

105TH CONGRESS  
2D SESSION

# H. R. 3334

To provide certainty for, reduce administrative and compliance burdens associated with, and streamline and improve the collection of royalties from Federal and outer continental shelf oil and gas leases, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1998

Mr. THORNBERRY (for himself, Mrs. CUBIN, and Mr. BRADY) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To provide certainty for, reduce administrative and compliance burdens associated with, and streamline and improve the collection of royalties from Federal and outer continental shelf oil and gas leases, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Royalty Enhancement Act of 1998”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Rights, obligations, and responsibilities.
- Sec. 4. Costs responsibility.
- Sec. 5. Transporter charges.
- Sec. 6. Imbalances.
- Sec. 7. Royalty-in-kind for trucked, tankered, or barged oil or gas.
- Sec. 8. Limitations on application.
- Sec. 9. Reporting.
- Sec. 10. Audit.
- Sec. 11. Lease terms not affected.
- Sec. 12. Eligible and small refiners.
- Sec. 13. Applicable laws.
- Sec. 14. Indian lands.
- Sec. 15. Effective date; regulations.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) AFFILIATE; AFFILIATED.—

4 (A) The term “affiliate” or “affiliated”  
 5 means that a person controls, is controlled by,  
 6 or is under common control with another per-  
 7 son. Affiliation shall be determined on a lease-  
 8 by-lease and asset-by-asset basis.

9 (B) For purposes of this Act, based on the  
 10 instruments of ownership—

11 (i) Ownership in excess of 50 percent  
 12 constitutes control.

13 (ii) Ownership of at least 10 percent  
 14 and not more than 50 percent creates a re-  
 15 buttable presumption of control if each  
 16 owner has a separate and independent  
 17 right to control or utilize the capacity of  
 18 the asset.

1 (iii) Ownership of less than 10 per-  
2 cent creates a presumption of noncontrol  
3 which the Secretary may rebut if he dem-  
4 onstrates actual or legal control, including  
5 the existence of interlocking directorates.

6 (2) COMPENSATORY ROYALTY.—The term  
7 “compensatory royalty” means a payment made to  
8 a royalty owner as compensation for loss of income  
9 that it may suffer due to a lease being drained of  
10 oil and gas by wells drilled on lands adjacent to the  
11 lands subject to the lease.

12 (3) COMPRESSION.—The term “compression”  
13 means the process of raising the pressure of gas.

14 (4) CONDENSATE.—The term “condensate”  
15 means liquid hydrocarbons (normally exceeding 40  
16 degrees of API gravity) recovered at the surface  
17 without resorting to processing. Condensate is that  
18 stabilized mixture of liquid hydrocarbons at atmos-  
19 pheric pressure that results from condensation of pe-  
20 troleum hydrocarbons existing initially in a gaseous  
21 phase in an underground reservoir.

22 (5) DELIVERY POINT.—The term “delivery  
23 point” means—

24 (A) for a lease premise for which a produc-  
25 tion measurement meter is approved in accord-

1           ance with applicable laws before the date of en-  
2           actment of this Act—

3                   (i) subject to clause (ii), the existing  
4                   approved meter location, or

5                   (ii) subject to clause (ii), a delivery  
6                   point requested by a lessee and approved  
7                   in accordance with subparagraph (B); or

8                   (B) for a lease premise for which no pro-  
9                   duction measurement meter is approved before  
10                  the date of the enactment of this Act, that  
11                  point on or near the lease premises, approved  
12                  by the appropriate agency in accordance with  
13                  applicable laws and regulations, where lease  
14                  production can be measured and reported in a  
15                  manner that is practical, economical, and verifi-  
16                  able, except that such point may be at a loca-  
17                  tion off the lease premises where, if necessary,  
18                  production can be allocated back to the lease  
19                  premises.

20           (6) ELIGIBLE SMALL REFINER.—The term “eli-  
21           gible small refiner” means a refiner that—

22                   (A) has applied to the Secretary for certifi-  
23                   cation as an eligible small refiner;

24                   (B) has a total crude oil and condensate  
25                   refining capacity (including the refining capac-

ity of any person who controls, is controlled by,  
or is under common control with such refiner)  
not exceeding 100,000 barrels per day;

(C) is a corporation, company, partnership,  
trust or estate organized under the laws of the  
United States or of any State, territory, or mu-  
nicipality thereof, or is a person who is a  
United States citizen; and

(D) has continuously operated a refinery in  
the United States for no less than 6 months im-  
mediately preceding the date of application for  
certification as an eligible small refiner.

(7) ELIGIBLE SMALL REFINER PORTION.—The  
term “eligible small refiner portion” means the por-  
tion of all royalty oil volumes required to be offered  
for sale to eligible small refiners. The eligible small  
refiner portion shall be 40 percent of all royalty oil  
volumes, unless the Secretary determines that a  
greater share is in the public interest.

(8) FERC.—The term “FERC” means the  
Federal Energy Regulatory Commission.

(9) FIELD.—The term “field” means a geo-  
graphic region situated over one or more subsurface  
oil or gas reservoirs that encompasses at least the  
outermost boundaries of all oil and gas accumula-

1 tions known to be within those reservoirs vertically  
2 projected to the land surface.

3 (10) FORCE MAJEURE.—The term “force  
4 majeure” means foreseen and unforeseen acts of  
5 God, strikes, lockouts, or other industrial disturb-  
6 ances, acts of the public enemy, wars, blockades, in-  
7 surrections, riots, epidemics, landslides, lightning,  
8 hurricanes or storms, hurricane or storm warnings  
9 which, in the judgment of the party affected by such  
10 event, require the precautionary shutdown or evacu-  
11 ation of Production facilities, earthquakes, fires,  
12 floods, washouts, disturbances, explosions, accidental  
13 breakage to lines of pipe, machine breakage, freezing  
14 of wells or lines of pipe, partial or entire failure of  
15 wells, and any other cause of a similar nature be-  
16 yond the reasonable control of the party affected  
17 which renders that party unable to carry out its obli-  
18 gations under this Act.

19 (11) GAS.—The term “gas” means any fluid,  
20 whether combustible, noncombustible, hydrocarbon,  
21 or nonhydrocarbon, that—

22 (A) is extracted from a reservoir;

23 (B) has neither independent shape nor vol-  
24 ume;

25 (C) tends to expand indefinitely; and

1 (D) exists in a gaseous or rarefied state  
2 under standard temperature and pressure con-  
3 ditions.

4 (12) GATHERING.—The term “gathering”  
5 means the movement of lease production to a central  
6 accumulation point on the lease, unit, or  
7 communitized area, or to a central accumulation  
8 point off the lease, unit, or communitized area ap-  
9 proved by the Secretary.

10 (13) GISB.—The term “GISB” means the Gas  
11 Industry Standards Board, as incorporated in the  
12 State of Delaware on September 26, 1994.

13 (14) LEASE OPERATOR; OPERATOR.—Each of  
14 the terms “lease operator” and “operator” means  
15 any person, including a lessee, who has control of or  
16 who manages operations on lease premises on Fed-  
17 eral onshore lands or who has been designated as an  
18 operator on the outer continental shelf by applicable  
19 law.

