

105TH CONGRESS
2D SESSION

S. 1930

To provide certainty for, reduce administrative and compliance burdens associated with, and streamline and improve the collection of royalties from Federal and outer continental shelf oil and gas leases, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 2, 1998

Mr. NICKLES (for himself, Mr. DOMENICI, Mr. MURKOWSKI, Mrs. HUTCHISON, Mr. BREAUX, and Mr. CRAIG) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide certainty for, reduce administrative and compliance burdens associated with, and streamline and improve the collection of royalties from Federal and outer continental shelf oil and gas leases, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Royalty Enhancement Act of 1998”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Rights, obligations and responsibilities.
- Sec. 4. Costs responsibility.
- Sec. 5. Transporter charges.
- Sec. 6. Imbalances.
- Sec. 7. Royalty-in-kind for trucked, tankered, or barged oil or gas.
- Sec. 8. Limitations on application.
- Sec. 9. Reporting.
- Sec. 10. Audit.
- Sec. 11. Lease terms not affected.
- Sec. 12. Eligible and small refiners.
- Sec. 13. Applicable laws.
- Sec. 14. Indian lands.
- Sec. 15. Effective date; regulations.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) AFFILIATE; AFFILIATED.—

6 (A) The term “affiliate” or “affiliated”
 7 means that a person controls, is controlled by,
 8 or is under common control with another per-
 9 son. Affiliation shall be determined on a lease-
 10 by-lease and asset-by-asset basis.

11 (B) For purposes of this Act, based on the
 12 instruments of ownership:

13 (i) Ownership in excess of 50 percent
 14 constitutes control.

15 (ii) Ownership of at least 10 percent
 16 and not more than 50 percent creates a re-
 17 buttable presumption of control only if
 18 each owner has a separate and independ-

1 ent right to control or utilize the capacity
2 of the asset.

3 (iii) Ownership of less than 10 per-
4 cent does not constitute control.

5 (2) COMPENSATORY ROYALTY.—The term
6 “compensatory royalty” means a payment made to
7 a royalty owner as compensation for loss of income
8 that it may suffer due to a lease being drained of
9 oil and gas by wells drilled on lands adjacent to the
10 lands subject to the lease.

11 (3) COMPRESSION.—The term “compression”
12 means the process of raising the pressure of gas.

13 (4) CONDENSATE.—The term “condensate”
14 means liquid hydrocarbons (normally exceeding 40
15 degrees of API gravity) recovered at the surface
16 without resorting to processing. Condensate is that
17 stabilized mixture of liquid hydrocarbons at atmos-
18 pheric pressure that results from condensation of pe-
19 troleum hydrocarbons existing initially in a gaseous
20 phase in an underground reservoir.

21 (5) DELIVERY POINT.—The term “delivery
22 point” means—

23 (A) for a lease premise for which a produc-
24 tion measurement meter is approved in accord-

1 ance with applicable laws before the date of en-
2 actment of this Act—

3 (i) subject to clause (ii), the existing
4 approved meter location, or

5 (ii) a delivery point requested by a les-
6 see and approved in accordance with sub-
7 paragraph (B); or

8 (B) for a lease premise for which no pro-
9 duction measurement meter is approved before
10 the date of the enactment of this Act, that
11 point on or near the lease premises, approved
12 by the appropriate agency in accordance with
13 applicable laws and regulations, where lease
14 production can be measured and reported in a
15 manner that is practical, economical, and verifi-
16 able, except that such point may be at a loca-
17 tion off the lease premises where, if necessary,
18 production can be allocated back to the lease
19 premises.

20 (6) ELIGIBLE SMALL REFINER.—The term “eli-
21 gible small refiner” means a refiner that—

22 (A) has applied to the Secretary for certifi-
23 cation as an eligible small refiner;

24 (B) has a total crude oil and condensate
25 refining capacity (including the refining capac-

1 ity of any person who controls, is controlled by,
2 or is under common control with such refiner)
3 not exceeding 100,000 barrels per day;

4 (C) is a corporation, company, partnership,
5 trust or estate organized under the laws of the
6 United States or of any State, territory, or mu-
7 nicipality thereof, or is a person who is a
8 United States citizen; and

9 (D) has continuously operated a refinery in
10 the United States for no less than 6 months im-
11 mediately preceding the date of application for
12 certification as an eligible small refiner.

13 (7) ELIGIBLE SMALL REFINER PORTION.—The
14 term “eligible small refiner portion” means the por-
15 tion of all royalty oil volumes required to be offered
16 for sale to eligible small refiners. The eligible small
17 refiner portion shall be 40 percent of all royalty oil
18 volumes, unless the Secretary determines that a
19 greater share is in the public interest.

20 (8) FERC.—The term “FERC” means the
21 Federal Energy Regulatory Commission.

