

(Pub. L. 109–58, title III, §341, Aug. 8, 2005, 119 Stat. 697.)

### Editorial Notes

#### REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle”, meaning subtitle E (§§341–357) of title III of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 697, which enacted this part, amended sections 6504, 6506a, 6507, and 6508 of this title, sections 184 and 226 of Title 30, Mineral Lands and Mining, and section 1337 of Title 43, Public Lands, and enacted provisions set out as a note under section 226 of Title 30. For complete classification of subtitle E to the Code, see Tables.

### § 15902. Program on oil and gas royalties in-kind

#### (a) Applicability of section

Notwithstanding any other provision of law, this section applies to all royalty in-kind accepted by the Secretary on or after August 8, 2005, under any Federal oil or gas lease or permit under—

- (1) section 192 of title 30;
- (2) section 1353 of title 43; or
- (3) any other Federal law governing leasing of Federal land for oil and gas development.

#### (b) Terms and conditions

All royalty accruing to the United States shall, on the demand of the Secretary, be paid in-kind. If the Secretary makes such a demand, the following provisions apply to the payment:

##### (1) Satisfaction of royalty obligation

Delivery by, or on behalf of, the lessee of the royalty amount and quality due under the lease satisfies royalty obligation of the lessee for the amount delivered, except that transportation and processing reimbursements paid to, or deductions claimed by, the lessee shall be subject to review and audit.

##### (2) Marketable condition

###### (A) Definition of marketable condition

In this paragraph, the term “in marketable condition” means sufficiently free from impurities and otherwise in a condition that the royalty production will be accepted by a purchaser under a sales contract typical of the field or area in which the royalty production was produced.

###### (B) Requirement

Royalty production shall be placed in marketable condition by the lessee at no cost to the United States.

##### (3) Disposition by the Secretary

The Secretary may—

(A) sell or otherwise dispose of any royalty production taken in-kind (other than oil or gas transferred under section 1353(a)(3) of title 43<sup>1</sup> for not less than the market price; and

(B) transport or process (or both) any royalty production taken in-kind.

##### (4) Retention by the Secretary

The Secretary may, notwithstanding section 3302 of title 31, retain and use a portion of the

revenues from the sale of oil and gas taken in-kind that otherwise would be deposited to miscellaneous receipts, without regard to fiscal year limitation, or may use oil or gas received as royalty taken in-kind (referred to in this paragraph as “royalty production”) to pay the cost of—

- (A) transporting the royalty production;
- (B) processing the royalty production;
- (C) disposing of the royalty production; or
- (D) any combination of transporting, processing, and disposing of the royalty production.

#### (5) Limitation

##### (A) In general

Except as provided in subparagraph (B), the Secretary may not use revenues from the sale of oil and gas taken in-kind to pay for personnel, travel, or other administrative costs of the Federal Government.

##### (B) Exception

Notwithstanding subparagraph (A), the Secretary may use a portion of the revenues from royalty in-kind sales, without fiscal year limitation, to pay salaries and other administrative costs directly related to the royalty in-kind program.

#### (c) Reimbursement of cost

If the lessee, pursuant to an agreement with the United States or as provided in the lease, processes the royalty gas or delivers the royalty oil or gas at a point not on or adjacent to the lease area, the Secretary shall—

- (1) reimburse the lessee for the reasonable costs of transportation (not including gathering) from the lease to the point of delivery or for processing costs; or
- (2) allow the lessee to deduct the transportation or processing costs in reporting and paying royalties in-value for other Federal oil and gas leases.

#### (d) Benefit to the United States required

The Secretary may receive oil or gas royalties in-kind only if the Secretary determines that receiving royalties in-kind provides benefits to the United States that are greater than or equal to the benefits that are likely to have been received had royalties been taken in-value.

#### (e) Deduction of expenses

##### (1) In general

Before making payments under section 191 of title 30 or section 1337(g) of title 43 of revenues derived from the sale of royalty production taken in-kind from a lease, the Secretary shall deduct amounts paid or deducted under subsections (b)(4) and (c) and deposit the amount of the deductions in the miscellaneous receipts of the Treasury.

##### (2) Accounting for deductions

When the Secretary allows the lessee to deduct transportation or processing costs under subsection (c), the Secretary may not reduce any payments to recipients of revenues derived from any other Federal oil and gas lease as a consequence of that deduction.

#### (f) Consultation with States

The Secretary—

<sup>1</sup> So in original. Probably should be followed by a closing parenthesis.