20 (15) LEASE PREMISES.—The term “lease prem-  
21 ises” means all land and interests in land owned by  
22 the United States that are subject to an oil and gas  
23 lease issued under the mineral leasing laws, includ-  
24 ing mineral resources of mineral estates reserved to

1 the United States in the conveyance of a surface or  
2 non-mineral estate.

3 (16) LEASE PRODUCTION.—The term “lease  
4 production” means any produced oil or gas that is  
5 attributable to, originating from, or allocated to a  
6 Federal onshore or an outer continental shelf lease  
7 premises.

8 (17) LESSEE.—The term “lessee” means any  
9 person to whom the United States issues an oil and  
10 gas lease, or any person to whom operating rights  
11 under an oil and gas lease have been assigned.

12 (18) MERCHANTABLE CONDITION; MARKET-  
13 ABLE CONDITION.—Each of the terms “merchant-  
14 able condition” and “marketable condition” means  
15 the condition of oil or gas that is sufficiently free of  
16 impurities to meet the requirements of or is accepted  
17 by the transporter of production from that lease  
18 premises, royalty oil, or royalty gas. Whether or not  
19 lease production is in merchantable condition shall  
20 not affect the responsibility for the bearing of costs  
21 of gathering or transportation, as provided by this  
22 Act.

23 (19) MINIMUM ROYALTY.—The term “minimum  
24 royalty” means that minimum amount of annual



1 royalty that a lessee must pay, as specified in the  
2 lease or in applicable leasing regulations.

3 (20) NET PROFIT SHARE LEASE ROYALTY  
4 PRIOR TO PAYOUT.—The term “net profit share  
5 lease royalty prior to payout” means the specified  
6 share of the net profit from production of oil and  
7 gas as provided in the lease.

8 (21) OIL.—The term “oil”—

9 (A) means a mixture of hydrocarbons that  
10 exists in the liquid phase in natural under-  
11 ground reservoirs and remains liquid at atmos-  
12 pheric pressure after passing through surface  
13 separating facilities; and

14 (B) includes condensate.

15 (22) OIL AND GAS LEASE; LEASE.—Each of the  
16 terms “oil and gas lease” and “lease” means any  
17 contract, profit-share arrangement, or other agree-  
18 ment issued or maintained in accordance with the  
19 Outer Continental Shelf Lands Act (43 U.S.C. 1301  
20 et seq.) or the Mineral Lands Leasing Act (30  
21 U.S.C. 181 et seq.) and issued or approved by the  
22 United States that authorizes exploration for, ex-  
23 traction of, or removal of oil or gas.

24 (23) OPERATING RIGHTS.—The term “operat-  
25 ing rights” means the interest created by a lease or

1 derived therefrom authorizing the holder of that in-  
2 terest to enter upon the lease premises to conduct  
3 drilling and related operations, including production  
4 of oil or gas from such lands in accordance with the  
5 terms of the lease. A record title owner is the owner  
6 of operating rights under a lease except to the extent  
7 that the operating rights or a portion thereof have  
8 been transferred from record title.

9 (24) PERSON.—The term “person” means an  
10 individual natural person, proprietorship, firm (pri-  
11 vate or public), corporation, business, limited liabil-  
12 ity company, unincorporated association, association,  
13 State, partnership, trust, consortium, joint venture,  
14 joint stock company.

15 (25) PROCESSING; PROCESS.—Each of the  
16 terms “processing” and “process”—

17 (A) means any process designed to remove  
18 elements or compounds (hydrocarbon and non-  
19 hydrocarbon) from oil or gas;

20 (B) includes absorption, adsorption, or re-  
21 frigeration; and

22 (C) does not include lease or field proc-  
23 esses, such as natural pressure reduction, me-  
24 chanical separation, heating, cooling, dehydra-

1           tion, and compression on the upstream side of  
2           the delivery point.

3           (26) PRODUCING; PRODUCED; PRODUCTION.—

4           The term “producing”, “produced”, or “production”  
5           means the act of bringing hydrocarbons to the sur-  
6           face.

7           (27) QUALIFIED MARKETING AGENT.—The  
8           term “qualified marketing agent” means a person  
9           with whom the Secretary has contracted to receive,  
10          handle, transport, deliver, market, process, dispose  
11          of, broker, or sell, or any combination thereof, roy-  
12          alty oil or royalty gas taken in kind by the United  
13          States from, or that is attributable to, an oil and gas  
14          lease.

15          (28) REGULATED PIPELINE; REGULATED FA-  
16          CILITY.—Each of the terms “regulated pipeline” and  
17          “regulated facility”—

18                 (A) means a pipeline, truck, tanker, barge,  
19                 or other modality of carriage for oil or gas, the  
20                 operation of which is subject to regulation by a  
21                 State governmental authority or Federal gov-  
22                 ernmental authority (or both) with respect to  
23                 the rates that may be charged shippers for  
24                 transportation service; and

25                 (B) includes, but is not limited to—

1 (i) a pipeline performing the inter-  
2 state movement of gas subject to regula-  
3 tion by the Federal Energy Regulatory  
4 Commission under the Natural Gas Act  
5 (15 U.S.C. 717 et seq.);

6 (ii) a pipeline whose movements of oil  
7 are subject to regulation by the Federal  
8 Energy Regulatory Commission under the  
9 Interstate Commerce Act (49 U.S.C. 1 et  
10 seq.); and

11 (iii) any pipeline, truck, tanker, barge  
12 or other modality of carriage for Oil or  
13 Gas whose rates for carriage are regulated  
14 by a governmental authority under State  
15 law.

16 (29) ROYALTY GAS.—The term “royalty gas”  
17 means that fraction or percentage of gas produced  
18 from or attributable to lease premises, that the  
19 United States as lessor is entitled to take in kind  
20 under the terms of an oil and gas lease.

21 (30) ROYALTY OIL.—The term “royalty oil”  
22 means that fraction or percentage of oil produced  
23 from or attributable to lease premises, that the  
24 United States as lessor is entitled to take in kind  
25 under the terms of an oil and gas lease.

1           (31) ROYALTY SHARE.—The term “royalty  
2 share” means that fraction or percentage of royalty  
3 oil or royalty gas (or both) produced from or attrib-  
4 utable to lease premises, that the United States as  
5 lessor is entitled to take in kind under the terms of  
6 an oil and gas lease.

7           (32) SECRETARY.—The term “Secretary”  
8 means the Secretary of the Interior.

9           (33) TENDER.—The term “tender” means the  
10 act by which a lessee makes royalty oil or royalty  
11 gas produced from lease premises available to the  
12 United States for receipt.

13           (34) TRANSPORTATION; TRANSPORT.—Each of  
14 the terms “transportation” and “transporting”  
15 means any movement (including associated or relat-  
16 ed activities to facilitate movement such as compres-  
17 sion and dehydration) of royalty oil or royalty gas.  
18 Such terms include any movement of royalty oil or  
19 royalty gas downstream of the delivery point, includ-  
20 ing movement described in this paragraph. Such  
21 terms may include—

22                   (A) the movement of unseparated, bulk  
23 production away from the lease premises to a  
24 point distant from the lease premises; and

1 (B) the movement of separated, identifi-  
2 able production downstream of a well on the  
3 lease premises to any point that is not on, and  
4 is not adjacent to, the lease premises, unit, or  
5 communitized area, as approved by the Sec-  
6 retary.