22 (9) FIELD.—The term “field” means a geo-
23 graphic region situated over one or more subsurface
24 oil or gas reservoirs that encompasses at least the
25 outermost boundaries of all oil and gas accumula-

1 tions known to be within those reservoirs vertically
2 projected to the land surface.

3 (10) FORCE MAJEURE.—The term “force
4 majeure” means foreseen and unforeseen acts of
5 God, strikes, lockouts, or other industrial disturb-
6 ances, acts of the public enemy, wars, blockades, in-
7 surrections, riots, epidemics, landslides, lightning,
8 hurricanes or storms, hurricane or storm warnings
9 which, in the judgment of the party affected by such
10 event, require the precautionary shutdown or evacu-
11 ation of production facilities, earthquakes, fires,
12 floods, washouts, disturbances, explosions, accidental
13 breakage to lines of pipe, machine breakage, freezing
14 of wells or lines of pipe, partial or entire failure of
15 wells, and any other cause of a similar nature be-
16 yond the reasonable control of the party affected
17 which renders that party unable to carry out its obli-
18 gations under this Act. Force majeure as used in
19 this Act shall not include market conditions.

20 (11) GAS.—The term “gas” means any fluid,
21 whether combustible, noncombustible, hydrocarbon,
22 or nonhydrocarbon, that—

23 (A) is extracted from a reservoir;

24 (B) has neither independent shape nor vol-
25 ume;

1 (C) tends to expand indefinitely; and

2 (D) exists in a gaseous or rarefied state
3 under standard temperature and pressure con-
4 ditions.

5 (12) GATHERING.—The term “gathering”
6 means the movement of unseparated, unidentifiable
7 lease production upstream of the delivery point to a
8 central accumulation point on or immediately adja-
9 cent to the lease premises, unit, or communitized
10 area.

11 (13) GISB.—The term “GISB” means the Gas
12 Industry Standards Board, as incorporated in the
13 State of Delaware on September 26, 1994.

14 (14) LEASE OPERATOR; OPERATOR.—Each of
15 the terms “lease operator” and “operator” means
16 any person, including a lessee, who has control of or
17 who manages operations on lease premises, accord-
18 ing to the terms of the joint operating agreement or
19 any other agreement or method by which an opera-
20 tor is designated, or Federal onshore lands or who
21 has been designated as an operator on the outer con-
22 tinental shelf by applicable law.

23 (15) LEASE PREMISES.—The term “lease prem-
24 ises” means all land and interests in land owned by
25 the United States that are subject to an oil and gas

1 lease issued under the mineral leasing laws, includ-
2 ing mineral resources of mineral estates reserved to
3 the United States in the conveyance of a surface or
4 non-mineral estate.

5 (16) LEASE PRODUCTION.—The term “lease
6 production” means any produced oil or gas that is
7 attributable to, originating from, or allocated to a
8 Federal onshore or an outer continental shelf lease
9 premises.

10 (17) LESSEE.—The term “lessee” means any
11 person to whom the United States issues an oil and
12 gas lease, or any person to whom operating rights
13 under an oil and gas lease have been assigned.

14 (18) MERCHANTABLE CONDITION; MARKET-
15 ABLE CONDITION.—Each of the terms “merchant-
16 able condition” and “marketable condition” means
17 the condition of oil or gas that is sufficiently free of
18 impurities to meet the requirements of or is accepted
19 by the first transporter of royalty oil and royalty gas
20 from that lease premises either prior to or at the de-
21 livery point. Whether or not lease production is in
22 merchantable condition shall not affect the respon-
23 sibility for the bearing of costs of gathering or trans-
24 portation, as provided by this Act.

1 (19) MINIMUM ROYALTY.—The term “minimum
2 royalty” means that minimum amount of annual
3 royalty that a lessee must pay, as specified in the
4 lease or in applicable leasing regulations.

5 (20) NET PROFIT SHARE LEASE ROYALTY
6 PRIOR TO PAYOUT.—The term “net profit share
7 lease royalty prior to payout” means the specified
8 share of the net profit from production of oil and
9 gas as provided in the lease.

10 (21) OIL.—The term “oil”—

11 (A) means a mixture of hydrocarbons that
12 exists in the liquid phase in natural under-
13 ground reservoirs and remains liquid at atmos-
14 pheric pressure after passing through surface
15 separating facilities; and

16 (B) includes condensate.

17 (22) OIL AND GAS LEASE; LEASE.—Each of the
18 terms “oil and gas lease” and “lease” means any
19 contract, profit-share arrangement, or other agree-
20 ment issued or maintained in accordance with the
21 Outer Continental Shelf Lands Act (43 U.S.C. 1301
22 et seq.) or the Mineral Lands Leasing Act (30
23 U.S.C. 181 et seq.) and issued or approved by the
24 United States that authorizes exploration for, ex-
25 traction of, or removal of oil or gas.

