(c) Authorization of appropriations

(1) In general

There are authorized to be appropriated to the Secretary—

(A) $500,000 for each fiscal year for project feasibility studies under subsection (a); and

(B) $4,000,000 for each fiscal year for project implementation under subsection (b).

(2) Limitation of funds received by insular areas

No insular area may receive, during any 3-year period, more than 20 percent of the total funds made available during that 3-year period under subparagraphs (A) and (B) of paragraph (1) unless the Secretary determines that providing funding in excess of that percentage best advances existing opportunities to meet the objectives of this section.

(Pub. L. 109–58, title II, §252, Aug. 8, 2005, 119 Stat. 682.)

SUBCHAPTER III—OIL AND GAS

PART A—PRODUCTION INCENTIVES

§ 15901. Definition of Secretary

In this part, the term ''Secretary'' means the Secretary of the Interior.

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

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[1] 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

[1] So in original. Probably should be followed by a closing parenthesis.

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) Reports

(1) In general

Not later than September 30, 2006, the Secretary shall submit to Congress a report that addresses—

(A) actions taken to develop business processes and automated systems to fully support the royalty-in-kind capability to be used in tandem with the royalty-in-value approach in managing Federal oil and gas revenue; and

(B) future royalty-in-kind businesses operation plans and objectives.

(2) Reports on oil or gas royalties taken in-kind

For each of fiscal years 2006 through 2015 in which the United States takes oil or gas royalties in-kind from production in any State or from the outer Continental Shelf, excluding royalties taken in-kind and sold to refineries under subsection (h), the Secretary shall submit to Congress a report that describes—

(A) the 1 or more methodologies used by the Secretary to determine compliance with subsection (d), including the performance standard for comparing amounts received by the United States derived from royalties in-kind to amounts likely to have been received had royalties been taken in-value;

(B) an explanation of the evaluation that led the Secretary to take royalties in-kind from a lease or group of leases, including the expected revenue effect of taking royalties in-kind;

(C) actual amounts received by the United States derived from taking royalties in-kind and costs and savings incurred by the United States associated with taking royalties in-kind, including administrative savings and any new or increased administrative costs; and

(D) an evaluation of other relevant public benefits or detriments associated with taking royalties in-kind.

(f) 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.

(g) Consultation with States

The Secretary—

(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.

(h) 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.

(i) 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.

(j) 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.

(Pub. L. 109–58, title III, § 342, Aug. 8, 2005, 119 Stat. 697.)

REFERENCES IN TEXT

This part, referred to in subsec. (g)(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.

§ 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.

(c) Reduced royalty rate

(1) In general

When a marginal property meets the conditions specified in subsection (b), the royalty rate shall be the lesser of—

(A) 5 percent; or

(B) the applicable rate under any other statutory or regulatory royalty relief provision that applies to the affected production.

(2) Period of effectiveness

The reduced royalty rate under this subsection shall be effective beginning on the first day of the production month following the date on which the applicable condition specified in subsection (b) is met.

(d) Termination of reduced royalty rate

A royalty rate prescribed in subsection (c)(1) shall terminate—

(1) with respect to oil production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of West Texas Intermediate crude oil at Cushing, Oklahoma, on average, exceeds $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; or

(B) the property no longer qualifies as a marginal property; and

(2) with respect to gas production from a marginal property, on the first day of the production month following the date on which—

(A) the spot price of natural gas delivered at Henry Hub, Louisiana, on average, exceeds $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; or

(B) the property no longer qualifies as a marginal property.

(e) Regulations prescribing different relief

(1) Discretionary regulations

The Secretary may by regulation prescribe different parameters, standards, and requirements for, and a different degree or extent of, royalty relief for marginal properties in lieu of those prescribed in subsections (a) through (d).

(2) Mandatory regulations

Unless a determination is made under paragraph (3), not later than 18 months after August 8, 2005, the Secretary shall by regulation—

(A) prescribe standards and requirements for, and the extent of royalty relief for, marginal properties for oil and gas leases on the outer Continental Shelf; and

(B) define what constitutes a marginal property on the outer Continental Shelf for purposes of this section.

(3) Report

To the extent the Secretary determines that it is not practicable to issue the regulations referred to in paragraph (2), the Secretary shall provide a report to Congress explaining such determination by not later than 18 months after August 8, 2005.

(4) Considerations

In issuing regulations under this subsection, the Secretary may consider—

(A) oil and gas prices and market trends;

(B) production costs;

(C) abandonment costs;

(D) Federal and State tax provisions and the effects of those provisions on production economics;

(E) other royalty relief programs;

(F) regional differences in average wellhead prices;