

lease, easement, right of way or other agreement, regardless of form, or by applicable regulation.

(Pub. L. 111-88, div. A, title I, §114, Oct. 30, 2009, 123 Stat. 2928.)

REFERENCES IN TEXT

Sections 1719 and 1720 of this title, referred to in text, was in the original "Sections 109 and 110 of the Federal Oil and Gas Royalty Management Act" and was translated as meaning sections 109 and 110 of the Federal Oil and Gas Royalty Management Act of 1982, to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, and not as part of the Federal Oil and Gas Royalty Management Act of 1982 which comprises this chapter.

§ 1721. Royalty terms and conditions, interest, and penalties

(a) Charge on late royalty payment or royalty payment deficiency

In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments at the rate applicable under section 6621 of title 26. In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount due.

(b) Charge on late payment made by Secretary to States

Any payment made by the Secretary to a State under section 191 of this title and any other payment made by the Secretary to a State from any oil or gas royalty received by the Secretary which is not paid on the date required under section 191 of this title shall include an interest charge computed at the rate applicable under section 6621 of title 26.

(c) Deposit in royalty accounts of charges on royalties due and owing Indians

All interest charges collected under this chapter or under other applicable laws because of nonpayment, late payment or underpayment of royalties due and owing an Indian tribe or an Indian allottee shall be deposited to the same account as the royalty with respect to which such interest is paid.

(d) Charge on late deposit of royalty fund to an Indian account

Any deposit of royalty funds made by the Secretary to an Indian account which is not made by the date required under section 1714 of this title shall include an interest charge computed at the rate applicable under section 6621 of title 26.

(e) Nonliability of States for Secretary's failure to comply with the Emergency Petroleum Allocation Act of 1973 or regulations thereunder

Notwithstanding any other provision of law, no State will be assessed for any interest or pen-

alties found to be due against the Secretary for failure to comply with the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or regulation of the Secretary of Energy thereunder concerning crude oil certification or pricing with respect to crude oil taken by the Secretary in kind as royalty. Any State share of an overcharge, resulting from such failure to comply, shall be assessed against moneys found to be due and owing to such State as a result of audits of royalty accounts for transactions which took place prior to January 12, 1983, except that if after the completion of such audits, sufficient moneys have not been found due and owing to any State, the State shall be assessed the balance of that State's share of the overcharge.

(f) Limitation on interest charged

Interest shall be charged under this section only for the number of days a payment is late.

(g) Omitted

(h) Lessee or designee interest

Interest shall be allowed and paid or credited on any overpayment, with such interest to accrue from the date such overpayment was made, at the rate obtained by applying the provisions of subparagraphs (A) and (B) of section 6621(a)(1) of title 26, but determined without regard to the sentence following subparagraph (B) of section 6621(a)(1). Interest which has accrued on any overpayment may be applied to reduce an underpayment. This subsection applies to overpayments made later than six months after August 13, 1996, or September 1, 1996, whichever is later. Such interest shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act [30 U.S.C. 181 et seq.], and the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], which are not payable to a State or the Reclamation Fund. The portion of any such interest payment attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any other recipient designated by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.

(i) Limitation on interest

Upon a determination by the Secretary that an excessive overpayment (based upon all obligations of a lessee or its designee for a given reporting month) was made for the sole purpose of receiving interest, interest shall not be paid on the excessive amount of such overpayment. For purposes of this chapter, an "excessive overpayment" shall be the amount that any overpayment a lessee or its designee pays for a given reporting month (excluding payments for demands for obligations determined to be due as a result of judicial or administrative proceedings or agreed to be paid pursuant to settlement agreements) for the aggregate of all of its Federal leases exceeds 10 percent of the total royalties paid that month for those leases.

(j) Estimated payment

A lessee or its designee may make a payment for the approximate amount of royalties (hereinafter in this subsection "estimated payment") that would otherwise be due for such lease by the date royalties are due for that lease. When an estimated payment is made, actual royalties are payable at the end of the month following the month in which the estimated payment is made. If the estimated payment was less than the amount of actual royalties due, interest is owed on the underpaid amount. If the estimated payment exceeds the actual royalties due, interest is owed on the overpayment. If the lessee or its designee makes a payment for such actual royalties, the lessee or its designee may apply the estimated payment to future royalties. Any estimated payment may be adjusted, recouped, or reinstated at any time by the lessee or its designee.