7 (35) TRANSPORTER.—The term “transporter”  
8 means a person or entity who is transporting or pro-  
9 viding transportation.

10 (36) UNITED STATES.—The term “United  
11 States” means the United States of America and  
12 any agency, department, or instrumentality thereof.

13 **SEC. 3. RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES.**

14 (a) RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES  
15 OF THE UNITED STATES.—

16 (1) GENERAL RULE.—Except as otherwise pro-  
17 vided in section 8 of this Act, all royalty oil and roy-  
18 alty gas accruing to the United States under any oil  
19 and gas lease shall be taken in kind by the United  
20 States at the applicable delivery point for each lease  
21 premises.

22 (2) OWNERSHIP AND RECEIPT BY UNITED  
23 STATES.—Ownership of all right, title and interest  
24 in royalty oil and royalty gas produced from oil and  
25 gas lease premises governed by this Act shall remain

1 in the United States until sale or other disposition  
2 by the United States. Nothing in this Act shall limit  
3 the right of the United States to have royalty oil or  
4 royalty gas stored after its production in such tanks  
5 or other surface facilities as the lessee may be ex-  
6 pressly obligated to furnish under any applicable  
7 lease term. The United States shall not delay or  
8 defer the receipt of lease production, delay receipt of  
9 new production, or physically segregate the royalty  
10 share prior to receipt by the United States. The  
11 United States shall have custody, possession, and re-  
12 sponsibility attendant thereto for royalty oil and roy-  
13 alty gas at and beyond the delivery point.

14 (3) SELECTION OF AND CONTRACTS WITH A  
15 QUALIFIED MARKETING AGENT.—(A) Except as pro-  
16 vided in subsection (b), the Secretary shall, for each  
17 lease premises, contract with a person to act as a  
18 qualified marketing agent to market and dispose of  
19 royalty oil and royalty gas. Each qualified marketing  
20 agent shall be authorized to advise and consult with  
21 the Secretary on the sale and disposition of the roy-  
22 alty oil and royalty gas and to directly sell and  
23 broker the royalty oil and royalty gas.

24 (B) To be eligible for a contract under this  
25 paragraph to act as a qualified marketing agent, a

1 person must have the expertise necessary to receive,  
2 handle, transport, deliver, market, process, dispose,  
3 broker, or sell royalty oil and royalty gas in accord-  
4 ance with this Act. Under rules promulgated by the  
5 Secretary, the Secretary may designate any person  
6 as ineligible to act as a qualified marketing agent  
7 under this paragraph by reason of such person's re-  
8 lationship to persons engaged in the handling, gath-  
9 ering, transporting, marketing, processing, or pur-  
10 chasing of oil or gas.

11 (C) The Secretary shall contract with not more  
12 than one qualified marketing agent for each lease  
13 premises for royalty oil and not more than one quali-  
14 fied marketing agent for each lease premises for roy-  
15 alty gas.

16 (D) The Secretary shall solicit competitive bids  
17 for contracts for qualified marketing agents. The  
18 Secretary shall promulgate final rules within 12  
19 months after the date of the enactment of this Act  
20 regarding the competitive manner in which qualified  
21 marketing agents shall be selected.

22 (E) The compensation of each qualified market-  
23 ing agent—

24 (i) shall be determined and made by the  
25 Secretary without further appropriation based



1 on the services to be performed by the qualified  
2 marketing agent; and

3 (ii) shall be established in the contract be-  
4 tween the qualified marketing agent and the  
5 United States.

6 (F) Except as otherwise provided in subsection  
7 (b), the Secretary shall be solely responsible for ob-  
8 taining and contracting with qualified marketing  
9 agents and shall be authorized to pay qualified mar-  
10 keting agents from proceeds derived from the sale of  
11 royalty oil and royalty gas without further appro-  
12 priation.

13 (G) Each contract shall—

14 (i) require the qualified marketing agent to  
15 dispose of and sell royalty oil and royalty gas  
16 in an open, nondiscriminatory, and competitive  
17 manner; and

18 (ii) prohibit the qualified marketing agent  
19 from precluding any person from competing for  
20 the handling, gathering, transporting, market-  
21 ing, processing, or purchasing of royalty oil and  
22 royalty gas solely by reason of the person being  
23 a lessee or person affiliated with a lessee, quali-  
24 fied marketing agent, gatherer, royalty payor,  
25 transporter, processor or purchaser.

1           (4) TRANSPORTATION COSTS.—Each contract  
2           under paragraph (3) shall require the Secretary to  
3           bear the costs of any transportation of royalty oil  
4           and royalty gas without further appropriation as  
5           specified by this Act incurred prior to the sale or  
6           other disposition of the royalty oil and royalty gas  
7           by the qualified marketing agent.

8           (5) PROCESSING.—The qualified marketing  
9           agent under paragraph (3) shall—

10                 (A) have the right to process royalty oil  
11                 and royalty gas, after receipt at the delivery  
12                 point, for the recovery and sale of valuable  
13                 products; and

14                 (B) require the Secretary to bear any ap-  
15                 plicable costs of exercising such right without  
16                 further appropriation.

17           (6) COMPLIANCE WITH STANDARDS.—In taking  
18           in kind, processing, and shipping royalty oil and roy-  
19           alty gas, the United States and its qualified market-  
20           ing agent shall comply with all procedures which are  
21           customary or required of processors and shippers,  
22           including but not limited to the applicable FERC-  
23           approved GISB standards, nominations of volumes,  
24           scheduling of deliveries, and the movement of oil or  
25           gas in or through the facilities of the initial trans-

1       porter and any subsequent transporter. The Sec-  
2       retary and his qualified marketing agent shall as-  
3       sume responsibility and any liability associated with  
4       such duties.

5               (7) FAIR MARKET VALUE REQUIREMENTS.—

6       The net proceeds received by the United States from  
7       the sale of royalty oil and royalty gas are deemed to  
8       satisfy in full the Secretary's responsibility to receive  
9       fair market value as defined by any applicable stat-  
10      ute or lease provision.

11              (b) RIGHTS, OBLIGATIONS AND RESPONSIBILITIES  
12      OF STATES.—

13              (1) SELECTION OF QUALIFIED MARKETING  
14      AGENTS.—At its option and for the mutual benefit  
15      of the United States and the State, a State entitled  
16      to revenues under the provisions of section 35 of the  
17      Mineral Leasing Act (30 U.S.C. 191) or section 8(g)  
18      of the Outer Continental Shelf Lands Act (43  
19      U.S.C. 1353) may elect to act on behalf of the Sec-  
20      retary in selecting qualified marketing agents to sell  
21      or dispose of royalty oil or royalty gas produced  
22      from lease premises within the State or from section  
23      8(g) lease premises adjacent to the State, whichever  
24      is applicable. If it makes such an election, the State  
25      shall enjoy all the rights and assume all obligations

1 that the United States would otherwise have under  
2 this Act. If a State selects a qualified marketing  
3 agent that has contracted to market production from  
4 State leases, the contract with the qualified market-  
5 ing agent shall be on terms no less favorable to the  
6 interests of the United States than the contract with  
7 the State. A State may make such an election from  
8 time to time in accordance with paragraph (4).