1 (23) OPERATING RIGHTS.—The term “operat-
2 ing rights” means the interest created by a lease or
3 derived therefrom authorizing the holder of that in-
4 terest to enter upon the lease premises to conduct
5 drilling and related operations, including production
6 of oil or gas from such lands in accordance with the
7 terms of the lease. A record title owner is the owner
8 of operating rights under a lease except to the extent
9 that the operating rights or a portion thereof have
10 been transferred from record title.

11 (24) PERSON.—The term “person” means an
12 individual natural person, proprietorship, firm (pri-
13 vate or public), corporation, business, limited liabil-
14 ity company, unincorporated association, association,
15 partnership, trust, consortium, joint venture, joint
16 stock company.

17 (25) PROCESSING; PROCESS.—Each of the
18 terms “processing” and “process”—

19 (A) means any process designed to remove
20 elements or compounds (hydrocarbon and non-
21 hydrocarbon) from oil or gas;

22 (B) includes absorption, adsorption, or re-
23 frigeration; and

24 (C) does not include lease or field proc-
25 esses, such as natural pressure reduction, me-

1 chanical separation, heating, cooling, dehydra-
2 tion, and compression on the upstream side of
3 the delivery point.

4 (26) PRODUCING, PRODUCED; PRODUCTION.—
5 The term “producing”, “produced”, or “production”
6 means the act of bringing hydrocarbons to the sur-
7 face.

8 (27) QUALIFIED MARKETING AGENT.—The
9 term “qualified marketing agent” means a person
10 with whom the Secretary has contracted to receive,
11 handle, transport, deliver, market, process, dispose
12 of, broker, or sell, or any combination thereof, roy-
13 alty oil or royalty gas taken in kind by the United
14 States from, or that is attributable to, an oil and gas
15 lease.

16 (28) REGULATED PIPELINE; REGULATED FA-
17 CILITY.—Each of the terms “regulated pipeline” and
18 “regulated facility”—

19 (A) means a pipeline, truck, tanker, barge,
20 or other modality of carriage for oil or gas, the
21 operation of which is subject to regulation by a
22 State government authority or Federal govern-
23 ment authority (or both) with respect to the
24 rates that may be charged shippers for trans-
25 portation service; and

1 (B) includes, but is not limited to—

2 (i) a pipeline performing the inter-
3 state movement of gas subject to regula-
4 tion by the Federal Energy Regulatory
5 Commission under the Natural Gas Act
6 (15 U.S.C. 717 et seq.);

7 (ii) a pipeline whose movements of oil
8 are subject to regulation by the Federal
9 Energy Regulatory Commission under the
10 Interstate Commerce Act (49 U.S.C. 1 et
11 seq.); and

12 (iii) any pipeline, truck, tanker, barge
13 or other modality of carriage for Oil or
14 Gas whose rates for carriage are regulated
15 by a governmental authority under State
16 law.

17 (29) ROYALTY GAS.—The term “royalty gas”
18 means that fraction or percentage of gas produced
19 from or attributable to lease premises, that the
20 United States as lessor is entitled to take in kind
21 under the terms of an oil and gas lease.

22 (30) ROYALTY OIL.—The term “royalty oil”
23 means that fraction or percentage of oil produced
24 from or attributable to lease premises, that the

1 United States as lessor is entitled to take in kind
2 under the terms of an oil and gas lease.

3 (31) ROYALTY SHARE.—The term “royalty
4 share” means that fraction or percentage of royalty
5 oil or royalty gas (or both) produced from or attrib-
6 utable to lease premises, that the United States as
7 lessor is entitled to take in kind under the terms of
8 an oil and gas lease.

9 (32) SECRETARY.—The term “Secretary”
10 means the Secretary of the Interior.

11 (33) TENDER.—The term “tender” means the
12 act by which a lessee makes royalty oil or royalty
13 gas produced from lease premises available to the
14 United States for receipt.

15 (34) TRANSPORTATION; TRANSPORT.—Each of
16 the terms “transportation” and “transporting”
17 means any movement (including associated or relat-
18 ed activities to facilitate movement such as compres-
19 sion and dehydration), upstream or downstream of
20 the delivery point of royalty oil or royalty gas that
21 is not gathering as defined herein including move-
22 ment described as transportation in this paragraph.
23 Such transportation shall include but not limited
24 to—

1 (A) the movement of unseparated, uniden-
2 tifiable lease production to a point not on or
3 immediately adjacent to the lease premises,
4 unit, or communitized area; and

5 (B) any movement of separated, identifi-
6 able lease production regardless of whether such
7 movement is on or off the lease premises, unit
8 or communitized area.

9 (35) TRANSPORTER.—The term “transporter”
10 means a person or entity who is transporting or pro-
11 viding transportation.