(k) Volume allocation of oil and gas production

(1) Except as otherwise provided by this subsection—

(A) a lessee or its designee of a lease in a unit or communitization agreement which contains only Federal leases with the same royalty rate and funds distribution shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee;

(B) a lessee or its designee of a lease in any other unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the volume of oil and gas produced from such agreement and allocated to the lease in accordance with the terms of the agreement; and

(C) a lessee or its designee of a lease that is not contained in a unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee.

(2) This subsection applies only to requirements for reporting and paying royalties. Nothing in this subsection is intended to alter a lessee's liability for royalties on oil or gas production based on the share of production allocated to the lease in accordance with the terms of the lease, a unit or communitization agreement, or any other agreement.

(3) For any unit or communitization agreement if all lessees contractually agree to an alternative method of royalty reporting and payment, the lessees may submit such alternative method to the Secretary or the delegated State for approval and make payments in accordance with such approved alternative method so long as such alternative method does not reduce the amount of the royalty obligation.

(4) The Secretary or the delegated State shall grant an exception from the reporting and payment requirements for marginal properties by allowing for any calendar year or portion thereof of royalties to be paid each month based on the volume of production sold. Interest shall not accrue on the difference for the entire calendar year or portion thereof between the amount of

oil and gas actually sold and the share of production allocated to the lease until the beginning of the month following such calendar year or portion thereof. Any additional royalties due or overpaid royalties and associated interest shall be paid, refunded, or credited within six months after the end of each calendar year in which royalties are paid based on volumes of production sold. For the purpose of this subsection, the term "marginal property" means a lease that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 thousand cubic feet of gas per well per day, or a combination thereof, determined by dividing the average daily production of crude oil and natural gas from producing wells on such lease by the number of such wells, unless the Secretary, together with the State concerned, determines that a different production is more appropriate.

(5) Not later than two years after August 13, 1996, the Secretary shall issue any appropriate demand for all outstanding royalty payment disputes regarding who is required to report and pay royalties on production from units and communitization agreements outstanding on August 13, 1996, and collect royalty amounts owed on such production.

(l) Production allocation

The Secretary shall issue all determinations of allocations of production for units and communitization agreements within 120 days of a request for determination. If the Secretary fails to issue a determination within such 120-day period, the Secretary shall waive interest due on obligations subject to the determination until the end of the month following the month in which the determination is made.

(Pub. L. 97-451, title I, § 111, Jan. 12, 1983, 96 Stat. 2455; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104-185, § 6(a)-(e), (h)(1), Aug. 13, 1996, 110 Stat. 1712-1715; Pub. L. 104-200, § 1(3)-(6), Sept. 22, 1996, 110 Stat. 2421.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (e), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Mineral Leasing Act, referred to in subsec. (h), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

The Outer Continental Shelf Lands Act, referred to in subsec. (h), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

CODIFICATION

Section is comprised of section 111 of Pub. L. 97-451. Subsec. (g) of section 111 of Pub. L. 97-451 amended section 191(a) of this title.

AMENDMENTS

1996—Pub. L. 104-185, § 6(h)(1), substituted "Royalty terms and conditions, interest, and penalties" for

“Royalty interest, penalties and payments” in section catchline.

Subsec. (h). Pub. L. 104-185, §6(a), added subsec. (h).

Subsec. (i). Pub. L. 104-200, §1(3), inserted “not” after “receiving interest, interest shall”.

Pub. L. 104-185, §6(b), added subsec. (i).

Subsec. (j). Pub. L. 104-200, §1(4), (5), substituted “date royalties are due” for “rate royalties are due”, “interest is owed on the underpaid amount” for “interest is owed on the underpaid amount”, and “interest is owed on the overpayment” for “interest is owed on the overpayment”.

Pub. L. 104-185, §6(c), added subsec. (j).

Subsec. (k). Pub. L. 104-185, §6(d), added subsec. (k).