(1) shall consult with a State before conducting a royalty in-kind program under this part within the State;

(2) may delegate management of any portion of the Federal royalty in-kind program to the State except as otherwise prohibited by Federal law; and

(3) shall consult annually with any State from which Federal oil or gas royalty is being taken in-kind to ensure, to the maximum extent practicable, that the royalty in-kind program provides revenues to the State greater than or equal to the revenues likely to have been received had royalties been taken in-value.

**(g) Small refineries**

**(1) Preference**

If the Secretary finds that sufficient supplies of crude oil are not available in the open market to refineries that do not have their own source of supply for crude oil, the Secretary may grant preference to those refineries in the sale of any royalty oil accruing or reserved to the United States under Federal oil and gas leases issued under any mineral leasing law, for processing or use in those refineries at private sale at not less than the market price.

**(2) Proration among refineries in production area**

In disposing of oil under this subsection, the Secretary may, at the discretion of the Secretary, prorate the oil among refineries described in paragraph (1) in the area in which the oil is produced.

**(h) Disposition to Federal agencies**

**(1) Onshore royalty**

Any royalty oil or gas taken by the Secretary in-kind from onshore oil and gas leases may be sold at not less than the market price to any Federal agency.

**(2) Offshore royalty**

Any royalty oil or gas taken in-kind from a Federal oil or gas lease on the outer Continental Shelf may be disposed of only under section 1353 of title 43.

**(i) Federal low-income energy assistance programs**

**(1) Preference**

In disposing of royalty oil or gas taken in-kind under this section, the Secretary may grant a preference to any person, including any Federal or State agency, for the purpose of providing additional resources to any Federal low-income energy assistance program.

**(2) Report**

Not later than 3 years after August 8, 2005, the Secretary shall submit a report to Congress—

(A) assessing the effectiveness of granting preferences specified in paragraph (1); and

(B) providing a specific recommendation on the continuation of authority to grant preferences.

**(j) McAlester Army Ammunition Plant**

At the request of the Secretary of Defense, the Secretary shall—

(1) take in-kind royalty gas from any lease on the McAlester Army Ammunition Plant in McAlester, Oklahoma; and

(2) sell such royalty gas to the Department of Defense in accordance with subsection (h)(1), for use only at that plant, only for energy resilience purposes, and only to the extent necessary to meet the natural gas needs of that plant.

(Pub. L. 109-58, title III, §342, Aug. 8, 2005, 119 Stat. 697; Pub. L. 113-188, title XI, §1101, Nov. 26, 2014, 128 Stat. 2023; Pub. L. 118-159, div. A, title XVII, §1706, Dec. 23, 2024, 138 Stat. 2209.)

**Editorial Notes**

REFERENCES IN TEXT

This part, referred to in subsec. (f)(1), was in the original “this subtitle”, meaning subtitle E (§§341-357) of title III of Pub. L. 109-58, Aug. 8, 2005, 119 Stat. 697, which enacted this part, amended sections 6504, 6506a, 6507, and 6508 of this title, sections 184 and 226 of Title 30, Mineral Lands and Mining, and section 1337 of Title 43, Public Lands, and enacted provisions set out as a note under section 226 of Title 30. For complete classification of subtitle E to the Code, see Tables.

AMENDMENTS

2024—Subsec. (j). Pub. L. 118-159 added subsec. (j).

2014—Subsecs. (e) to (j). Pub. L. 113-188 redesignated subsecs. (f) to (j) as (e) to (i), respectively, and struck out former subsec. (e) which required various reports on oil and gas royalties in-kind.

**§ 15903. Marginal property production incentives**

**(a) Definition of marginal property**

Until such time as the Secretary issues regulations under subsection (e) that prescribe a different definition, in this section, the term “marginal property” means an onshore unit, communitization agreement, or lease not within a unit or communitization agreement, that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90,000,000 British thermal units of gas per well per day calculated based on the average over the 3 most recent production months, including only wells that produce on more than half of the days during those 3 production months.

**(b) Conditions for reduction of royalty rate**

Until such time as the Secretary issues regulations under subsection (e) that prescribe different standards or requirements, the Secretary shall reduce the royalty rate on—

(1) oil production from marginal properties as prescribed in subsection (c) if the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, is, on average, less than \$15 per barrel (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days; and

(2) gas production from marginal properties as prescribed in subsection (c) if the spot price of natural gas delivered at Henry Hub, Louisiana, is, on average, less than \$2.00 per million British thermal units (adjusted in accordance with the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics) for 90 consecutive trading days.