9 (2) COMPLIANCE WITH REQUIREMENTS.—A  
10 State that elects to act under this section shall—

11 (A) exercise such rights in accordance with  
12 the requirements established by this Act gov-  
13 erning royalty in kind; and

14 (B) be subject to the rights, responsibil-  
15 ities, and obligations of the United States under  
16 this Act, as may be applicable, including those  
17 set forth in subsection (a).

18 (3) NOTICE; EFFECTIVE PERIOD OF ELEC-  
19 TION.—A State may elect to act under this section  
20 after giving the Secretary 90 days notice. The elec-  
21 tion is effective 90 days after the date the Secretary  
22 receives notice of the election. The election shall re-  
23 main in effect for a period of not less than 3 years.  
24 After the initial term, a State must give sufficient

1 notice to the United States, but in no event less  
2 than 180 days, to terminate an election period.

3 (4) COVERED OIL AND GAS.—A State’s election  
4 under this subsection shall apply to all royalty oil  
5 and royalty gas within the State and section 8(g)  
6 lands adjacent to the State, as applicable.

7 (5) EXISTING CONTRACTS.—If a contract be-  
8 tween a qualified marketing agent and the United  
9 States exists that has not expired, the State’s elec-  
10 tion shall be subject to that existing contract.

11 (6) LIMITATION ON DEDUCTIONS FROM STATE  
12 SHARE OF RECEIPTS.—If a State makes an election  
13 under this section, payment of the State’s share of  
14 receipts for the sale of royalty oil and royalty gas  
15 shall be made without deductions for costs applicable  
16 to the services provided by the State under the net  
17 receipts sharing provisions of the Mineral Leasing  
18 Act.

19 (c) RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES  
20 OF THE LESSEE.—

21 (1) EFFECT OF TENDER BY LESSEE.—A lessee  
22 shall tender royalty oil and royalty gas to the United  
23 States at the delivery point for each lease premises,  
24 except as provided in section 6. Upon such tender  
25 for any lease premises, all royalty obligations of the

1 lessee shall be considered fulfilled and fully satisfied  
2 for the amount tendered, including any express or  
3 implied obligation or duty to market, except as pro-  
4 vided in section 6. If the United States fails to take  
5 in kind the entire volume tendered, the lessee's obli-  
6 gation or duty shall nonetheless be fully satisfied.

7 (2) MEASUREMENT OF LEASE PRODUCTION.—A  
8 lessee shall measure or cause to be measured lease  
9 production, including royalty oil and royalty gas, at  
10 the delivery point in accordance with any applicable  
11 laws and lease terms.

12 (3) TERMINATION OF RESPONSIBILITIES OF  
13 LESSEE.—A lessee shall have no responsibility or ob-  
14 ligation for royalty oil or royalty gas after tendering  
15 it in accordance with paragraph (1) and shall not be  
16 liable for any costs or liability downstream of the de-  
17 livery point associated with the royalty oil or royalty  
18 gas.

19 (4) REPORTING AND RECORDKEEPING.—With  
20 respect to royalty oil and royalty gas taken in kind  
21 by the United States, a lessee shall not be subject  
22 to the reporting and recordkeeping requirements of  
23 the Federal Oil and Gas Royalty Management Act  
24 (30 U.S.C. 1701 et seq.) or other applicable laws for  
25 any lease, other than records or reports necessary to

1       verify the quantity of royalty oil or royalty gas pro-  
2       duced from a lease premises.

3       (d) RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES  
4       OF QUALIFIED MARKETING AGENTS.—

5               (1) IN GENERAL.—In accordance with the  
6       terms of its contract with the United States, a quali-  
7       fied marketing agent shall—

8               (A) advise and consult with the United  
9       States regarding the terms and conditions of  
10      sales to purchasers;

11              (B) arrange for the receipt, handling,  
12      transporting, delivery, marketing, processing,  
13      disposition, brokering and sale of royalty oil  
14      and royalty gas; and

15              (C) be authorized to enter into sales con-  
16      tracts on behalf of the United States.

17              (2) MOVEMENT OF ROYALTY OIL AND ROYALTY  
18      GAS.—A qualified marketing agent shall be author-  
19      ized to make any arrangements necessary to move  
20      royalty oil and royalty gas downstream of the appli-  
21      cable delivery point, and shall be authorized to enter  
22      into transportation and processing contracts on be-  
23      half of the United States.

24              (3) REQUIREMENT TO TAKE.—A qualified mar-  
25      keting agent shall be required to take 100 percent

1 of the royalty share tendered by the lessee from each  
2 lease premises on a daily basis.

3 (4) ENHANCEMENT OF REVENUES TO UNITED  
4 STATES.—In handling, marketing, and disposing of  
5 royalty oil and royalty gas, a qualified marketing  
6 agent shall utilize its experience and expertise to  
7 seek opportunities to enhance revenues to the United  
8 States, including opportunities for the sale of royalty  
9 oil and royalty gas at or away from the lease prem-  
10 ises, depending on the facts and circumstances rel-  
11 evant to receiving, handling, transporting, delivering,  
12 marketing, processing, disposition, brokering, and  
13 sale of the royalty oil or royalty gas.

14 (5) AFFILIATE TRANSACTIONS.—Qualified mar-  
15 keting agent sales to itself or an affiliate shall be  
16 made in accordance with the following standards:

17 (A) When selling royalty oil and royalty  
18 gas to an affiliate, a qualified marketing agent  
19 shall not give preference to an affiliate, includ-  
20 ing but not limited to, favoring the affiliate  
21 with lower sales prices, rights of first refusal or  
22 more favorable terms than those offered to non-  
23 affiliated purchasers of royalty oil and royalty  
24 gas.



(B) The managing employees of the qualified marketing agent shall periodically certify that it has complied with these provisions. The civil penalty provisions of section 109(d) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1719(d)) and the criminal penalty provisions section 110 of such Act (30 U.S.C. 1720) shall apply to any qualified marketing agent who violates subparagraph (A).

**SEC. 4. COSTS RESPONSIBILITY.**

(a) MERCHANTABLE CONDITION.—The lessee shall bear the costs of placing royalty oil and royalty gas in merchantable condition at the delivery point, if not produced in such condition at the well: *Provided, however,* That gathering and transportation costs under this Act shall be governed solely by section 4(b) and section 5, and responsibility for such costs shall not be dependent upon whether the royalty oil or royalty gas is in merchantable condition at the time of gathering or transportation.

(b) GATHERING AND TRANSPORTATION OF ROYALTY OIL AND ROYALTY GAS.—

(1) GATHERING.—The lessee shall bear the costs of gathering royalty oil and royalty gas.