12 (36) UNITED STATES.—The term “United
13 States” means the United States of America and
14 any agency, department, or instrumentality thereof.

15 **SEC. 3. RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES.**

16 (a) RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES
17 OF THE UNITED STATES.—

18 (1) GENERAL RULE.—Except as otherwise pro-
19 vided in section 8 of this Act, all royalty oil and roy-
20 alty gas accruing to the United States under any oil
21 or gas lease shall be taken in kind by the United
22 States at the applicable delivery point for each lease
23 premises.

24 (2) OWNERSHIP AND RECEIPT BY UNITED
25 STATES.—Ownership of all right, title and interest

1 in royalty oil and royalty gas produced from oil and
2 gas lease premises governed by this Act shall remain
3 in the United States until sale or other disposition
4 by the United States. Nothing in this Act shall limit
5 the right of the United States to have royalty oil or
6 royalty gas stored after its production in such tanks
7 or other surface facilities as the lessee may be ex-
8 pressly obligated to furnish under any applicable
9 lease term. The United States shall not delay or
10 defer the receipt of lease production, delay receipt of
11 new production, or physically segregate the royalty
12 share prior to receipt by the United States. The
13 United States shall have custody, possession, and re-
14 sponsibility attendant thereto for royalty oil and roy-
15 alty gas at and beyond the delivery point.

16 (3) SELECTION OF AND CONTRACTS WITH A
17 QUALIFIED MARKETING AGENT.—(A) Except as pro-
18 vided in subsection (b), the Secretary shall, for each
19 lease premises, contract with a person to act as a
20 qualified marketing agent to market and dispose of
21 royalty oil and royalty gas. Each qualified marketing
22 agent shall be authorized to advise and consult with
23 the Secretary on the sale and disposition of the roy-
24 alty oil and royalty gas and to directly sell and
25 broker the royalty oil and royalty gas.

1 (B) To be eligible for a contract under this
2 paragraph to act as a qualified marketing agent, a
3 person must have the expertise necessary to receive,
4 handle, transport, deliver, market, process, dispose,
5 broker, or sell royalty oil and royalty gas in accord-
6 ance with this Act. Under rules promulgated by the
7 Secretary, the Secretary may designate any person
8 as ineligible or place other requirements on a person
9 to act as a qualified marketing agent for a particu-
10 lar lease premises under this paragraph by reason of
11 such person being affiliated with persons engaged in
12 the, transporting, processing, or purchasing of oil or
13 gas for that lease premises.

14 (C) The Secretary shall contract with not more
15 than one qualified marketing agent for each lease
16 premises for royalty oil and not more than one quali-
17 fied marketing agent for each lease premises for roy-
18 alty gas.

19 (D) The Secretary shall solicit competitive bids
20 for contracts for qualified marketing agents. The
21 Secretary shall promulgate final rules within 12
22 months after the date of the enactment of this Act
23 regarding the competitive manner in which qualified
24 marketing agents shall be selected.

1 (E) The compensation of each qualified market-
2 ing agent—

3 (i) shall be determined and made by the
4 Secretary without further appropriation based
5 on the services to be performed by the qualified
6 marketing agent; and

7 (ii) shall be established in the contract be-
8 tween the qualified marketing agent and the
9 United States.

10 (F) Except as otherwise provided in subsection
11 (b), the Secretary shall be solely responsible for ob-
12 taining and contracting with qualified marketing
13 agents and shall be authorized to pay qualified mar-
14 keting agents from proceeds derived from the sale of
15 royalty oil and royalty gas without further appro-
16 priation.

17 (G) Each contract shall—

18 (i) require the qualified marketing agent to
19 dispose of and sell royalty oil and royalty gas
20 in an open, nondiscriminatory, and competitive
21 manner; and

22 (ii) prohibit the qualified marketing agent
23 from precluding any person from competing for
24 the handling, gathering, transporting, market-
25 ing, processing, or purchasing of royalty oil and

1 royalty gas solely by reason of the person being
2 a lessee or person affiliated with a lessee, quali-
3 fied marketing agent, gatherer, royalty payor,
4 transporter, processor, or purchaser.

5 (H) To further the purposes of this Act the
6 Secretary shall be provided the greatest latitude in
7 contracting with qualified marketing agents to mar-
8 ket and dispose of royalty oil or royalty gas, con-
9 tracts with qualified marketing agents under this
10 Act shall be exempted from otherwise applicable fed-
11 eral procurement and property disposition laws, in-
12 cluding but not limited to the Armed Services Pro-
13 curement Act of 1947, 10 U.S.C. 2304, et seq. or
14 the Federal Property Administration Services Act,
15 41 U.S.C. 253, et seq., or their implementing regu-
16 lations.

