](#footnote-ref-192)
192. 18942 U.S.C. § 6217(b). [↑](#footnote-ref-193)
193. 1902005 Energy Policy Act § 364. [↑](#footnote-ref-194)
194. 191*See* 2005 Energy Policy Act § 365(d), amending subsection (d) of the Energy Act of 2000. [↑](#footnote-ref-195)
195. 192U.S. Departments of the Interior, Agriculture, and Energy, *Inventory of Onshore Federal* ***Oil*** *and Natural Gas Resources and Restrictions to Their Development, Phase III Inventory—Onshore United States* (2008). [↑](#footnote-ref-196)
196. 1932005 Energy Policy Act § 365. [↑](#footnote-ref-197)
197. 194Memorandum of Understanding among the USDA, DOI, and EPA Regarding Air Quality Analyses and Mitigation for Federal ***Oil*** and Gas Decisions Through the National Environmental Policy Act Process, (June 23, 2011) (recognizing the need for clear communication between agencies as they oversee the increased demand for ***oil*** and gas development and air quality protections). The Secretary of the Interior may also request that the governors of Wyoming, Montana, Colorado, Utah and New Mexico serve as signatories to the MOU. 2005 Energy Policy Act § 365(b)(2). [↑](#footnote-ref-198)
198. 19516 U.S.C. § 1536. [↑](#footnote-ref-199)
199. 19633 U.S.C. § 1344. [↑](#footnote-ref-200)
200. 19742 U.S.C. § 7401 *et seq.* [↑](#footnote-ref-201)
201. 19816 U.S.C. § 472a *et seq.* [↑](#footnote-ref-202)
202. 199The Act designated the following BLM Field Offices as Pilot Project offices: Rawlins, Wyoming; Buffalo, Wyoming; Miles City, Montana; Farmington, New Mexico; Carlsbad, New Mexico; Grand Junction/Glenwood Springs, Colorado; and Vernal, Utah. 2005 Energy Policy Act § 365(d). [↑](#footnote-ref-203)
203. 20030 U.S.C. § 191 (subsequent to EPAct 2005, this provision of the USC was extended twice by the following Public Laws: 113-67 and 113-291). [↑](#footnote-ref-204)
204. 2012005 Energy Policy Act § 365(g). [↑](#footnote-ref-205)
205. 20230 U.S.C. § 226. The additional language was added in § 226(p). 30 U.S.C. § 226 was extended by Pub. L. No. 113-291. [↑](#footnote-ref-206)
206. 2032005 Energy Policy Act § 366. [↑](#footnote-ref-207)
207. 2042005 Energy Policy Act § 366. [↑](#footnote-ref-208)
208. 2052005 Energy Policy Act § 366. [↑](#footnote-ref-209)
209. 2062005 Energy Policy Act § 366. [↑](#footnote-ref-210)
210. 2072005 Energy Policy Act § 366. [↑](#footnote-ref-211)
211. 2082005 Energy Policy Act § 367. [↑](#footnote-ref-212)
212. 2092005 Energy Policy Act § 367; Update of Linear Right-of-Way Rent Schedule, 73 Fed. Reg. 65,039 (Oct. 31, 2008) (codified at 43 C.F.R. §§ 2800, 2806.20, and 2920). [↑](#footnote-ref-213)
213. 210The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1702(o), defines the western states as the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. [↑](#footnote-ref-214)
214. 2112005 Energy Policy Act § 368(a). [↑](#footnote-ref-215)
215. 2122005 Energy Policy Act § 368(b). [↑](#footnote-ref-216)
216. 2132005 Energy Policy Act § 368(c). [↑](#footnote-ref-217)
217. 2142005 Energy Policy Act § 368(d). [↑](#footnote-ref-218)
218. 2152005 Energy Policy Act § 372. [↑](#footnote-ref-219)
219. 2162005 Energy Policy Act § 372(a)(1). The Act defines a “utility facility” as

     any privately, publicly, or cooperatively owned line, facility, or system—

     (1) for the transportation of—

     (A) ***oil***, natural gas, synthetic liquid fuel, or gaseous fuel;

     (B) any refined product produced from ***oil***, natural gas, synthetic liquid fuel, or gaseous fuel; or

     (C) products in support of the production of material referred to in subparagraph (A) or (B);

     (2) for storage and terminal facilities in connection with the production of material referred to in paragraph (1); or

     (3) for the generation, transmission, and distribution of electric energy.

