

example, (1) the proposed regulations state their purpose is to encourage participation by companies not favorably situated with respect to access to reserves of the minerals present in oil shale, (2) the applicant is required to set forth its interest in nonfederally owned oil shale lands and the reasons why it needs federally leased land for its proposed research and development, (3) in evaluating applications, the Department is to consider the applicant's need for leased lands to conduct its proposed research and development and projected commercial activities, as well as its need for reserves of the minerals proposed to be produced, and (4) the applicant is required to describe the reserves it then owns or controls of oil and other minerals of the kind believed to be present in the lands applied for.

This discrimination is not authorized by any provision of the Mineral Leasing Act of 1920 nor by any considerations of morality or equity. No criteria are established for determining what constitutes not favorably situated with respect to oil shale or need. Quite apart from the difficulties in orderly and fair administration of such provisions, they constitute an unwarranted administrative usurpation of the prerogatives of the legislative branch. The awarding of leases on Federal lands on the basis of need of the applicant from any viewpoint is novel and not designed to father a healthy new industry nor to assure to the Government the best return for its leases. As a practical matter, it would seem difficult to award bids at the same time on the basis of the other criteria established and of need. When does one outweigh the other?

The Department's proposed regulations provide for a minimum royalty of 3 percent of gross value at point of shipment to market of the mineral products from the oil shale.

Some lessees will doubtless mine oil shale, crush it and then retort it to obtain the material which, after hydrogenation, will be shipped to refineries. Others may well use some method of *in situ* retorting. Further definition of "point of shipment to market" is therefore needed to avoid inconsistent treatment and discrimination. Although the term mineral products from the oil shale apparently includes shale oil and other mineral byproducts of the retorting or other extraction process, the term should specifically include shale oil.

Oil shale is mined and processed to obtain shale oil and it is reasonable to recognize the value of the shale oil itself for the purposes of computing both royalties and depletion. Its value can at this point be correlated with the values of other known low-grade crude oils.

The regulations also provide that the annual net income royalty rate shall be a percentage of net income from production of mineral products from oil shale to the point of shipment to market. These rates vary from 10 percent of that part of net income which is no more than 10 percent of investment to 50 percent of that part of net income which is more than 20 percent of investment.

In effect, the 3-percent royalty is credited against the net income royalty. Net income is defined as taxable income computed without allowance for royalty and depletion and investment is defined as the original cost less depreciation of capital assets. Under this provision a successful operator will find himself in a bracket paying 50 percent of his pretax profits without allowance for royalty and