17 (4) TRANSPORTATION COSTS.—Each contract
18 under paragraph (3) shall require the Secretary to
19 bear the costs of any transportation of royalty oil
20 and royalty gas without further appropriation as
21 specified by this Act incurred prior to the sale or
22 other disposition of the royalty oil and royalty gas
23 by the qualified marketing agent.

24 (5) PROCESSING.—The qualified marketing
25 agent under paragraph (3) shall—

1 (A) have the right to process royalty oil
2 and royalty gas, after receipt at the delivery
3 point, for the recovery and sale of valuable
4 products; and

5 (B) require the Secretary to bear any ap-
6 plicable costs of exercising such right without
7 further appropriation.

8 (6) COMPLIANCE WITH STANDARDS.—In taking
9 in kind, processing, and shipping royalty oil and roy-
10 alty gas, the United States and its qualified market-
11 ing agent shall comply with all procedures which are
12 customary or required of processors and shippers,
13 including but not limited to the applicable FERC-
14 approved GISB standards, nominations of volumes,
15 scheduling of deliveries, and the movement of oil or
16 gas in or through the facilities of the initial trans-
17 porter and any subsequent transporter. The United
18 States and its qualified marketing agent shall sepa-
19 rately contract with transporters, purchasers, and
20 processors. The Secretary and his qualified market-
21 ing agent shall assume responsibility and any liabil-
22 ity associated with such duties.

23 (7) FAIR MARKET VALUE REQUIREMENTS.—
24 The net proceeds received by the United States from
25 the sale of royalty oil and royalty gas shall satisfy

1 in full the Secretary's responsibility to receive fair
2 market value as defined by an applicable statute or
3 lease provision.

4 (b) RIGHTS, OBLIGATIONS AND RESPONSIBILITIES
5 OF STATES.—

6 (1) SELECTION OF QUALIFIED MARKETING
7 AGENTS.—At its option and for the mutual benefit
8 of the United States and the State, a State entitled
9 to revenues under the provisions of section 35 of the
10 Mineral Leasing Act (30 U.S.C. 191) or section 8(g)
11 of the Outer Continental Shelf Lands Act (43
12 U.S.C. 1353) may elect to act on behalf of the Sec-
13 retary in selecting qualified marketing agents to sell
14 or dispose of royalty oil or royalty gas produced
15 from lease premises within the State or from section
16 8(g) lease premises adjacent to the State, whichever
17 is applicable. If it makes such an election, the State
18 shall enjoy all the rights and assume all obligations
19 that the United States would otherwise have under
20 this Act. If a State selects a qualified marketing
21 agent that has contracted to market production from
22 State leases, the contract with the qualified market-
23 ing agent shall be on terms no less favorable to the
24 interests of the United States than the contract with

1 the State. A State may make such an election from
2 time to time in accordance with paragraph (4).

3 (2) COMPLIANCE WITH REQUIREMENTS.—A
4 State that elects to act under this section shall—

5 (A) exercise such rights in accordance with
6 the requirements established by this Act gov-
7 erning royalty in kind; and

8 (B) be subject to the rights, responsibil-
9 ities, and obligations of the United States under
10 this Act, as may be applicable, including those
11 set forth in subsection (a) and in no event shall
12 regulations be applicable to a State which do
13 not apply in substance to the United States to
14 the extent required by applicable law.

15 (3) NOTICE; EFFECTIVE PERIOD OF ELEC-
16 TION.—A State may elect to act under this section
17 after giving the Secretary 90 days notice. The elec-
18 tion is effective 90 days after the date the Secretary
19 receives notice of the election. The election shall re-
20 main in effect for a period of not less than 3 years.
21 After the initial term, a State must give sufficient
22 notice to the United States, but in no event less
23 than 180 days, to terminate an election period.

24 (4) COVERED OIL AND GAS.—A State's election
25 under this subsection shall apply to all royalty oil

1 and royalty gas within the State and section 8(g)
2 lands adjacent to the State, as applicable.

3 (5) EXISTING CONTRACTS.—If a contract be-
4 tween a qualified marketing agent and the United
5 States exists that has not expired, the State's elec-
6 tion shall be subject to that existing contract.

7 (6) LIMITATION ON DEDUCTIONS FROM STATE
8 SHARE OF RECEIPTS.—If a State makes an election
9 under this section, payment of the State's share of
10 receipts for the sale of royalty oil and royalty gas
11 shall be made without deductions for costs applicable
12 to the services provided by the State under the net
13 receipts sharing provisions of the Mineral Leasing
14 Act.

