# Public Law 100-234
# 100th Congress

## An Act

To provide for adjustments of royalty payments under certain Federal onshore and Indian oil and gas leases, and for other purposes.

Jan. 6, 1988
[H.R. 3479]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Notice to Lessees Numbered 5 Gas Royalty Act of 1987.
Contracts.

(a) That this Act may be referred to as the "Notice to Lessees Numbered 5 Gas Royalty Act of 1987".

(b) FINDINGS.—The Congress finds that—

(1) effective on June 1, 1977, in Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases Numbered 5 (NTL-5) (42 Fed. Reg. 22,610), the Secretary of the Interior established the method of calculating the amount of royalties to be paid to the United States on natural gas production from Federal and Indian oil and gas leases.

(2) NTL-5 was a duly promulgated rule of the Department of the Interior within the meaning of the Administrative Procedure Act;

(3) under the NTL-5 method of calculation, the base value for royalty purposes of certain gas production was the greater of the price received under the gas sales contract or the highest applicable ceiling rate then established by the Federal Power Commission. The applicable ceiling rate was subsequently interpreted to be the maximum lawful price established under the Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.);

(4) although between 1982 and 1986 gas prices in many areas declined below the maximum lawful prices established under the Natural Gas Policy Act of 1978, the continued application of NTL-5 required some royalties to be paid on the basis of a ceiling rate higher than the market value for the gas;

(5) effective August 1, 1986, the Secretary of the Interior modified the method of calculating certain future Federal and Indian gas royalty payments. This modification, published in the Federal Register on July 25, 1986 (51 Fed. Reg. 26,759) was a duly promulgated regulation of the Department of the Interior. The modification left the original provisions of NTL-5 in effect for gas sales prior to August 1, 1986, since the Secretary found that retroactive modification of NTL-5 would have resulted in inconsistent royalty enforcement and would have undermined the policy of strict compliance with lawful Federal royalty valuation rules and the need to ensure that Federal lessees and other payors rely upon rules until such time as the rules are lawfully changed (51 Fed. Reg. 26,759);

(6) in January 1987, the Department of the Interior proposed to reconsider its position and proposed to modify NTL-5 retroactively;

(7) there is a trust responsibility of the United States for the administration of Indian oil and gas resources as reaffirmed in

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sections 2 (a)(4) and (b)(4) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 (a)(4) and (b)(4)); and

(8) the failure to adjust the method of calculating royalty payments resulting from changes in the gas market created various problems in valuation, produced inequitable situations for many lessees and payors whose gas market price was well below the National Gas Policy Act ceiling prices, and created uncertainty associated with the collection of royalty revenues. Uniform application of National Gas Policy Act ceiling prices was inequitable given market conditions during this period. For these reasons, it is necessary and appropriate for the Congress to provide for certain adjustments through legislation.

SEC. 2. DEFINITIONS.

For purposes of this Act:

(a) SECRETARY.—The term "Secretary" means the Secretary of the Interior or his designee.

(b) NTL-5.—The term "NTL-5" means the Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases published May 4, 1977 (42 Fed. Reg. 22,610).

(c) OTHER TERMS.—All other terms carry the same meanings as provided in section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. Sec. 1702).

SEC. 3. VALUATION FOR ROYALTY PURPOSES OF CERTAIN GAS PRODUCTION FROM FEDERAL AND INDIAN LANDS.

(a) APPLICABILITY.—The provisions of this section shall be used in determining the value for royalty purposes of any gas production from Federal onshore or Indian oil and gas leases during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2, section II.A.2 or section VI of NTL-5.

