

4710, and 4711) of subtitle I of title 41'' substituted for ''the Federal Property and Administrative Services Act of 1949'' on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

A prior section 4 of act Mar. 3, 1925, related to exportation of helium gas and was classified to section 165 of this title, prior to repeal by act Aug. 26, 1954, ch. 937, title V, §542(a)(13), 68 Stat. 861.

AMENDMENTS

2013—Subsecs. (c)(3), (4), (d)(2). Pub. L. 113-40 substituted ''section 167d(e)'' for ''section 167d(f)''.
 1996—Pub. L. 104-273 amended section generally. Prior to amendment, section consisted of single par. authorizing Secretary to maintain and operate helium production and purification plants and to conduct or contract for research as to helium production, purification, transportation, liquefaction, storage, and utilization.

§ 167c. Storage, withdrawal and transportation

(a) In general

If the Secretary provides helium storage, withdrawal, or transportation services to any person, the Secretary shall impose a fee on the person that accurately reflects the economic value of those services.

(b) Minimum fees

The fees charged under subsection (a) shall be not less than the amount required to reimburse the Secretary for the full costs of providing storage, withdrawal, or transportation services, including capital investments in upgrades and maintenance at the Federal Helium System.

(c) Schedule of fees

Prior to sale or auction under subsection (a), (b), or (c) of section 167d of this title, the Secretary shall annually publish a standardized schedule of fees that the Secretary will charge under this section.

(d) Treatment

All fees received by the Secretary under this section shall be credited to the Helium Production Fund established under section 167d(e) of this title.

(e) Storage and delivery

In accordance with this section, the Secretary shall—

(1) allow any person or qualified bidder to which crude helium is sold or auctioned under section 167d of this title to store helium in the Federal Helium Reserve; and

(2) establish a schedule for the transportation and delivery of helium using the Federal Helium System that—

(A) ensures timely delivery of helium auctioned pursuant to section 167d(b)(2) of this title;

(B) ensures timely delivery of helium acquired from the Secretary from the Federal Helium Reserve by means other than an auction under section 167d(b)(2) of this title, including nonallocated sales; and

(C) provides priority access to the Federal Helium Pipeline for in-kind sales for Federal users.

(f) New Pipeline access

The Secretary shall consider any applications for access to the Federal Helium Pipeline in a manner consistent with the schedule for phasing out commercial sales and disposition of assets pursuant to section 167d of this title.

(Mar. 3, 1925, ch. 426, §5, as added Pub. L. 86-777, §2, Sept. 13, 1960, 74 Stat. 920; amended Pub. L. 104-273, §3, Oct. 9, 1996, 110 Stat. 3317; Pub. L. 113-40, §4, Oct. 2, 2013, 127 Stat. 535.)

PRIOR PROVISIONS

A prior section 5 of act Mar. 3, 1925, authorized governmental cooperation with Department of the Interior to effectuate the purposes of this chapter and was classified to section 166 of this title, prior to the general amendment of this chapter by Pub. L. 86-777.

AMENDMENTS

2013—Pub. L. 113-40 amended section generally. Prior to amendment, section related to fees for storage, transportation, and withdrawal.

1996—Pub. L. 104-273 amended section generally. Prior to amendment, section related to licensing for extraction, transportation, and sale of helium under Federal helium refining program, including provisions in subsec. (a) relating to rules and regulations, in subsec. (b) relating to terms, assignments, and revocations of licenses, in subsec. (c) relating to purpose of licenses, and in subsec. (d) relating to suspension of licenses and reacquisition of helium supplies in times of war or national emergency.

§ 167d. Sale of crude helium

(a) Phase A: allocation transition

(1) In general

The Secretary shall offer crude helium for sale in such quantities, at such times, at not less than the minimum price established under subsection (b)(7), and under such terms and conditions as the Secretary determines necessary to carry out this subsection with minimum market disruption.

(2) Federal purchases

Federal users may purchase refined helium with priority pipeline access under this subsection from persons who have entered into enforceable contracts to purchase an equivalent quantity of crude helium at the in-kind price from the Secretary.

(3) Duration

This subsection applies during—

(A) the period beginning on October 2, 2013, and ending on September 30, 2014; and

(B) any period during which the sale of helium under subsection (b) is delayed or suspended.

(b) Phase B: auction implementation

(1) In general

The Secretary shall offer crude helium for sale in quantities not subject to auction under paragraph (2), after completion of each auction, at not less than the minimum price established under paragraph (7), and under such terms and conditions as the Secretary determines necessary—

(A) to maximize total recovery of helium from the Federal Helium Reserve over the long term;

(B) to maximize the total financial return to the taxpayer;

(C) to manage crude helium sales according to the ability of the Secretary to extract and produce helium from the Federal Helium Reserve;

(D) to give priority to meeting the helium demand of Federal users in the event of any disruption to the Federal Helium Reserve; and

(E) to carry out this subsection with minimum market disruption.