(2) TRANSPORTATION.—The United States shall bear the costs of transporting royalty oil and

1 royalty gas to and beyond the delivery point until  
2 disposition or sale by the United States. Transpor-  
3 tation costs shall include associated or related activi-  
4 ties to facilitate movement, such as the costs of com-  
5 pression and dehydration associated with transpor-  
6 tation. The movement of unseparated, bulk produc-  
7 tion away from the lease premises to a point distant  
8 from the lease premises and the movement of sepa-  
9 rated, identifiable production away from a well on  
10 the lease premises to any point not on or adjacent  
11 to the lease premises, unit or communitized area  
12 shall be considered transportation. Transportation  
13 costs shall be governed solely by the definitions and  
14 provisions in this Act relating to transportation and  
15 responsibility for the payment of such costs shall not  
16 be dependent upon whether the royalty oil or royalty  
17 gas is in merchantable condition at the time of  
18 transportation.

19 (c) LIMITATION ON LESSEE'S RESPONSIBILITY FOR  
20 COSTS.—With respect to all royalty oil and royalty gas  
21 taken in kind by the United States, the lessee shall bear  
22 no costs other than those specifically identified in this sec-  
23 tion. After the royalty share is taken in kind, the United  
24 States shall dispose of and market its royalty oil and roy-  
25 alty gas and the lessee shall have no obligation to dispose

1 of or market the United States royalty share of produc-  
 2 tion.

3 (d) REIMBURSEMENT OF COSTS.—In bearing the  
 4 cost of transporting royalty oil and royalty gas, the United  
 5 States shall reimburse the lessee for transportation costs  
 6 without further appropriation in accordance with the pro-  
 7 visions of subsection (b) of this section and section 5.

8 **SEC. 5. TRANSPORTER CHARGES.**

9 (a) DETERMINATION.—The lessee or its affiliate shall  
 10 determine and calculate, where applicable, the transpor-  
 11 tation charges governed by this Act in accordance with  
 12 subsections (b) and (c).

13 (b) REIMBURSEMENT FOR TRANSPORTATION COSTS  
 14 PRIOR TO THE DELIVERY POINT.—

15 (1) TRANSPORT BY REGULATED PIPELINE OR  
 16 FACILITY.—Reimbursement to a lessee for costs of  
 17 transporting royalty oil and royalty gas produced by  
 18 the lessee and subsequently transported through a  
 19 regulated pipeline or facility before the delivery point  
 20 shall be—

21 (A) for nonaffiliated transactions, the ac-  
 22 tual rate paid under the tariff by the lessee; or  
 23 (B) for affiliated transactions, the lower of  
 24 the tariff rate or the actual rate paid under the  
 25 tariff.

1           (2) TRANSPORT BY SHIPMENT-BY-SHIPMENT  
2       TARIFF JURISDICTION PIPELINE OR FACILITY.—Re-  
3       imbursement to a lessee for transportation costs in-  
4       curred to transport royalty oil through a pipeline or  
5       facility for which jurisdiction for purposes of a tariff  
6       is determined on a shipment-by-shipment basis, shall  
7       be the tariff rate for all shipments by the lessee  
8       through the same pipeline or facility if there is a  
9       shipment through the pipeline or facility to which a  
10      tariff applies.

11          (3) TRANSPORT BY UNREGULATED PIPELINE  
12      OR FACILITY.—(A) Reimbursement to a lessee for  
13      transportation costs incurred to transport royalty oil  
14      or royalty gas through an unregulated pipeline or fa-  
15      cility before the delivery point shall be—

16               (i) for nonaffiliated transactions, the ac-  
17               tual costs incurred by the lessee; or

18               (ii) for affiliated transactions—

19                       (I) if third party oil or gas is being  
20                       transported through the pipeline or facility,  
21                       the weighted average (by volume) third  
22                       party charge; or

23                       (II) if no third party oil or gas is  
24                       being transported through the pipeline or  
25                       facility, not to exceed the pipeline or facil-

1                   ity owner’s or its affiliate’s costs of operat-  
2                   ing the pipeline or facility, including a re-  
3                   turn on undepreciated capital investment,  
4                   subject to paragraph (4).

5                   (B) For purposes of subparagraph (A)(ii)(II)  
6                   the term “costs of operating” means the sum of the  
7                   following:

8                   (i) Direct operating, maintenance, and re-  
9                   pair costs and expenses.

10                  (ii) Indirect costs (including but not lim-  
11                  ited to costs such as information systems, busi-  
12                  ness services and technical services) allocated to  
13                  the pipeline or facility, in an amount not ex-  
14                  ceeding 15 percent of the amount of direct  
15                  costs that applies under clause (i).

16                  (iii) An allowance for capital investment  
17                  calculated on the basis of either of the follow-  
18                  ing, as may be, elected by the lessee:

19                         (I) depreciation, plus a return on the  
20                         undepreciated capital, or

21                         (II) a return on depreciable capital in-  
22                         vestment.

23                   Return under subclauses (I) and (II) shall be at  
24                   a rate equal to twice the rate payable for bonds

1 with a Standard and Poor's industrial BBB  
2 bond rating.

3 (4) ALLOWANCE OF HIGHER TRANSPORTATION  
4 COSTS.—If the amount specified in paragraph  
5 (3)(A)(ii) does not adequately reflect the costs of the  
6 transportation services provided by a lessee or its af-  
7 filiate, the lessee may request a different transpor-  
8 tation reimbursement from the Secretary. For pipe-  
9 lines in more than 200 meters of water, the Sec-  
10 retary may allow a higher rate of return, sufficient  
11 for an investment in the fabricating, installing, oper-  
12 ating, and maintaining such pipelines as compared  
13 to pipelines in waters of less than 200 meters.

14 (5) RESTRICTION ON DISCLOSURE.—The  
15 United States and its qualified marketing agent  
16 shall keep confidential and shall not disclose the  
17 transportation charge or any facts or information re-  
18 lated thereto used by a lessee or its affiliate for re-  
19 imbursement under this subsection.

20 (c) CHARGES FOR TRANSPORTATION COSTS BEYOND  
21 THE DELIVERY POINT.—

22 (1) IN GENERAL.—Charges by the lessee or its  
23 affiliate for transportation of royalty oil or royalty  
24 gas through an unregulated pipeline or facility be-

1       yond the delivery point shall be a negotiated rate,  
2       that—

3               (A) shall not exceed the highest rate  
4       charged for transportation provided to a third  
5       party, if third party oil or gas is being trans-  
6       ported through the pipeline or facility; or

7               (B) shall be the fair commercial value of  
8       the transportation services provided by the les-  
9       see or its affiliate if no third party oil or gas  
10      is being transported through the pipeline or fa-  
11      cility.

12           (2)     DETERMINATION     OF     COMMERCIAL  
13      VALUE.—The standard to be used to determine the  
14      value/commercial value for purposes of paragraph  
15      (1)(B) shall be based upon the transportation serv-  
16      ices provided and not on the ownership of the pipe-  
17      line or facility by the lessee or its affiliate.