     (A) ***oil***, natural gas, synthetic liquid fuel, or gaseous fuel;

     (B) any refined product produced from ***oil***, natural gas, synthetic liquid fuel, or gaseous fuel; or

     (C) products in support of the production of material referred to in subparagraph (A) or (B);

     (2) for storage and terminal facilities in connection with the production of material referred to in paragraph (1); or

     (3) for the generation, transmission, and distribution of electric energy.

     2005 Energy Policy Act § 372(c). [↑](#footnote-ref-220)
220. 2172005 Energy Policy Act § 372(c). [↑](#footnote-ref-221)
221. 218Instruction Memorandum From the Assistant Director, Energy, Minerals, and Realty Management to All Field Office Officials, *Policy Guidance for Use of Corridors Designated Pursuant to Section 368 of EPAct 2005* (Apr. 7, 2014). [↑](#footnote-ref-222)
222. 219A separate and distinct provision of the Energy Policy Act—Section 1221—granted actual permitting and construction authority to FERC over electric transmission siting activity when a state withholds permit approval, or is unable to effectively permit a transmission project. 2005 Energy Policy Act § 112(a) (amending Federal Power Act Section 216). Section 1221 of the Act amended Section 216 of the Federal Power Act and the authority that it created is commonly refer to as federal “backstop” siting authority. For a comparison of EPAct Section 368 and EPAct Section 1221, see Debbie Swanstrom & Meredith M. Jolivert, *DOE Transmission Corridor Designations & FERC Backstop Siting Authority: Has the Energy Policy Act of 2005 Succeeded in Stimulating the Development of New Transmission Facilities?* 30 Energy L.J. 415 (2009). [↑](#footnote-ref-223)
223. 220Request for Information: West-Wide Energy Corridor Review, 79 Fed. Reg. 17567 (Mar. 28, 2014); Instruction Memorandum From the Assistant Director, Energy, Minerals, and Realty Management to All Field Office Officials, Policy Guidance for Use of Corridors Designated Pursuant to Section 368 of EPAct 2005 (Apr. 7, 2014); Memorandum of Understanding Regarding Regional Periodic Reviews, Including Review of Interagency Operating Procedures, For Section 368 Corridors, at III (2013) (discussing EPAct and the litigation discussing Section 368 corridors). In litigation challenging a separate provision of EPAct 2005, the reviewing court discussed the Section 368 corridor designation process. The California Wilderness Coalition v. United States Department of Energy, 631 F.3d 1072 (9th Cir. 2011) (reviewing implementation of EPAct 2005 Section 1221). The court pointed to the Programmatic Environmental Impact Statement that was published during the development of Section 368 corridors as proof that the same analysis was possible when implementing the litigated EPAct 2005 provision. [↑](#footnote-ref-224)
224. 2212005 Energy Policy Act § 369(c) (extended by Pub. L. No. 113-188). [↑](#footnote-ref-225)
225. 2222005 Energy Policy Act § 369(d). [↑](#footnote-ref-226)
226. 223The DOI issued regulations establishing a leasing program. ***Oil*** Shale Management—General, 73 Fed. Reg. 69,413 (Final Rule, Nov. 18, 2008). The regulations were challenged in federal court, resulting in a private settlement and the reopening of the comment period. ***Oil*** Shale Management—General, 78 Fed. Reg. 35,601 (June 13, 2013) (reopening the comment period surrounding Final Rule). After the close of the comment period, the DOI’s ***Oil*** Shale Management regulations were incorporated into the 2013 Code of Federal Regulations. ***Oil*** Shale Management, 43 C.F.R. Parts 3900, 3920, and 3930. The Federal Register’s website has a complete history of the rulemaking and subsequent agency actions in its “Unified Agenda” section under “Unified Agenda 1004-AE28,” *available at* https://www.federalregister.gov/regulations/1004-AE28/***oil***-shale-management. [↑](#footnote-ref-227)
227. 224*Id.* 2005 Energy Policy Act § 369(d)(1). [↑](#footnote-ref-228)
228. 2252005 Energy Policy Act § 369(e). [↑](#footnote-ref-229)