(2) Auction quantities

For the period described in paragraph (4) and consistent with the conditions described in paragraph (8), the Secretary shall annually auction to any qualified bidder a quantity of crude helium in the Federal Helium Reserve equal to—

(A) for fiscal year 2015, 10 percent of the total volume of crude helium made available for that fiscal year;

(B) for each of fiscal years 2016 through 2019, a percentage of the total volume of crude helium that is 15 percentage points greater than the percentage made available for the previous fiscal year; and

(C) for fiscal year 2020 and each fiscal year thereafter, 100 percent of the total volume of crude helium made available for that fiscal year.

(3) Federal purchases

Federal users may purchase refined helium with priority pipeline access under this subsection from persons who have entered into enforceable contracts to purchase an equivalent quantity of crude helium at the in-kind price from the Secretary.

(4) Duration

This subsection applies during the period—

(A) beginning on October 1, 2014; and

(B) ending on the date on which the volume of recoverable crude helium at the Federal Helium Reserve (other than privately owned quantities of crude helium stored temporarily at the Federal Helium Reserve under section 167c of this title and this section) is 3,000,000,000 standard cubic feet.

(5) Safety valve

The Secretary may adjust the quantities specified in paragraph (2)—

(A) downward, if the Secretary determines the adjustment necessary—

(i) to minimize market disruptions that pose a threat to the economic well-being of the United States; and

(ii) only after submitting a written justification of the adjustment to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives; or

(B) upward, if the Secretary determines the adjustment necessary to increase participation in crude helium auctions or returns to the taxpayer.

(6) Auction format

The Secretary shall conduct each auction using a method that maximizes revenue to the Federal Government.

(7) Prices

The Secretary shall annually establish, as applicable, separate sale and minimum auction prices under subsection (a)(1) and paragraphs (1) and (2) using, if applicable and in the following order of priority:

(A) The sale price of crude helium in auctions held by the Secretary under paragraph (2).

(B) Price recommendations and disaggregated data from a qualified, independent third party who has no conflict of interest, who shall conduct a confidential survey of qualifying domestic helium transactions.

(C) The volume-weighted average price of all crude helium and pure helium purchased, sold, or processed by persons in all qualifying domestic helium transactions.

(D) The volume-weighted average cost of converting gaseous crude helium into pure helium.

(8) Terms and conditions

(A) In general

The Secretary shall require all persons that are parties to a contract with the Secretary for the withdrawal, acceptance, storage, transportation, delivery, or redelivery of crude helium to disclose, on a strictly confidential basis—

(i) the volumes and associated prices in dollars per thousand cubic feet of all crude and pure helium purchased, sold, or processed by persons in qualifying domestic helium transactions;

(ii) the volumes and associated costs in dollars per thousand cubic feet of converting crude helium into pure helium; and

(iii) refinery capacity and future capacity estimates.

(B) Condition

As a condition of sale or auction to a refiner under subsection (a)(1) and paragraphs (1) and (2), effective beginning 90 days after October 2, 2013, the refiner shall make excess refining capacity of helium available at commercially reasonable rates to—

(i) any person prevailing in auctions under paragraph (2); and

(ii) any person that has acquired crude helium from the Secretary from the Federal Helium Reserve by means other than an auction under paragraph (2) after October 2, 2013, including nonallocated sales.

(9) Use of information

The Secretary may use the information collected under this chapter—

(A) to approximate crude helium prices; and

(B) to ensure the recovery of fair value for the taxpayers of the United States from sales of crude helium.

(10) Protection of confidentiality

The Secretary shall adopt such administrative policies and procedures as the Secretary considers necessary and reasonable to ensure the confidentiality of information submitted pursuant to this chapter.

(11) Forward auctions

Effective beginning in fiscal year 2016, the Secretary may conduct a forward auction once

each fiscal year of a quantity of helium that is equal to up to 10 percent of the volume of crude helium to be made available at auction during the following fiscal year if the Secretary determines that the forward auction will—

- (A) not cause a disruption in the supply of helium from the Reserve;
- (B) represent a cost-effective action;
- (C) generate greater returns for taxpayers; and
- (D) increase the effectiveness of price discovery.