18      (d) ARBITRATION.—

19           (1) IN GENERAL.—If negotiations between a  
20      qualified marketing agent and an entity owning the  
21      pipeline or facility do not result in a mutually agree-  
22      able charge for transportation under subsection (c),  
23      then either party may, at any time during the nego-  
24      tiation, require that such matter be submitted to ar-  
25      bitration in accordance with this subsection.

1           (2) SELECTION OF ARBITRATORS.—Any dispute  
2       regarding a charge for transportation that is not re-  
3       solved by agreement shall be determined by a panel  
4       of 3 arbitrators upon written notice given by either  
5       party to the other, which notice shall also name one  
6       arbitrator. The party receiving such notice shall,  
7       within 10 business days thereafter, by written notice  
8       to the other party, name the second arbitrator, or  
9       failing to do so, the first party who gave notice shall  
10      name the second arbitrator. The two arbitrators so  
11      appointed shall name the third, or failing to do so  
12      within 5 business days then upon the request of ei-  
13      ther party, the third arbitrator shall be a certified  
14      arbitrator appointed by a professional arbitration as-  
15      sociation. Whether appointed by the two party-  
16      named arbitrators or by a professional arbitration  
17      association, the third arbitrator shall be knowledge-  
18      able about and experienced in the transportation of  
19      oil or gas or both, as applicable.

20           (3) HEARING.—An arbitration hearing shall be  
21      held within 20 calendar days following the selection  
22      of the third arbitrator. At the hearing, each party  
23      shall submit a proposed transportation rate and evi-  
24      dence to support such rate as it sees fit.



1           (4) DECISION.—The panel of arbitrators shall  
2       determine which of the rates submitted by the par-  
3       ties shall be the transportation charge used. The ar-  
4       bitrators shall render a written decision within 10  
5       calendar days after the hearing under paragraph (3)  
6       based on a majority vote of the 3 arbitrators. Such  
7       decision shall be final and binding on the United  
8       States, the qualified marketing agent, and the lessee  
9       and its affiliate, and shall be enforceable in any  
10      court having jurisdiction.

11          (5) EXPENSES.—Each party shall bear its ex-  
12      penses of prosecuting its own case in any arbitra-  
13      tion, and the parties shall share equally any other  
14      expenses of the arbitration, including compensation  
15      for the third arbitrator at a rate that is fair and rea-  
16      sonable to the United States.

17          (6) USE OF EMPLOYEE OF PARTY AS ARBITRA-  
18      TOR.—(A) Any arbitrator named by the parties may  
19      be a permanent or temporary officer or employee of  
20      the Federal or a State Government, or an employee  
21      of any party to the dispute, if all parties agree that  
22      the arbitrator may serve.

23          (B) In implementing this paragraph, the Sec-  
24      retary may use the services of one or more employ-  
25      ees of other agencies to serve as arbitrators to be

1 named by the Secretary. The Secretary may enter  
2 into an interagency agreement that provides for the  
3 reimbursement by the user agency or the parties of  
4 the full or partial costs of the services of such an  
5 employee.

6 (7) LIMITATION ON DISCLOSURE.—Any party  
7 (including the United States and its qualified mar-  
8 keting agent) to an arbitration proceeding shall keep  
9 confidential and shall not disclose the results of the  
10 arbitration or any facts, evidence, or information re-  
11 lated thereto provided in confidence to the arbitra-  
12 tors.

13 (8) INTERIM RATE.—(A) The royalty oil and  
14 royalty gas shall be transported at the disputed rate  
15 during the interim period, subject to an obligation to  
16 refund if the rate is later reduced as a result of arbi-  
17 tration.

18 (B) Any refund under subparagraph (A) shall  
19 be made with interest at the average short-term rate  
20 as specified in section 6621 of the Internal Revenue  
21 Code of 1986.

22 (9) DELAY OR CURTAILMENT OF PRODUCTION  
23 PROHIBITED.—At no time during such arbitration or  
24 dispute shall lease production be delayed or cur-  
25 tailed.

1 **SEC. 6. IMBALANCES.**

2 (a) REQUIREMENT TO RESOLVE IMBALANCES.—

3 (1) IN GENERAL.—If the amount of royalty oil  
4 or royalty gas production taken by the United States  
5 from a lease premises during a calendar month dif-  
6 fers from the amount of royalty oil or royalty gas  
7 production attributable to that lease premises for  
8 that calendar month, and the difference results from  
9 the circumstances described in paragraph (2), the  
10 difference (in this section referred to as a “royalty  
11 share imbalance”) shall be resolved in accordance  
12 with this section.

13 (2) CIRCUMSTANCES.—The circumstances re-  
14 ferred to in paragraph (1) are the following:

15 (A) A force majeure event at the delivery  
16 point that prevents the United States trans-  
17 porter from receiving royalty oil or royalty gas.

18 (B) A failure by the United States or its  
19 qualified marketing agent to receive, transport,  
20 and market its royalty oil or royalty gas ten-  
21 dered for a one-time occurrence of not more  
22 than 3 consecutive days in any calendar quar-  
23 ter.

24 (C) A difference between the amount made  
25 available to the United States at the delivery  
26 point by the lease operator on behalf of the les-

1           see and the United States royalty share of total  
2           production.

3       (b) IMBALANCE ACCOUNTS.—

4           (1) MAINTENANCE OF INFORMATION.—Each  
5       lease operator shall maintain information on the  
6       quantity of royalty oil and royalty gas produced  
7       from or attributable to each lease premises and the  
8       amount of royalty oil or royalty gas production  
9       taken by the United States from each lease prem-  
10      ises. The information shall include—

11           (A) the quantities of royalty oil and royalty  
12          gas taken in kind by the United States at the  
13          delivery point;

14           (B) the quantities of royalty oil and roy-  
15          alty gas produced from and attributed to the  
16          lease premises; and

17           (C) the current month and cumulative roy-  
18          alty share imbalances.

19       (2) REPORT.—(A) Each lease operator shall—

20           (i) submit a royalty share imbalance report  
21          to the qualified marketing agent for the United  
22          States with respect to the lease no later than  
23          60 days after the expiration of each month of  
24          production from the lease; or

(ii) if all information for the report is not available by such date, file or cause to be filed with the qualified marketing agent a report that contains estimated quantities, and file a revised final report showing actual quantities no later than 60 days after information on all actual quantities is received.

(B) The royalty share imbalance report submitted under subparagraph (A) to the qualified marketing agent shall constitute formal notice of a royalty share imbalance, which shall be remedied in accordance with subsection (c).

(c) MANAGING IMBALANCES.—

(1) IN GENERAL.—If a royalty share imbalance occurs during any calendar month, the lease operator shall work with the United States (through its qualified marketing agent) to settle the royalty share imbalance in a manner consistent with the existing production balancing agreements or practices among operating rights owners.

(2) ROYALTY OIL IMBALANCE.—In the case of a royalty share imbalance with respect to royalty oil, and in the absence of multiple operating rights owners, additional quantities of oil may be taken by either a lessee or the United States to expeditiously

1 settle such royalty share imbalance as soon as is rea-  
2 sonably practicable, as determined by the lease oper-  
3 ator.

