

United States Senate

WASHINGTON, DC 20510

July 2, 2014

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Ave, N.W.
Washington, DC 20227

Dear Secretary Pritzker:

Recently, the *Wall Street Journal* reported that the Department of Commerce has granted private rulings to two oil companies permitting them to export a form of ultra-light crude oil called condensate. If true, these private rulings may have been issued in contravention of the longstanding ban on exports of U.S. crude oil, which also prohibits the exports of lease condensate.

The ban on crude oil exports was passed as part of the Energy Policy and Conservation Act of 1975 (EPCA).¹ Commerce Department regulations implementing this statutory ban unquestionably restrict the export of condensate. The Department's Bureau of Industry and Security (BIS) regulations explicitly define condensate as crude oil and therefore subject to the export ban, stating, in pertinent part that:

“Included [under the crude oil prohibitions] are reconstituted crude petroleum, and lease condensate [*emphasis added*] and liquid hydrocarbons produced from tar sands, gilsonite, and oil shale.”²

Exports of condensate or other light crude oils appear to be prohibited unless and until the regulation is revised following notice and public comment.

Moreover, Section 103 of EPCA requires a Presidential finding to exempt crude exports from the prohibition if they are determined to be “consistent with the national interest and the purposes of this chapter.” The statute clearly requires such exemptions to be “included in such rule [prohibiting exports of crude oil] or provided for in an amendment thereto.” Absent such a Presidential finding and a revision of the regulations prohibiting exports of crude oil, including lease condensate, the Commerce Department does not appear to possess the authority to issue exemptions for condensates or some subset of condensates from the crude export restrictions.

We request that you provide us with copies of the two private rulings recently issued by the Commerce Department for Pioneer Natural Resources Co. and Enterprise Products Partners LP with respect to condensate exports. We also request copies of any other such rulings issued by

¹ P.L. 94-163

² 15 C.F.R. § 754.2

the Commerce Department in the last 12 months that relate to interpretations of the crude oil export ban or condensate exports.

Finally, we ask that you or a member of your staff respond in writing to the following questions by the close of business on Monday, July 14, 2014.

1. Please detail the Department's legal rationale for approving the export of oil condensates despite the clear prohibition on the export of lease condensate in the BIS regulations.
2. Does the Commerce Department believe that these private rulings constitute any change to the existing prohibitions on crude oil exports? If not, why not?
3. Does the Commerce Department have any other pending requests for private rulings relating to the export of any type of crude oil or refined petroleum product? If so, please provide a list of all such pending requests, including the name of the requestor, the date on which it was submitted, the volume and type of exports requested and the proposed recipient of such exports.
4. The definition of crude oil subject to export limitations in the BIS regulations includes oil "which has not been processed through a crude oil distillation tower."³ Does the Commerce Department believe that these rulings expand or modify the Department's interpretation or definition of that process?
5. Did Commerce consider and reject conducting a formal rulemaking before approving these condensate exports? If so, why was formal notice and comment rejected? If not, why did Commerce not consider allowing for notice and public comment?
6. How many times has Commerce issued a ruling to exempt a type of energy product or commodity from the export prohibition in the last five years? In how many of those cases was notice and comment opportunity not given to the general public? For each such ruling, please provide us with the name of the requestor, the date on which it was granted, the volume and type of exports requested and the recipient of such exports.
7. Did Commerce seek input of other federal departments with expertise in energy technologies and products in making these rulings, such as the Department of Energy or the Department of the Interior? If not, why not? If so, please state the departments that consulted on these decisions and provide any correspondence or other materials that indicate the views expressed by these departments on the question of whether the rulings violate the aforementioned EPCA ban.
8. Does the Commerce Department intend to limit any similar rulings on exports in the future to only condensates? What defining characteristics, such as API gravity, will the Department use to define condensates from other types of crude oil for the purposes of

³ Id.

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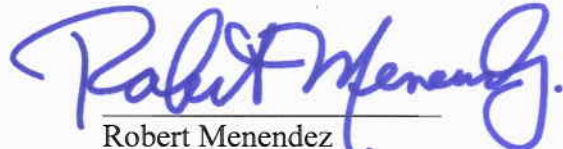
any such rulings? Does the Commerce Department plan to go through a formal rulemaking to define condensates? If not, why not?

Thank you for your attention to this matter. If you have any questions, please contact Morgan Gray on Sen. Markey's staff at (202) 224-2742.

Sincerely,



Edward J. Markey
United States Senator



Robert Menendez
United States Senator