Subsec. (k)(4). Pub. L. 104-200, §1(6), substituted “additional royalties due” for “additional royalties dues”.

Subsec. (l). Pub. L. 104-185, §6(e), added subsec. (l).

1986—Subsecs. (a), (b), (d). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-185 applicable with respect to production of oil and gas after the first day of the month following Aug. 13, 1996, except as provided by subsecs. (h) and (k)(5) of this section, see section 11 of Pub. L. 104-185, set out as a note under section 1701 of this title.

APPLICABILITY OF 1996 AMENDMENT

Amendment by Pub. L. 104-185 not applicable to any privately owned minerals or with respect to Indian lands, see sections 9 and 10 of Pub. L. 104-185, set out as a note under section 1701 of this title.

PAYMENT OF INTEREST CHARGES FROM CURRENT RECEIPTS

Pub. L. 108-447, div. E, title I, Dec. 8, 2004, 118 Stat. 3053, as amended by Pub. L. 110-161, div. F, title I, Dec. 26, 2007, 121 Stat. 2109, provided in part: “That in fiscal year 2005 and thereafter, notwithstanding 30 U.S.C. 191(a) and 43 U.S.C. 1338, the Secretary shall pay amounts owed to States and Indian accounts under the provisions of 30 U.S.C. 1721(b) and (d) from amounts received as current receipts from bonuses, royalties, interest collected from lessees and designees, and rentals of the public lands and the outer continental shelf under provisions of the Mineral Leasing Act (30 U.S.C. 181 et seq.), and the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), which are not payable to a State or the Reclamation Fund.”

§ 1721a. Adjustments and refunds

(a) Adjustments to royalties paid to Secretary or a delegated State

(1) If, during the adjustment period, a lessee or its designee determines that an adjustment or refund request is necessary to correct an underpayment or overpayment of an obligation, the lessee or its designee shall make such adjustment or request a refund within a reasonable period of time and only during the adjustment period. The filing of a royalty report which reflects the underpayment or overpayment of an obligation shall constitute prior written notice to the Secretary or the applicable delegated State of an adjustment.

(2)(A) For any adjustment, the lessee or its designee shall calculate and report the interest due attributable to such adjustment at the same time the lessee or its designee adjusts the principle¹ amount of the subject obligation, except as provided by subparagraph (B).

(B) In the case of a lessee or its designee who determines that subparagraph (A) would impose a hardship, the Secretary or such delegated State shall calculate the interest due and notify the lessee or its designee within a reasonable time of the amount of interest due, unless such lessee or its designee elects to calculate and report interest in accordance with subparagraph (A).

(3) An adjustment or a request for a refund for an obligation may be made after the adjustment period only upon written notice to and approval by the Secretary or the applicable delegated State, as appropriate, during an audit of the period which includes the production month for which the adjustment is being made. If an overpayment is identified during an audit, then the Secretary or the applicable delegated State, as appropriate, shall allow a credit or refund in the amount of the overpayment.

(4) For purposes of this section, the adjustment period for any obligation shall be the six-year period following the date on which an obligation became due. The adjustment period shall be suspended, tolled, extended, enlarged, or terminated by the same actions as the limitation period in section 1724 of this title.

(b) Refunds

(1) In general

A request for refund is sufficient if it—

(A) is made in writing to the Secretary and, for purposes of section 1724 of this title, is specifically identified as a demand;

(B) identifies the person entitled to such refund;

(C) provides the Secretary information that reasonably enables the Secretary to identify the overpayment for which such refund is sought; and

(D) provides the reasons why the payment was an overpayment.

(2) Payment by Secretary of the Treasury

The Secretary shall certify the amount of the refund to be paid under paragraph (1) to the Secretary of the Treasury who shall make such refund. Such refund shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act [30 U.S.C. 181 et seq.] and the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], which are not payable to a State or the Reclamation Fund. The portion of any such refund attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any recipient prescribed by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.

(3) Payment period

A refund under this subsection shall be paid or denied (with an explanation of the reasons for the denial) within 120 days of the date on which the request for refund is received by the Secretary. Such refund shall be subject to

¹ So in original. Probably should be “principal”.