15 (c) RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES
16 OF THE LESSEE.—

17 (1) EFFECT OF TENDER BY LESSEE.—A lessee
18 shall tender royalty oil and royalty gas to the United
19 States at the delivery point for each lease premises,
20 except as provided in section 6. Upon such tender
21 for any lease premises, all royalty obligations of the
22 lessee shall be considered fulfilled and fully satisfied
23 for the amount tendered, including any express or
24 implied obligation or duty to market, except as pro-
25 vided in section 6. If the United States fails to take

1 in kind the entire volume tendered, the lessee's obli-
2 gation or duty shall nonetheless be fully satisfied.

3 (2) MEASUREMENT OF LEASED PRODUCTION.—

4 A lessee shall measure or cause to be measured lease
5 production, including royalty oil and royalty gas, at
6 the delivery point in accordance with any applicable
7 laws and lease terms.

8 (3) TERMINATION OF RESPONSIBILITIES OF

9 LESSEE.—A lessee shall have no responsibility or ob-
10 ligation for royalty oil or royalty gas after tendering
11 it in accordance with paragraph (1) and shall not be
12 liable for any costs or liability downstraem of the de-
13 livery point associated with the royalty oil or royalty
14 gas.

15 (4) REPORTING AND RECORD KEEPING.—With

16 respect to royalty oil and royalty gas taken in kind
17 by the United States, a lessee shall not be subject
18 to the reporting and record keeping requirements of
19 the Federal Oil and Gas Royalty Management Act
20 (30 U.S.C. 1701 et seq.) or other applicable laws for
21 any lease, other than records or reports necessary to
22 verify the quantity of royalty oil or royalty gas pro-
23 duced from a lease premises.

24 (d) RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES

25 OF QUALIFIED MARKETING AGENTS.—

1 (1) IN GENERAL.—In accordance with the
2 terms of its contract with the United States, a quali-
3 fied marketing agent shall—

4 (A) advise and consult with the United
5 States regarding the terms and conditions of
6 sales to purchasers;

7 (B) arrange for the receipt, handling,
8 transporting, delivery, marketing, processing,
9 disposition, brokering and sale of royalty oil
10 and royalty gas; and

11 (C) be authorized to enter into sales con-
12 tracts on behalf of the United States.

13 (2) MOVEMENT OF ROYALTY OIL AND ROYALTY
14 GAS.—A qualified marketing agent shall be author-
15 ized to make any arrangements necessary to move
16 royalty oil and royalty gas downstream of the appli-
17 cable delivery point, and shall be authorized to enter
18 into transportation and processing contracts on be-
19 half of the United States.

20 (3) REQUIREMENT TO TAKE.—A qualified mar-
21 keting agent shall be required to take 100 percent
22 of the royalty share tendered by the lessee from each
23 lease premises on a daily basis.

24 (4) ENHANCEMENT OF REVENUES TO UNITED
25 STATES.—In handling, marketing, and disposing of

1 royalty oil and royalty gas, a qualified marketing
2 agent shall utilize its experience and expertise to
3 seek opportunities to enhance revenues to the United
4 States, including opportunities for the sale of royalty
5 oil and royalty gas at or away from the lease prem-
6 ises, depending on the facts and circumstances rel-
7 evant to receiving, handling, transporting, delivering,
8 marketing, processing, disposition, brokering, and
9 sale of the royalty oil or royalty gas.

10 (5) AFFILIATE TRANSACTIONS.—Qualified mar-
11 keting agent sales to itself or an affiliate shall be
12 made in accordance with the following standards:

13 (A) When selling royalty oil and royalty
14 gas to an affiliate, a qualified marketing agent
15 shall not give preference to an affiliate, includ-
16 ing but not limited to, favoring the affiliate
17 with lower sales prices, rights of first refusal or
18 more favorable terms than those offered to non-
19 affiliated purchasers of royalty oil and royalty
20 gas.

21 (B) The managing employee of the quali-
22 fied marketing agent shall periodically certify
23 that it has complied with these provisions. The
24 civil penalty provisions of section 109(d) of the
25 Federal Oil and Gas Royalty Management Act

1 of 1982 (30 U.S.C. 1719(d)) shall apply to any
2 qualified marketing agent who violates subpara-
3 graph (A).

4 **SEC. 4. COSTS RESPONSIBILITY.**

5 (a) **MERCHANTABLE CONDITION.**—The lessee shall
6 bear the costs of placing royalty oil and royalty gas in
7 merchantable condition at the delivery point, if not pro-
8 duced in such condition at the well: *Provided, however,*
9 That gathering and transportation costs under this Act
10 shall be governed solely by section 4(b) and section 5, and
11 responsibility for such costs shall not be dependent upon
12 whether the royalty oil or royalty gas is in merchantable
13 condition at the time of gathering or transportation.

14 (b) **GATHERING AND TRANSPORTATION OF ROYALTY**
15 **OIL AND ROYALTY GAS.**—

16 (1) **GATHERING.**—The lessee shall bear the
17 costs of gathering royalty oil and royalty gas.