(12) Sale schedule and frequency

For fiscal year 2015 the Secretary shall conduct only one auction, which shall precede, and one sale, which shall take place no later than August 1, 2014, with full and final payment for the sale being made no later than September 26, 2014. Consistent with the annual volumes established under paragraph (2), effective beginning in fiscal year 2016, the Secretary may conduct auctions twice during each fiscal year if the Secretary determines that the auction frequency will—

- (A) not cause a disruption in the supply of helium from the Reserve;
- (B) represent a cost-effective action;
- (C) generate greater returns for taxpayers; and
- (D) increase the effectiveness of price discovery.

(13) One-time sale

(A) In general

Notwithstanding paragraph (4)(A), the Secretary shall hold a one-time sale of helium, no later than August 1, 2014 from amounts available in fiscal year 2016 pursuant to this section. Full and final payment for the sale must be made no later than 45 days after the date the sale takes place.

(B) Volume sold

The volume of helium sold under this paragraph—

- (i) shall be at least 250 million cubic feet; and
- (ii) shall be made available for sale consistent with paragraph (2)(B).

(c) Phase C: continued access for Federal users

(1) In general

The Secretary shall offer crude helium for sale to Federal users in such quantities, at such times, at such prices required to reimburse the Secretary for the full costs of the sales, and under such terms and conditions as the Secretary determines necessary to carry out this subsection.

(2) Federal purchases

Federal users may purchase refined helium with priority pipeline access under this subsection from persons who have entered into enforceable contracts to purchase an equivalent quantity of crude helium at the in-kind price from the Secretary.

(3) Effective date

This subsection applies beginning on the day after the date described in subsection (b)(4)(B).

(d) Phase D: disposal of assets

(1) In general

Not earlier than 2 years after the date of commencement of Phase C described in subsection (c) and not later than September 30, 2021, the Secretary shall designate as excess property and dispose of all facilities, equipment, and other real and personal property, and all interests in the same, held by the United States in the Federal Helium System.

(2) Applicable law

The disposal of the property described in paragraph (1) shall be in accordance with subtitle I of title 40.

(3) Proceeds

All proceeds accruing to the United States by reason of the sale or other disposal of the property described in paragraph (1) shall be treated as funds received under this chapter for purposes of subsection (e).

(4) Costs

All costs associated with the sale and disposal (including costs associated with termination of personnel) and with the cessation of activities under this subsection shall be paid from amounts available in the Helium Production Fund established under subsection (e).

(e) Helium Production Fund

(1) In general

All amounts received under this chapter, including amounts from the sale or auction of crude helium, shall be credited to the Helium Production Fund, which shall be available without fiscal year limitation for purposes determined to be necessary and cost effective by the Secretary to carry out this chapter (other than sections 167n, 167o, and 167p of this title), including capital investments in upgrades and maintenance at the Federal Helium System, including—

- (A) well head maintenance at the Cliffside Field;
- (B) capital investments in maintenance and upgrades of facilities that pressurize the Cliffside Field;
- (C) capital investments in maintenance and upgrades of equipment related to the storage, withdrawal, enrichment, transportation, purification, and sale of crude helium from the Federal Helium Reserve;
- (D) entering into purchase, lease, or other agreements to drill new or uncap existing wells to maximize the recovery of crude helium from the Federal Helium System; and
- (E) any other scheduled or unscheduled maintenance of the Federal Helium System.

(2) Excess funds

Amounts in the Helium Production Fund in excess of amounts the Secretary determines to be necessary to carry out paragraph (1) shall be paid to the general fund of the Treasury and used to reduce the annual Federal budget deficit.

(3) Retirement of public debt

Out of amounts paid to the general fund of the Treasury under paragraph (2), the Sec-

retary of the Treasury shall use \$51,000,000 to retire public debt.

(4) Report

Not later than 1 year after October 2, 2013, and annually thereafter, the Secretary of the Interior shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report describing all expenditures by the Bureau of Land Management to carry out this chapter.

(f) Minimum quantity

The Secretary shall offer for sale or auction during each fiscal year under subsections (a), (b), and (c) a quantity of crude helium that is the lesser of—

(1) the quantity of crude helium offered for sale by the Secretary during fiscal year 2012; or

(2) the maximum total production capacity of the Federal Helium System.

(Mar. 3, 1925, ch. 426, § 6, as added Pub. L. 86-777, § 2, Sept. 13, 1960, 74 Stat. 921; amended Pub. L. 104-273, § 4, Oct. 9, 1996, 110 Stat. 3317; Pub. L. 113-40, § 5, Oct. 2, 2013, 127 Stat. 536.)

AMENDMENTS

2013—Pub. L. 113-40 amended section generally. Prior to amendment, section related to sale of helium.

