

114TH CONGRESS
1ST SESSION

S. 1891

To amend the Mineral Leasing Act to improve coal royalties, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2015

Mr. WYDEN (for himself and Mr. UDALL) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Mineral Leasing Act to improve coal royalties, 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.**

4 This Act may be cited as the “Coal Royalty Fairness
5 Act of 2015”.

6 **SEC. 2. VALUATION OF COAL ROYALTIES.**

7 Section 7 of the Mineral Leasing Act (30 U.S.C. 207)
8 is amended—

9 (1) in subsection (a), by striking the fourth sen-
10 tence; and

1 (2) by adding at the end the following:

2 “(d) ROYALTIES.—

3 “(1) DEFINITIONS.—In this subsection:

4 “(A) ASSESSMENT VALUE.—

5 “(i) IN GENERAL.—The term ‘assess-
6 ment value’, with respect to Federal coal,
7 means—

8 “(I) the price of Federal coal
9 paid by the purchaser at final sale; or

10 “(II) a price imputed by the Sec-
11 retary based on the coal price index.

12 “(ii) EXCLUSIONS.—The term ‘assess-
13 ment value’ does not include, as deter-
14 mined and to the extent determined to be
15 appropriate by the Secretary—

16 “(I) transportation costs, as de-
17 termined in accordance with the
18 transportation cost index; or

19 “(II) the cost of coal washing.

20 “(B) BROKER.—The term ‘broker’ means
21 a person that resells Federal coal.

22 “(C) COAL PRICE INDEX.—The term ‘coal
23 price index’ means the schedule of average mar-
24 ket prices of Federal coal (in United States dol-
25 lars) paid by the purchaser at final sale, based

1 on the quality and type of the Federal coal, as
2 determined by the Secretary, in consultation
3 with the Administrator of the Energy Informa-
4 tion Administration.

5 “(D) PURCHASER.—

6 “(i) IN GENERAL.—The term ‘pur-
7 chaser’ means a person that—

8 “(I) purchases or contracts to
9 purchase Federal coal—

10 “(aa) directly from a coal
11 mine operator; or

12 “(bb) indirectly from a
13 broker; and

14 “(II) uses that Federal coal in
15 any industrial or energy conversion
16 process.

17 “(ii) EXCLUSION.—The term ‘pur-
18 chaser’ does not include—

19 “(I) a coal broker; or

20 “(II) any other third-party inter-
21 mediary.

22 “(E) QUALITY.—The term ‘quality’, with
23 respect to Federal coal, means the quality of
24 Federal coal measured in British thermal units,

1 sulfur, moisture, and other criteria determined
2 to be appropriate by the Secretary.

3 “(F) SECRETARY.—The term ‘Secretary’
4 means the Secretary of the Interior.

5 “(G) TRANSPORTATION COST INDEX.—The
6 term ‘transportation cost index’ means the
7 transportation cost index established under
8 paragraph (7).

9 “(H) TYPE.—The term ‘type’, with respect
10 to Federal coal, means a general category of
11 coal, such as metallurgical coal or steam coal,
12 as determined by the Secretary.

13 “(2) PAYMENT RATE.—

14 “(A) IN GENERAL.—Except as provided in
15 subparagraph (B), a lease shall require pay-
16 ment of a royalty in such amount as the Sec-
17 retary shall determine of not less than 12.5 per-
18 cent of the assessment value of Federal coal, as
19 determined under paragraph (3).

20 “(B) EXCEPTION.—In lieu of the royalty
21 payment rate described in subparagraph (A),
22 the Secretary may establish such lower royalty
23 payment rate as the Secretary determines to be
24 appropriate in the case of Federal coal recov-
25 ered by an underground mining operation.

1 “(3) VALUATION FOR ROYALTIES.—Not later
2 than 1 year after the date of enactment of this sub-
3 section, the Secretary shall establish, as the valu-
4 ation for Federal coal royalties, the assessment value
5 of Federal coal.

6 “(4) ADMINISTRATION.—

7 “(A) REPORTING.—The purchaser of Fed-
8 eral coal shall annually submit to the Secretary
9 a report containing such information as the
10 Secretary determines to be necessary to carry
11 out this subsection.

12 “(B) AUDITS.—To carry out this sub-
13 section, the Secretary may examine the records
14 of any person engaged in the purchase, sale,
15 transportation, or marketing of Federal coal.

16 “(5) COAL PRICE INDEX.—

17 “(A) IN GENERAL.—The Secretary shall
18 compile the assessment values of coal by type
19 and quality of coal in a coal price index.

20 “(B) PUBLICATION.—Not less frequently
21 than quarterly, the Secretary shall publish the
22 coal price index, along with a methodological
23 description, including—

24 “(i) the method of calculation;

1 “(ii) the data used to calculate the
2 coal price index in an aggregate manner
3 that does not reveal proprietary informa-
4 tion; and

5 “(iii) any other information the Sec-
6 retary considers appropriate to ensure
7 transparency.

8 “(C) OTHER INFORMATION.—If a person
9 believes that the coal price index significantly
10 deviates from the assessment value of the coal
11 produced by the person, the person may peti-
12 tion the Secretary to use information supplied
13 by the person in lieu of the coal price index, in-
14 cluding all information the Secretary requires
15 to accurately determine the assessment value
16 and audit the records of the person.