18 (2) **TRANSPORTATION.**—The United States
19 shall bear the costs of transporting royalty oil and
20 royalty gas to and beyond the delivery point until
21 disposition or sale by the United States. Transpor-
22 tation costs shall include associated or related activi-
23 ties to facilitate movement, such as the costs of com-
24 pression and dehydration associated with transpor-
25 tation. The movement of unseparated, unidentifiable

1 lease production to a point not on or immediately
2 adjacent to the lease premises, unit or communitized
3 area and the movement of separated, identifiable
4 lease production regardless of whether such move-
5 ment on or off the lease premises, unit or
6 communitized area shall be considered transpor-
7 tation. Transportation costs shall be governed solely
8 by the definitions and provisions in this Act relating
9 to transportation and responsibility for the payment
10 of such costs shall not be dependent upon whether
11 the royalty oil or royalty gas is in merchantable con-
12 dition at the time of transportation.

13 (c) LIMITATION ON LESSEE'S RESPONSIBILITY FOR
14 COSTS.—With respect to all royalty oil and royalty gas
15 taken in kind by the United States, the lessee shall bear
16 no costs other than those specifically identified in this sec-
17 tion. After the royalty share is taken in kind, the United
18 States shall dispose of and market its royalty oil and roy-
19 alty gas and the lessee shall have no obligation to dispose
20 of or market the United States royalty share of produc-
21 tion.

22 (d) REIMBURSEMENT OF COSTS.—In bearing the
23 cost of transporting royalty oil and royalty gas, the United
24 States shall reimburse the lessee for transportation costs

1 without further appropriation in accordance with the pro-
2 visions of subsection (b) of this section and section 5.

3 **SEC. 5. TRANSPORTER CHARGES.**

4 (a) DETERMINATION.—The lessee or its affiliate shall
5 determine and calculate, where applicable, the transpor-
6 tation charges governed by this Act in accordance with
7 subsections (b) and (c).

8 (b) REIMBURSEMENT FOR TRANSPORTATION COSTS
9 PRIOR TO THE DELIVERY POINT.—

10 (1) TRANSPORT BY REGULATED PIPELINE OR
11 FACILITY.—Reimbursement to a lessee for costs of
12 transporting royalty oil and royalty gas produced by
13 the lessee and subsequently transported through a
14 regulated pipeline or facility before the delivery point
15 shall be—

16 (A) for nonaffiliated transactions, the ac-
17 tual rate paid under the tariff by the lessee; or

18 (B) for affiliated transactions, the lower of
19 the tariff rate or the actual rate paid under the
20 tariff.

21 (2) TRANSPORT BY SHIPMENT-BY-SHIPMENT
22 TARIFF JURISDICTION PIPELINE OR FACILITY.—Re-
23 imbursement to a lessee for transportation costs in-
24 curred to transport royalty oil through a pipeline or
25 facility for which jurisdiction for purposes of a tariff

1 is determined on a shipment-by-shipment basis, shall
2 be the tariff rate for all shipments by the lessee
3 through the same pipeline or facility if there is a
4 shipment through the pipeline or facility to which a
5 tariff applies.

6 (3) TRANSPORT BY UNREGULATED PIPELINE
7 OR FACILITY.—(A) Reimbursement to a lessee for
8 transportation costs incurred to transport royalty oil
9 or royalty gas through an unregulated pipeline or fa-
10 cility before the delivery point shall be—

11 (i) for nonaffiliated transactions, the ac-
12 tual costs incurred by the lessee; or

13 (ii) for affiliated transactions—

14 (I) if third party oil or gas is being
15 transported through the pipeline or facility,
16 the weighted average (by volume) third
17 party charge; or

18 (II) if no third party oil or gas is
19 being transported through the pipeline or
20 facility, not to exceed the pipeline or facil-
21 ity owner's or its affiliate's costs of operat-
22 ing the pipeline or facility, including a re-
23 turn on undepreciated capital investment,
24 subject to paragraph (4).

1 (B) For purposes of subparagraph (A)(ii)(II)
2 the term “costs of operating” means the sum of the
3 following:

4 (i) Direct operating, maintenance, and re-
5 pair costs and expenses.

6 (ii) Indirect costs (including but not lim-
7 ited to costs such as information systems, busi-
8 ness services and technical service) allocated to
9 the pipeline or facility, in an amount not ex-
10 ceeding 15 percent of the amount of direct
11 costs that applies under clause (I).

12 (iii) An allowance for capital investment
13 calculated on the basis of either of the follow-
14 ing, as may be, elected by the lessee:

15 (I) Depreciation, plus a return on the
16 undepreciated capital, or

17 (II) A return on depreciable capital
18 investment.

19 Return under subclauses (I) and (II) shall be a rate
20 equal to twice the rate payable for bonds with a
21 Standard and Poor’s industrial BBB bond rating.