1996—Subsec. (a). Pub. L. 104-273, § 4(a), substituted “from persons who have entered into enforceable contracts to purchase an equivalent amount of crude helium from the Secretary” for “from the Secretary”.

Subsec. (b). Pub. L. 104-273, § 4(b), inserted “crude” before “helium” and inserted at end “Except as may be required by reason of subsection (a), sales of crude helium under this section shall be in amounts as the Secretary determines, in consultation with the helium industry, necessary to carry out this subsection with minimum market disruption.”

Subsec. (c). Pub. L. 104-273, § 4(c)(2), which directed the amendment of subsec. (c) by substituting “all funds required to be repaid to the United States as of October 1, 1995 under this section (referred to in this subsection as ‘repayable amounts’). The price at which crude helium is sold by the Secretary shall not be less than the amount determined by the Secretary by—” and pars. (1) and (2) for “together with interest as provided in this subsection” and all that followed through the end of the subsec., was executed by making the substitution for language which read “together with interest as provided in subsection (d) of this section, the following:” along with former pars. (1) to (3), to reflect the probable intent of Congress. Prior to amendment, pars. (1) to (3) read as follows:

“(1) Within twenty-five years from September 13, 1960, the net capital and retained earnings of the helium production fund (established under section 164 of this title prior to amendment by the Helium Act Amendments of 1960), determined by the Secretary as of September 13, 1960, plus any moneys expended thereafter by the Department of the Interior from funds provided in the Supplemental Appropriation Act, 1959, for construction of a helium plant at Keyes, Oklahoma;

“(2) Within twenty-five years from the date of borrowing, all funds borrowed, as provided in section 167j of this chapter, to acquire and construct helium plants and facilities; and

“(3) Within twenty-five years from September 13, 1960, unless the Secretary determines that said period should be extended for not more than ten years, all funds borrowed, as provided in section 167j of this title for all purposes other than those specified in clause (2) above.”

Pub. L. 104-273, § 4(c)(1), inserted “crude” after “Sales of”.

Subsec. (d). Pub. L. 104-273, § 4(d), inserted heading and amended text generally. Prior to amendment, text read as follows: “Compound interest on the amounts specified in clauses (1), (2), and (3) of subsection (c) which have not been paid to the Treasury shall be calculated annually at rates determined by the Secretary of the Treasury taking into consideration the current average market yields of outstanding marketable obligations of the United States having maturities comparable to the investments authorized by this chapter, except that the interest rate on the amounts specified in clause (1) of subsection (c) shall be determined as of Sept. 13, 1960, and the interest rate on the obligations specified in clauses (2) and (3) of subsection (c) as of the time of each borrowing.”

Subsecs. (e), (f). Pub. L. 104-273, § 4(e), (f), redesignated subsec. (f) as (e)(1), added par. (2), and struck out former subsec. (e) which read as follows: “Helium shall be sold for medical purposes at prices which will permit its general use therefor; and all sales of helium to non-Federal purchasers shall be upon condition that the Federal Government shall have a right to repurchase helium so sold that has not been lost or dissipated, when needed for Government use, under terms and at prices established by regulations.”

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See also Transfer of Functions notes set out under those sections.

§ 167e. Intragovernmental cooperation

The Secretary of Defense and the Chairman of the Atomic Energy Commission may each designate representatives to cooperate with the Secretary in carrying out the purposes of this chapter, and shall have complete right of access to plants, data, and accounts.

(Mar. 3, 1925, ch. 426, § 7, as added Pub. L. 86-777, § 2, Sept. 13, 1960, 74 Stat. 921.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See also Transfer of Functions notes set out under those sections.

§ 167f. Repealed. Pub. L. 113-40, § 7(b), Oct. 2, 2013, 127 Stat. 544

Section, act Mar. 3, 1925, ch. 426, § 8, as added Pub. L. 86-777, § 2, Sept. 13, 1960, 74 Stat. 922; amended Pub. L. 104-273, § 5, Oct. 9, 1996, 110 Stat. 3318, related to elimination of helium stockpile.

§ 167g. Promulgation of rules and regulations

The Secretary is authorized to establish and promulgate such rules and regulations, as are consistent with the directions of this chapter and are necessary to carry out the provisions hereof.

(Mar. 3, 1925, ch. 426, § 9, as added Pub. L. 86-777, § 2, Sept. 13, 1960, 74 Stat. 922.)

§ 167h. Administrative procedure

(a) The provisions of subchapter II of chapter 5 of title 5 shall apply to any agency proceeding and any agency action taken under this chapter, including the issuance of rules and regulations, and the terms “agency proceeding” and “agency action” shall have the meaning specified in subchapter II of chapter 5 of title 5.