4 (3) ROYALTY GAS IMBALANCE.—(A) In the case  
5 of a royalty share imbalance with respect to royalty  
6 gas during any calendar month and in the absence  
7 of multiple operating rights owners, the lease opera-  
8 tor shall work with the United States (through its  
9 qualified marketing agent) to arrange for increased  
10 or decreased quantities of gas to be taken beginning  
11 the month after receipt of such notice by the quali-  
12 fied marketing agent, to expeditiously settle such  
13 royalty share imbalances as soon as is reasonably  
14 practicable.

15 (B) Additional quantities taken in a month by  
16 either a lessee or the United States to reduce a roy-  
17 alty share imbalance with respect to royalty gas  
18 shall not exceed 25 percent of that month's royalty  
19 gas.

20 (C) Until final settlement pursuant to sub-  
21 section (d), royalty share imbalances with respect to  
22 royalty gas shall be reduced chronologically in the  
23 order in which they were created.

24 (d) FINAL IMBALANCE REPORT AND FINAL SETTLE-  
25 MENT.—

1           (1) FINAL IMBALANCE REPORT.—Upon perma-  
2           nent cessation of production from a lease, the lease  
3           operator shall file a final imbalance report that—

4                   (A) contains the information described in  
5           subsection (b); and

6                   (B) states that the lease premises has per-  
7           manently ceased production and that a royalty  
8           share imbalance exists.

9           (2) FINAL SETTLEMENT.—The parties to a roy-  
10          alty share imbalance shall settle such royalty share  
11          imbalance using the same final settlement proce-  
12          dures as set forth in the existing production bal-  
13          ancing agreement between the operating rights own-  
14          ers, if any. In the absence of such an agreement,  
15          within 60 days of the final imbalance report, each  
16          party that received excess quantities shall, at its op-  
17          tion, make delivery of the excess quantities or make  
18          a cash payment, to the parties who received insuffi-  
19          cient quantities. The cash payment shall be based on  
20          the net proceeds (in terms of actual value received)  
21          from the sale of such excess quantities for value at  
22          the lease premises or the lessee may make delivery  
23          of the imbalance volume. No interest shall accrue,  
24          prior to the date of any settlement, on any imbal-  
25          ance.

1 **SEC. 7. ROYALTY-IN-KIND FOR TRUCKED, TANKERED, OR**  
2 **BARGED OIL OR GAS.**

3 (a) APPLICATION.—This section shall apply to roy-  
4 alty oil or royalty gas produced from onshore or offshore  
5 lease premises for which there is no pipeline connection  
6 at the well such that the royalty oil or royalty gas is trans-  
7 ported by truck, tanker, or barge from the lease premises.

8 (b) SELECTION OF TRANSPORTER.—

9 (1) IN GENERAL.—To further the efficient and  
10 cost-effective taking of royalty oil or royalty gas in  
11 kind from such lease premises, the qualified market-  
12 ing agent shall select and utilize a transporter who  
13 is transporting oil or gas for a lessee from the lease  
14 premises, or for the operator of the lease premises.

15 (2) EXCEPTION.—Royalty oil or royalty gas  
16 taken in kind may be transported in any other man-  
17 ner agreed to by the qualified marketing agent and  
18 the lessee or lease operator.

19 (c) RELATIONSHIP TO OTHER LAWS.—

20 (1) LAWS REGARDING OIL OR GAS TRANSPOR-  
21 TATION.—This section shall not alter or abridge any  
22 State or Federal law regulating the transportation of  
23 oil or gas by truck, tanker, or barge.

24 (2) FEDERAL ROYALTY PREPAYMENT PROVI-  
25 SIONS.—Nothing in this Act shall modify, abridge,  
26 or alter the provisions of section 7(b) of the Federal



1 Oil and Gas Royalty Simplification and Fairness Act  
2 (30 U.S.C. 1726) with respect to the prepayment of  
3 royalty.

4 **SEC. 8. LIMITATIONS ON APPLICATION.**

5 (a) LEASE ROYALTY CLAUSES AND ROYALTY PAY-  
6 MENTS.—This Act does not apply to royalty payments of  
7 the following types:

8 (1) Compensatory royalties.

9 (2) Minimum royalties.

10 (3) Net profit share lease royalties prior to pay-  
11 out.

12 (b) PRIOR ROYALTY RATE REDUCTION DETERMINA-  
13 TIONS.—This Act shall not modify or alter any royalty  
14 rate reduction determination made by the Secretary before  
15 or after the date of enactment of this Act. The amount  
16 of royalty oil and royalty gas taken in kind by the Sec-  
17 retary shall be the amount calculated by such reduced roy-  
18 alty rate.

19 (c) AUDIT OF ELIGIBLE SMALL REFINER.—The Sec-  
20 retary shall have the right to audit the reports of eligible  
21 small refiners related to the volume of royalty oil received  
22 as are required under the provisions of this Act during  
23 normal business hours, at reasonable times, to verify the  
24 accuracy of such reports.

1 **SEC. 9. REPORTING.**

2 (a) REPORTING BY LESSEE.—A lessee shall provide  
3 or cause to be provided all volume reports required under  
4 the oil and gas lease to the United States, but shall be  
5 relieved of the obligation of providing any royalty related  
6 and all royalty-in-value reports for any royalty oil or roy-  
7 alty gas taken in kind by the United States required pur-  
8 suant to the oil and gas lease terms or applicable statutes.  
9 A lessee shall make available or cause to be made available  
10 such information as is customarily provided to third party  
11 sellers of lease production on a timely basis.

12 (b) REPORTING BY QUALIFIED MARKETING  
13 AGENT.—A qualified marketing agent shall provide or  
14 cause to be provided to the United States any valuation  
15 or related royalty reports required by the Secretary.

16 **SEC. 10. AUDIT.**

17 (a) AUDIT OF LESSEE.—The Secretary shall have the  
18 right to audit the reports of lessees related to the volume  
19 of oil and gas produced as are required under this Act  
20 during normal business hours, at reasonable times, to ver-  
21 ify the accuracy of such reports.

22 (b) AUDIT OF QUALIFIED MARKETING AGENT.—The  
23 Secretary shall have the right to audit the reports of quali-  
24 fied marketing agents required under this Act during nor-  
25 mal business hours, at reasonable times, to verify the ac-  
26 curacy of such reports. Any information and records re-

1   garding sales of royalty oil and royalty gas shall be ob-  
2   tained, where necessary, from a qualified marketing agent  
3   and nonaffiliated purchaser shall be subject to audit.

4   **SEC. 11. LEASE TERMS NOT AFFECTED.**

5       In accordance with the terms of oil and gas leases  
6   issued by the Secretary, the Secretary shall exercise the  
7   right to be paid oil and gas royalties in amount pursuant  
8   to this Act and lessees shall pay such oil and gas royalties  
9   in amount pursuant to provisions of this Act. Nothing in  
10   this Act shall alter or abridge the rights of a lessee under  
11   an oil and gas lease, including the right to explore for,  
12   operate, drill for, or produce oil and gas or to otherwise  
13   operate the lease. The rights, duties, or obligations that  
14   exist between the United States and a lessee which arise  
15   under an oil and gas lease with respect to oil or gas used  
16   on the lease premises or gas unavoidably lost prior to the  
17   delivery point shall not be affected, abridged, or altered  
18   by this Act. When oil or gas is used on, or for the benefit  
19   of, a lease premises at a facility handling production from  
20   more than one lease premises, or at a facility handling  
21   unitized or communitized production, the proportionate  
22   share of each lease's production (actual or allocated) nec-  
23   essary to operate the facility may be used royalty-free.