(b) ROYALTY CALCULATION FOR CERTAIN FEDERAL ONSHORE AND INDIAN OIL AND GAS LEASES.—If the gas referred to in subsection (a) of this section was produced from a Federal onshore or Indian lease, the value of production, for the purpose of computing royalty, shall be the reasonable value of the product as determined consistent with the lease terms and the regulations codified at part 206 of title 30, Code of Federal Regulations, in effect at the time of production. In establishing the reasonable value, due consideration shall be given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices, and to other relevant matters. Under no circumstances shall the value of production of any of said substances for the purposes of computing royalty be deemed to be less than the gross proceeds accruing to the lessee from the sale thereof or less than the value computed on such reasonable unit value as shall have been determined by the Secretary. In the absence of good reason to the contrary, value computed on the basis of the highest price per thousand cubic feet or gallon paid or offered at the time of production in a fair and open market for the major portion of like-quality gas, or other products produced and sold from the field or areas where the leased lands are situated will be considered to be a reasonable value. In addition, if the gas was produced from an Indian lease, the reasonable value shall be determined consistent with the Secretary's trust responsibility, the lease terms, and the regulations codified at section 211.13 or section 212.16 of title 25,

Code of Federal Regulations, as applicable, in effect at the time of production.

(c) WRITTEN DOCUMENTATION.—In order for the Secretary to make royalty value determinations under this section, there must be written documentation which (1) has been determined to be adequate by the Secretary, (2) was in existence at or near the time of sale, (3) shows the actual price received, and (4) may include, but is not limited to, a gas sales contract, purchase statement, receipt, minerals management service oil and gas records, or other written documentation.

(d) EXCEPTION.—This section shall not apply to any gas for which, in the Secretary's judgment, the lessee or royalty payor received less than the highest applicable price under the Natural Gas Policy Act due to a failure by the lessee or payor to collect amounts which the purchaser would have been required to pay under a gas sales contract providing for that price and not as a result of market conditions or considerations.

SEC. 4. PROCEDURES.

(a) CASE-BY-CASE AUDIT FOR CERTAIN FEDERAL ONSHORE OIL AND GAS LEASES.—The Secretary shall publish in the Federal Register and send to each lessee or royalty payor of record for any Federal onshore oil and gas lease a notice of enactment of this Act informing such lessees and royalty payors of the provisions of this Act. Such notice shall include a description of the process whereby underpayments, if any, by lessees will be sought and the terms and conditions for lessees to obtaining refunds, if any, based on royalty calculations under this Act. Any lessee that has reason to believe that it is entitled to a refund under this Act shall provide written notice to the Secretary in a form prescribed by the Secretary specifying the Federal onshore oil and gas lease or leases involved. The Secretary, and any State in accordance with delegations of authority under section 205 or cooperative agreements under section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732, 1735), shall conduct a case-by-case audit of royalties for such leases and any other Federal onshore lease which is examined under existing law to determine the amount of royalties due and payable under this Act and other applicable law and the amount of any refund due a lessee. In addition to those leases for which the lessee has provided written notice to the Secretary pursuant to this subsection, priority shall be given to auditing those leases for which there is the greatest likelihood of underpayment of royalties.

Federal Register, publication.

(b) CASE-BY-CASE AUDIT ON INDIAN LEASES.—The Secretary shall publish in the Federal Register and send to each lessee or royalty payor of record for any Indian oil and gas lease a notice of enactment of this Act informing such lessees and royalty payors of the provisions of this Act. Such notice shall include a description of the process whereby underpayments, if any, by lessees will be sought and the terms and conditions for lessees to obtain refunds, if any, based on royalty calculations under this Act. Any lessee that has reason to believe that it is entitled to a refund under this Act shall provide written notice to the Secretary in a form prescribed by the Secretary specifying the Indian oil and gas lease or leases involved. The Secretary, and any Tribe in accordance with cooperative agreements under section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732), shall conduct a case-by-case audit of royalties for such leases and other Indian oil and gas

Federal Register, publication.

leases on which gas was produced at any time during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2, section II.A.2, or section VI of NTL-5 to determine the amount of royalties due and payable under this Act and other applicable law and the amount of any refund due a lessee. In addition to those leases for which the lessee has provided written notice to the Secretary pursuant to this subsection, priority shall be given to auditing those leases for which there is the greatest likelihood of underpayment of royalties.