229. 2262005 Energy Policy Act § 369(i). *See also* Government Reports Elimination Act of 2014, Pub. L. No. 113-188, § 601(b) (eliminating the annual reporting requirements to Congress regarding the activities of the Office of Petroleum Reserves). [↑](#footnote-ref-230)
230. 2272005 Energy Policy Act § 369(h). [↑](#footnote-ref-231)
231. 2282005 Energy Policy Act § 369(k). [↑](#footnote-ref-232)
232. 2292005 Energy Policy Act § 369(m). The geographic areas are listed in order of priority in § 369(m)(1)(B) as follows: the Green River Region of Colorado, Utah and Wyoming; the Devonian ***oil*** shales and other hydrocarbon-bearing rocks having the nomenclature of “shale” located east of the Mississippi River; and any remaining area in the central and western U.S., including Alaska, that contains ***oil*** shale and tar sands. [↑](#footnote-ref-233)
233. 2302005 Energy Policy Act § 369(n). [↑](#footnote-ref-234)
234. 2312005 Energy Policy Act § 369(o). [↑](#footnote-ref-235)
235. 2322005 Energy Policy Act § 369(l). [↑](#footnote-ref-236)
236. 2332005 Energy Policy Act § 369(p). [↑](#footnote-ref-237)
237. 2342005 Energy Policy Act § 369(q). [↑](#footnote-ref-238)
238. 2352005 Energy Policy Act § 369(s). [↑](#footnote-ref-239)
239. 23630 U.S.C. § 188(d)(2). [↑](#footnote-ref-240)
240. 2372005 Energy Policy Act § 371. [↑](#footnote-ref-241)
241. 2382005 Energy Policy Act § 371(a). [↑](#footnote-ref-242)
242. 239Conditions for reinstatement are set forth in 30 U.S.C. § 188(e). [↑](#footnote-ref-243)
243. 2402005 Energy Policy Act § 371(b). [↑](#footnote-ref-244)
244. 241The 60 day/15 month petition filing period for lease terminations prior to enactment of the Act follows the filing period in place under Section 31(d)(2) of the Mineral Leasing Act, 30 U.S.C. 188(d)(2) prior to its amendment under the Act. [↑](#footnote-ref-245)
245. 2422005 Energy Policy Act § 373. For a discussion of the National Park Service’s authority as it relates to the state of Texas and private parties with mineral rights, see Dunn-McCampbell Royalty Interest, Inc. v. Nat’l Park Serv., 630 F.3d 431, 442–443 (5th Cir. 2011). That case recognizes the Padre Island exception to the National Park Service’s authority to regulate mineral interests in national parks. *Id.* at 440. [↑](#footnote-ref-246)
246. 243Pub. L. No. 102-562 § 102, 106 Stat. 4234 (1992). [↑](#footnote-ref-247)
247. 2442005 Energy Policy Act § 374. [↑](#footnote-ref-248)
248. 2452005 Energy Policy Act § 374. [↑](#footnote-ref-249)
249. 2462005 Energy Policy Act § 374. [↑](#footnote-ref-250)
250. 247Bureau of Land Management Public Automated Lands Records, LR2000 (listing all case numbers associated with land patent applications under EPAct 2005 § 374). The land patent register is available at blm.gov/lr2000; copies of actual land patents are *available at* glorecords.blm.gov. [↑](#footnote-ref-251)
251. 24816 U.S.C. § 1465. [↑](#footnote-ref-252)
252. 2492005 Energy Policy Act § 381. [↑](#footnote-ref-253)
253. 2502005 Energy Policy Act § 381(c)(1). [↑](#footnote-ref-254)
254. 2512005 Energy Policy Act § 381(c)(2). [↑](#footnote-ref-255)
255. 2522005 Energy Policy Act § 381(b)(3). [↑](#footnote-ref-256)
256. 25316 U.S.C. § 1465. [↑](#footnote-ref-257)
257. 2542005 Energy Policy Act § 382. [↑](#footnote-ref-258)
258. 255Pub. L. No. 101-380, 104 Stat. 484 (1990); 33 U.S.C. § 2701. [↑](#footnote-ref-259)
259. 25643 U.S.C. § 1337. [↑](#footnote-ref-260)
260. 257“The term ‘covered lease tract’ means a leased tract (or portion of a leased tract): (A) lying seaward of the zone defined and governed by section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. § 1337(g)); or (B) lying within such zone but to which such section does not apply.” 2005 Energy Policy Act § 383(c)(1). [↑](#footnote-ref-261)
261. 2582005 Energy Policy Act § 383(a)–(b). [↑](#footnote-ref-262)
262. 2592005 Energy Policy Act § 383(b). [↑](#footnote-ref-263)
263. 26043 U.S.C. § 1356a. [↑](#footnote-ref-264)