17 “(6) EXPORTS.—

18 “(A) IN GENERAL.—In assessing royalties
19 for the export of Federal coal under this sub-
20 section, the Secretary may obtain from the ex-
21 porter of the Federal coal such information as
22 the Secretary determines to be necessary to
23 carry out this subsection.

24 “(B) ASSESSMENT VALUE OF EXPORTED
25 COAL.—Subject to subparagraph (C), in deter-

1 mining the assessment value of Federal coal
2 that is exported, the Secretary shall—

3 “(i) use the price of coal free on board
4 the marine vessel used to transport the
5 coal overseas at the port of origin; and

6 “(ii) limit any deductions that apply
7 to the assessment value of the Federal coal
8 to costs incurred prior to being free on-
9 board the vessel.

10 “(C) UNCERTAIN EXPORT PRICE.—If the
11 Secretary cannot determine the value of ex-
12 ported coal in accordance with subparagraph
13 (B), the Secretary shall—

14 “(i) assess royalties under this sub-
15 section based on the coal price index for
16 coal of a similar quantity and type; and

17 “(ii) limit any deductions that apply
18 to the assessment value of the Federal coal
19 to costs incurred within the contiguous
20 United States.

21 “(7) TRANSPORTATION COST INDEX.—

22 “(A) IN GENERAL.—Subject to the other
23 provisions of this paragraph, the Secretary, in
24 consultation with the Secretary of Energy and
25 the Secretary of Transportation (in consultation

1 with the Surface Transportation Board and
 2 others), shall—

3 “(i) compile in a transportation cost
 4 index the average costs of transporting
 5 coal; and

6 “(ii) determine the amount of any
 7 transportation cost deduction under this
 8 subsection, on the basis of the transpor-
 9 tation cost index.

10 “(B) UNIT OF MEASUREMENT.—The
 11 transportation cost index shall be based on the
 12 average transportation costs per ton of coal or
 13 another unit of measurement determined by the
 14 Secretary.

15 “(C) DIFFERENCES IN TRANSPORTATION
 16 COSTS.—The transportation cost index shall
 17 take into consideration differences in the costs
 18 of transportation, as determined by the Sec-
 19 retary, based on—

20 “(i) the mode of transportation;

21 “(ii) the geographic region, and

22 “(iii) other characteristics of the
 23 transportation industry that the Secretary
 24 considers to be necessary to calculate a

1 fair, transparent, and accurate transpor-
2 tation cost index.

3 “(D) EXCLUSIONS.—The transportation
4 cost index shall not include costs associated
5 with, as determined by the Secretary—

6 “(i) take-or-pay contract penalties;

7 “(ii) liquidated damages;

8 “(iii) the speculative aspects of trans-
9 portation transactions; or

10 “(iv) any other costs that are not di-
11 rectly associated with moving Federal coal
12 from 1 location to another location.

13 “(E) PUBLICATION.—Not less than twice
14 annually, the Secretary shall publish the trans-
15 portation cost index, along with a methodo-
16 logical description, including—

17 “(i) the method of calculation;

18 “(ii) the data used to calculate the
19 transportation cost index, in an aggregate
20 manner that does not reveal proprietary in-
21 formation; and

22 “(iii) any other information the Sec-
23 retary considers to be appropriate to en-
24 sure transparency.

1 “(F) OTHER INFORMATION.—If a person
2 believes that the transportation cost index sig-
3 nificantly deviates from the transportation costs
4 of the person, the person may petition the Sec-
5 retary to use information supplied by the per-
6 son (other than costs described in subparagraph
7 (D)) in lieu of the transportation cost index, in-
8 cluding all information the Secretary requires
9 to accurately determine cost and audit the
10 records of the person.

11 “(8) REVIEWS.—

12 “(A) IN GENERAL.—To ensure a trans-
13 parent, fair, and efficient administration of the
14 Federal coal program, and to ensure that citi-
15 zens of the United States receive a fair return
16 on Federal coal, not later than 3 years after the
17 date of enactment of this subsection and every
18 3 years thereafter during the 15-year period be-
19 ginning on that date of enactment, the Comp-
20 troller General of the United States shall sub-
21 mit to Congress a report that describes a review
22 of the Federal coal program, including the ad-
23 ministration of this subsection.

1 “(B) CONSULTATION.—In conducting a re-
2 view under this paragraph, the Comptroller
3 General shall consult with—

4 “(i) the Secretary;

5 “(ii) the Director of the Bureau of
6 Land Management;

7 “(iii) the Secretary of Transportation;
8 and

9 “(iv) the Secretary of Energy.

10 “(C) INCLUSIONS.—A review under this
11 paragraph shall include a review of—

12 “(i) the total volume of coal produc-
13 tion from Federal land;

14 “(ii) the total volume of remaining
15 coal reserves on Federal land;

16 “(iii) the total revenues generated
17 from the Federal coal program, itemized
18 by type of revenue, including lease bonus
19 payments and royalties;

20 “(iv) market prices for coal;

21 “(v) market prices for transportation
22 costs and any other deductible costs; and

23 “(vi) the appropriateness of royalty
24 rates.

1 “(D) FORMAT.—The Comptroller General
2 shall report information in a review under this
3 paragraph—

4 “(i) in the aggregate for the United
5 States; and

6 “(ii) categorized by State for at least
7 the top 10 Federal coal-producing States,
8 as determined by the Comptroller General.

9 “(9) APPLICATION.—This subsection—

10 “(A) applies to coal mined from Federal
11 land; and

12 “(B) does not apply to coal mined from
13 tribal land.”.

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