(c) The Secretary shall demand payment of any underpayment which is determined to be owed to the Federal or Indian lessor as a result of the case-by-case review required in this section.

(d) MMS NOTICE.—The Secretary shall provide a notice under this section to each lessee under a Federal onshore or Indian oil and gas lease on which an audit was performed in accordance with this section. The notice shall contain each of the following:

(1) A statement of the amount of the royalty payments made in accordance with the provisions of NTL-5.

(2) A statement of additional royalty payment, if any, to be made by a lessee or the amount of refund, if any, to which the lessee is entitled under this Act and a description of the means by which such refund will be provided.

(e) REPORT TO INDIAN TRIBES.—The Secretary shall provide a report to each Indian Tribe holding an Indian oil and gas lease on which gas was produced at any time during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2, section II.A.2, or section VI of NTL-5. The report to each Tribe shall contain information for each such lease held by the Tribe stating the difference between royalties computed in accordance with NTL-5 and royalties computed in accordance with subsection 3(b) of this Act.

SEC. 5. REFUND OF ROYALTIES PREVIOUSLY PAID.

(a) REFUND FOR FEDERAL ONSHORE OIL AND GAS LEASES.—

(1) If the Secretary or a court of competent jurisdiction determines that a lessee or royalty payor on a Federal onshore lease has paid, prior to October 1, 1987, more than the value determined under subsection 3(b) of this Act for any gas within the coverage of subsection 3(a) of this Act, the Secretary shall refund the Federal share of such overpayment from moneys received under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 191), which would otherwise be deposited to miscellaneous receipts in the Treasury, in accordance with procedures established by the Secretary.

State and local governments.

(2) The portion of any excess amount, as determined under paragraph (1), previously paid to a State under applicable law from royalties paid under a Federal onshore oil and gas lease or group of leases subject to a unit agreement shall be recouped from the next subsequent disbursements to that State. If the total amount of such recoupments for any month exceeds ten per centum of the total disbursement to that State for that month from mineral lease revenues, the Secretary shall recoup amounts in excess of that level from disbursements to the State in the next month subject to the same limitation. The Secretary shall pay any difference between the amounts required to be paid to a State as a result of this paragraph and the amounts available to be paid to the State from current royalty revenues

from moneys received under section 35 of the Minerals Lands Leasing Act of 1920, as amended (30 U.S.C. 191), which would otherwise be deposited to miscellaneous receipts.

(b) REFUND FOR INDIAN LEASES.—If the Secretary or a court of competent jurisdiction determines that a lessee or royalty payor has paid, prior to October 1, 1987, more than the value determined under subsection 3(b) of this Act for any gas within the coverage of subsection 3(a) of this Act and produced from an Indian lease, the Secretary shall refund the amount paid in excess of the value determined under subsection 3(b) from monies received under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 191) which would otherwise be deposited to miscellaneous receipts in the Treasury. The Secretary shall not recoup any portion of any such refund from the Indian lessor.

(c) The total amount of refunds made under this section shall not exceed two million dollars ($2,000,000).

SEC. 6. RECORDKEEPING REQUIREMENTS.

Notwithstanding the requirements of section 103 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1713), and any regulations promulgated pursuant thereto, lessees and other payors are required to maintain records related to the value of gas production to which this Act applies for the period January 1, 1982 through July 31, 1986, until the Secretary gives notice that maintenance of such records no longer is required.

SEC. 7. SAVINGS PROVISIONS.

Nothing in this Act shall be construed to affect the right of any Indian, Indian Tribe, or lessee to bring any action in a court of competent jurisdiction.

Approved January 6, 1988.

LEGISLATIVE HISTORY—H.R. 3479:

HOUSE REPORTS: No. 100-377 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 100-234 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD, Vol. 133 (1987):
Nov. 3, considered and passed House.
Dec. 9, considered and passed Senate, amended.
Dec. 18, House concurred in Senate amendment with an amendment and disagreed to another.
Dec. 21, Senate receded and concurred in House amendment.