264. 261The Act defined a “Producing State” as a “coastal State that has a seaward boundary within 200 nautical miles of the geographic center of a leased tract within any area of the outer Continental Shelf,” except for Producing States in which “a majority of the coastline is subject to a leasing moratoria, unless production was occurring on January 1, 2005, from a lease within 10 nautical miles of the coastline of that State.” 2005 Energy Policy Act § 384. [↑](#footnote-ref-265)
265. 262The Act defined a “Coastal Political Subdivision” as “a political subdivision of a coastal State any part of which political subdivision is within the coastal zone (as defined in Section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. § 1453)) of the coastal State as of the date of enactment of the Energy Policy Act of 2005; and not more than 200 nautical miles from the geographic center of any leased tract.” 2005 Energy Policy Act § 384. [↑](#footnote-ref-266)
266. 263The Act defined “qualified Outer Continental Shelf revenues” to mean “all amounts received by the United States from each leased tract or portion of a leased tract” within a zone designated under the Act from “bonus bids, rents, royalties (including payments for royalty taken in kind and sold), net profit share payments, and related late-payment interest from natural gas and ***oil*** leases issued under this Act.” 2005 Energy Policy Act § 384. [↑](#footnote-ref-267)
267. 2642005 Energy Policy Act § 384. The Act allocated the funds among the eligible states under this program by focusing first on a ratio of the amount of revenue generated from the Outer Continental Shelf production associated with a state compared to the overall revenue generated from Outer Continental Shelf production. *See* 2005 Energy Policy Act § 384. This amount is further allocated to each state’s Political Subdivisions in varying amounts. *See* 2005 Energy Policy Act § 384 (extended by Pub. L. No. 111-212). [↑](#footnote-ref-268)
268. 2652005 Energy Policy Act § 384. [↑](#footnote-ref-269)
269. 2662005 Energy Policy Act § 384. [↑](#footnote-ref-270)
270. 2672005 Energy Policy Act § 385. [↑](#footnote-ref-271)
271. 2682005 Energy Policy Act § 385. [↑](#footnote-ref-272)
272. 2692005 Energy Policy Act § 385. The Department of Energy contracted with the National Academy of Science to develop and publish a report as described by EPAct § 385. *Committee on Emerging Workforce Trends in the U.S. Energy and Mining Industries, Emerging Workforce Trends in the U.S. Energy and Mining Industries: A Call to Action* (2013). [↑](#footnote-ref-273)
273. 2702005 Energy Policy Act § 386. [↑](#footnote-ref-274)
274. 27142 U.S.C. § 13368(b). [↑](#footnote-ref-275)
275. 2722005 Energy Policy Act § 387. [↑](#footnote-ref-276)
276. 27343 U.S.C. § 1337. [↑](#footnote-ref-277)
277. 27433 U.S.C. § 1501 *et seq.* [↑](#footnote-ref-278)
278. 27542 U.S.C. § 9101 *et seq.* [↑](#footnote-ref-279)
279. 2762005 Energy Policy Act § 388(a). Renewable Energy and Alternate uses of Existing Facilities on the Outer Continental Shelf, 74 Fed. Reg 19638-01 (Apr. 29, 2009) (implementing EPAct 2005 § 388). [↑](#footnote-ref-280)
280. 2772005 Energy Policy Act § 388(a)(2). [↑](#footnote-ref-281)
281. 2782005 Energy Policy Act § 388(b). [↑](#footnote-ref-282)
282. 27933 U.S.C. § 2731 *et seq.* [↑](#footnote-ref-283)
283. 2802005 Energy Policy Act § 389. [↑](#footnote-ref-284)
284. 2812005 Energy Policy Act § 390. For a reference to the Bureau of Land Management’s NEPA handbook that specifically addresses the five categorical exclusions set forth in EPAct § 390, see Instruction Memorandum from Director of the Bureau of Land Management, Department of Interior, to All Bureau of Land Management Field Officials (June 20, 2010) (directing field offices to follow BLM’s 2008 NEPA Handbook H-1790-1). [↑](#footnote-ref-285)
285. 2822005 Energy Policy Act § 392. [↑](#footnote-ref-286)
286. 2832005 Energy Policy Act § 391. [↑](#footnote-ref-287)
287. 2842005 Energy Policy Act § 391. [↑](#footnote-ref-288)
288. 28542 U.S.C. § 7401 *et seq.* [↑](#footnote-ref-289)
289. 2862005 Energy Policy Act § 391. [↑](#footnote-ref-290)
290. 2872005 Energy Policy Act § 392. [↑](#footnote-ref-291)
291. 2882005 Energy Policy Act § 392(b). [↑](#footnote-ref-292)
292. 2892005 Energy Policy Act §§ 392(c)–(d). [↑](#footnote-ref-293)