1   **SEC. 12. ELIGIBLE AND SMALL REFINERS.**

2           (a) SALE OF ROYALTY OIL TO ELIGIBLE SMALL RE-  
3   FINERS.—(1) The Secretary shall direct qualified market-  
4   ing agents to offer for sale to eligible small refiners the  
5   eligible small refiner portion in accordance with the provi-  
6   sions set forth in this section.

7           (2) The sale of royalty oil from the eligible small re-  
8   finer portion to an eligible small refiner is intended for  
9   processing, or trading for equivalent barrels for process-  
10   ing, in the eligible small refiner's refineries located in the  
11   United States and not for resale in-kind or value.

12          (3) The Secretary shall annually review and recertify  
13   or withdraw the continuing eligibility of previously cer-  
14   tified eligible small refiners.

15          (4) The eligible small refiner portion shall be offered  
16   to eligible small refiners from royalty oil volumes to be  
17   sold by each qualified marketing agent. If there are suc-  
18   cessful offers for all royalty oil volumes to be sold, the  
19   eligible small refiner portion price shall be the weighted  
20   average price of the 40 percent of royalty oil volumes to  
21   be sold for which the lowest successful offers have been  
22   received. If a part of the royalty oil volumes to be sold  
23   does not receive a successful offer, for weighted average  
24   pricing purposes, that part shall be valued using the price  
25   of the lowest successful offer.

1       (5) Nothing in this section shall preclude any eligible  
2 small refiner from participating in any open and adver-  
3 tised or negotiated sale by qualified marketing agents.  
4 Royalty oil volumes obtained by any eligible small refiner  
5 in any open and advertised or negotiated sale shall not  
6 be included in calculating limitations on eligibility as de-  
7 fined in subsection (b).

8       (b) LIMITATIONS ON ELIGIBILITY.—No eligible small  
9 refiner may purchase royalty oil from the eligible small  
10 refiner portion for delivery at a rate that exceeds 60 per-  
11 cent of the combined crude oil and condensate distillation  
12 capacity of that eligible small refiner’s currently operating  
13 refineries located in the United States unless the Sec-  
14 retary determines that it is in the public interest to allow  
15 all eligible small refiners to purchase royalty oil at a great-  
16 er rate. The Secretary shall promulgate rules and regula-  
17 tions to determine an eligible small refiner’s current oper-  
18 ating capacity.

19       (c) FEES, CREDITWORTHINESS, AND SURETY RE-  
20 QUIREMENTS.—(1) The purchase of royalty oil from the  
21 eligible small refiner portion pursuant to this section shall  
22 not be subject to any fees or charges not required of all  
23 purchasers of royalty oil.

1       (2) The Secretary shall establish conditions for each  
2 eligible small refiner's creditworthiness at the time of de-  
3 termining and reviewing eligibility.

4       (3) Creditworthiness requirements for eligible small  
5 refiners shall not exceed standard industry requirements  
6 governing non-Federal crude oil purchasers, and the Sec-  
7 retary may not require surety in excess of the estimated  
8 value of 60 days anticipated deliveries of royalty oil from  
9 the eligible small refiner portion to individual eligible small  
10 refiners.

11       (d) ELIGIBLE SMALL REFINER ADVISORY PANEL.—  
12 The Secretary shall convene an eligible small refiner advi-  
13 sory panel to assist in developing policies and procedures  
14 to implement the provisions of this Act. The eligible small  
15 refiner advisory panel shall be comprised of representa-  
16 tives from not less than 5 small refiners who have partici-  
17 pated in the small refiner program established pursuant  
18 to section 36 of the Mineral Leasing Act (30 U.S.C. 192)  
19 or section 1353 of the Outer Continental Shelf Lands Act  
20 (43 U.S.C. 1353).

21       (e) \_\_\_\_\_.—Pursuant to the recommendations of the  
22 Small Refiner's Advisory Group, the Secretary shall de-  
23 velop and implement procedures to ensure a fair and equi-  
24 table opportunity for interested eligible small refiners to  
25 purchase royalty oil from the eligible small refiner portion.

1 (f) REPORTS ON RIK.—The Secretary may require  
 2 any eligible small refiner to submit a report demonstrating  
 3 the eligible small refiner’s compliance with subsection  
 4 (a)(2).

5 (g) REPEAL OF EXISTING ROYALTY-IN-KIND AU-  
 6 THORITY.—Section 36 of the Mineral Leasing Act (30  
 7 U.S.C. 192) and section 1353 of the Outer Continental  
 8 Shelf Lands Act (43 U.S.C. 1353) are repealed.

9 **SEC. 13. APPLICABLE LAWS.**

10 (a) MOVEMENT, DISPOSITION, AND SALE OF ROY-  
 11 ALTY OIL AND ROYALTY GAS.—In arranging for the  
 12 movement, disposition and sale of royalty oil and royalty  
 13 gas, the United States and its qualified marketing agents  
 14 shall be subject to all laws that apply to the movement,  
 15 disposition, and sale of oil and gas.

16 (b) NO ADDITIONAL PRIORITY OF SERVICE OR  
 17 MOVEMENT.—In any pipeline, truck, barge, railroad, or  
 18 other carrier downstream of the delivery point, royalty oil  
 19 and royalty gas shall not be afforded a priority of service  
 20 or movement, nor assigned a capacity right which is supe-  
 21 rior to that identified in—

22 (1) the contract for carriage of royalty oil and  
 23 royalty gas entered into by the transporter with the  
 24 United States or the qualified marketing agent; or

25 (2) the tariff applicable to such carrier, if any.

1       (c) MEANING OF TERMS USED.—The meaning of the  
2 terms used in this Act shall be supplemented by reference  
3 to generally accepted accounting principles.

4       (d) LAWS APPLICABLE TO STRIPPER OR MARGINAL  
5 PRODUCTION NOT AFFECTED.—Nothing in this Act shall  
6 modify, abridge or alter the provisions of the Deep Water  
7 Royalty Relief Act of 1995 (43 U.S.C. 1337), or any other  
8 Federal law applicable to stripper or marginal production.

9   **SEC. 14. INDIAN LANDS.**

10       This Act shall not apply with respect to Indian lands.

11   **SEC. 15. EFFECTIVE DATE; REGULATIONS.**

12       (a) IN GENERAL.—Except as provided in subsection  
13 (b), this Act shall become effective 18 months after the  
14 date of enactment of this Act, and shall apply with respect  
15 to the production of oil and gas on or after the first day  
16 of the month following the effective date of this Act.

17       (b) REGULATIONS.—The Secretary shall issue all  
18 regulations required for implementation of this Act within  
19 one year after the date of enactment of this Act.

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