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Front Range Center Manager.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Royalty-in-Kind (RIK) Eligible Refiner, Determination of Need

AGENCY: Minerals Management Service, Interior.

ACTION: Solicitation of comments.

SUMMARY: The Minerals Management Service (MMS), an agency of the U.S. Department of the Interior, is requesting written comments from interested parties—particularly from small and/or independent petroleum refiners—regarding their experiences in the crude oil marketplace. Specifically, we are interested in small and/or independent refiners' experiences in gaining access to adequate supplies of crude oil at equitable prices. This Determination of Need process will assist the Secretary of the Interior in deciding whether or not to continue with sales of Federal Government royalty oil under the RIK eligible refiner program.

DATES: Submit written comments on or before September 25, 2003.

ADDRESSES: Address your comments and suggestions regarding this proposal to Sharron L. Gebhardt, Regulatory Specialist.

By regular U.S. mail: Center for Excellence, Minerals Revenue Management, Minerals Management Service, P.O. Box 25165, MS 320B2, Denver, Colorado 80225-0165; or

By overnight mail or courier: Attn: Sharron L. Gebhardt, (303) 231-3211, Center for Excellence, Minerals Revenue Management, Minerals Management Service, Building 85, Room A614, Denver Federal Center, Denver, Colorado 80225-0165; or

By fax: Please submit fax Attn: Sharron L. Gebhardt, fax (303) 231-3781, Re: "Determination of Need" and your name and return address in your fax message. If you do not receive a confirmation that we have received your fax message, call the contact person listed below.

By e-mail: MRM.comments@mms.gov. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include "Attn: Determination of Need" and your name

and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

FOR FURTHER INFORMATION CONTACT:

Sharron L. Gebhardt at telephone (303) 231-3211, fax (303) 231-3781, or P.O. Box 25165, MS320B2, Denver Federal Center, Denver, Colorado 80225-0165.

SUPPLEMENTARY INFORMATION:

Introduction: Under the provisions of the Mineral Leasing Act of 1920 (MLA), as amended (30 U.S.C. 192), and the Outer Continental Shelf Lands Act (OCSLA) of August 7, 1953, as amended (43 U.S.C. 1334, 1353), the Secretary of the Interior can take Federal royalty oil in kind, in lieu of royalty payment, and sell it to "eligible refiners" for use in their refineries. The sale of royalty oil from Federal leases by the United States to eligible refiners is governed by the regulations at 30 CFR 208, effective December 1, 1987 (52 FR 41908, 10/30/1987).

An "eligible refiner," as defined at 30 CFR 208.2, means a refiner of crude oil meeting the following criteria to purchase royalty oil:

(1) For the purchase of royalty oil from onshore leases, it means a refiner that has an operating refinery and qualifies as a small and independent refiner as those terms are defined below:

- The term "independent refiner" means a refiner who (a) obtained, directly or indirectly more than 70 percent of his refinery input of domestic crude oil (or 70 percent of his refinery input of domestic and imported crude oil) from producers who do not control, are not controlled by, and are not under common control with, such refiner for the calendar quarter immediately preceding the date of the applicable "Notice of Availability of Royalty Oil," and (b) marketed or distributed in such quarter and continues to market and distribute a substantial volume of gasoline refined by him through branded independent marketers or non-branded independent marketers.

- The term "small refiner" means a refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day.

Crude oil received in exchange for the refiner's own production is considered to be part of that refiner's own production for purposes of this section.

(2) For the purchase of royalty oil from offshore leases, it means a refiner that has an operating refinery and qualifies as a small business enterprise

under the rules of the Small Business Administration (SBA) (13 CFR Part 121) as updated in **Federal Register** Notice (68 FR 15047, 03/28/2003). The SBA standard for a small business within the Petroleum Refining Industry is a concern with a total Operable Atmospheric Crude Oil Distillation Capacity of less than or equal to 125,000 barrels per calendar day, and that has no more than 1,500 employees. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or throughput.

The regulation at 30 CFR 208.4(a) governs the Determination of Need process and states that:

The Secretary may evaluate crude oil market conditions from time to time. The evaluation will include, among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. Such determinations may be made on a regional basis * * *.

In accordance with its practice of conducting periodic reviews of market trends and conditions, MMS believes that undertaking another Determination of Need will be beneficial in formulating any decision to hold future royalty oil sales to eligible refiners.

Background: The RIK eligible refiner program has been an important source of crude oil for these refiners in the past. Currently, there are six eligible refiner RIK contracts (involving Gulf of Mexico and Pacific Region offshore leases).

In 1997, MMS undertook an examination of the eligible refiner RIK program and determined that a "proactive, structured, and documented methodology" should be used to conduct future RIK Determinations of Need. The MMS performed a full analysis in 1999 and an update of that analysis in 2001. These analyses supported the continuation of the program, and each was followed by subsequent RIK sales to eligible refiners.

More recently, MMS has expanded the percentage of the oil royalties it takes in kind (apart from the eligible refiner program) to improve the efficiency and effectiveness of collecting and distributing royalties. In doing so, it has improved the administration of its RIK programs to better interface with standard industry practices. These improvements include:

- Changing the way we conduct our operations by implementing logical