22 (4) ALLOWANCE OF HIGHER TRANSPORTATION
23 COSTS.—If the amount specified in paragraph
24 (3)(A)(ii) does not adequately reflect the costs of the
25 transportation services provided by a lessee or its af-

1 affiliate, the lessee may request a different transpor-
2 tation reimbursement from the Secretary. For pipe-
3 lines in more than 200 meters of water, the Sec-
4 retary may allow a higher rate of return, sufficient
5 for an investment in the fabricating, installing, oper-
6 ating, and maintaining such pipelines as compared
7 to pipelines in waters of less than 200 meters.

8 (5) RESTRICTION ON DISCLOSURE.—The
9 United States and its qualified marketing agent
10 shall keep confidential and shall not disclose the
11 transportation charge or any facts or information re-
12 lated thereto used by a lessee or its affiliate for re-
13 imbursement under this subsection.

14 (c) CHARGES FOR TRANSPORTATION COSTS BEYOND
15 THE DELIVERY POINT.—

16 (1) IN GENERAL.—Charges by the lessee or its
17 affiliate for transportation of royalty oil or royalty
18 gas through an unregulated pipeline or facility be-
19 yond the delivery point shall be a negotiated rate,
20 that—

21 (A) shall not exceed the highest rate
22 charged for transportation provided to a third
23 party, if third party oil or gas is being trans-
24 ported through the pipeline or facility; or

1 (B) shall be the fair commercial value of
2 the transportation services provided by the les-
3 see or its affiliate if no third party oil or gas
4 is being transported through the pipeline or fa-
5 cility.

6 (2) DETERMINATION OF COMMERCIAL
7 VALUE.—The standard to be used to determine the
8 commercial value for purposes of paragraph (1)(B)
9 shall be based upon the transportation services pro-
10 vided and not on the ownership of the pipeline or fa-
11 cility by the lessee or its affiliate.

12 (d) ARBITRATION.—

13 (1) IN GENERAL.—If negotiations between a
14 qualified marketing agent and an entity owning the
15 pipeline or facility do not result in a mutually agree-
16 able negotiated charge for transportation under sub-
17 section (c), then the qualified marketing agent on
18 behalf of the Secretary or the entity owning the
19 pipeline or facility may, at any time during the nego-
20 tiation, require that such matter be submitted to ar-
21 bitration in accordance with this subsection.

22 (2) SELECTION OF ARBITRATORS.—Any dispute
23 regarding a charge for transportation that is not re-
24 solved by agreement shall be determined by a panel
25 of 3 arbitrators upon written notice given by either

1 party to the other, which notice shall also name one
2 arbitrator. The party receiving such notice shall,
3 within 10 business days thereafter, by written notice
4 to the other party, name the second arbitrator, or
5 failing to do so, the first party who gave notice shall
6 name the second arbitrator. The two arbitrators so
7 appointed shall name the third, or failing to do so
8 within 5 business days then upon the request of ei-
9 ther party, the third arbitrator shall be a certified
10 arbitrator appointed by a professional arbitrator as-
11 sociation. Whether appointed by the two party-
12 named arbitrators or by a professional arbitrator as-
13 sociation, the third arbitrator shall be knowledgeable
14 about and experienced in the transportation of oil or
15 gas or both, as applicable.

16 (3) HEARING.—An arbitration hearing shall be
17 held within 20 calendar days following the selection
18 of the third arbitrator. At the hearing, each party
19 shall submit a proposed transportation rate and evi-
20 dence to support such rate as it sees fit.

21 (4) DECISION.—The panel of arbitrators shall
22 determine which of the rates submitted by the par-
23 ties shall be the transportation charge used. The ar-
24 bitrators shall render a written decision within 10
25 calendar days after the hearing under paragraph (3)

1 based on a majority vote of the 3 arbitrators. Such
2 decision shall be final and binding on the United
3 States, the qualified marketing agent, and the lessee
4 and its affiliate, and shall be enforceable in any
5 court having jurisdiction.

6 (5) EXPENSES.—Each party shall bear its ex-
7 penses of prosecuting its own case in any arbitra-
8 tion, and the parties shall share equally any other
9 expenses of the arbitration, including compensation
10 for the third arbitrator at a rate that is fair and rea-
11 sonable to the United States.

12 (6) USE OF EMPLOYEE OF PARTY AS ARBITRA-
13 TOR.—(A) Any arbitrator named by the parties may
14 be a permanent or temporary officer or employee of
15 the Federal or a State Government, or an employee
16 of any party to the dispute, if all parties agree that
17 the person may serve.

18 (B) In implementing this paragraph, the quali-
19 fied marketing agent on behalf of the Secretary may
20 use the services of one or more employees of other
21 agencies to serve as arbitrators to be named by the
22 qualified marketing agent. The Secretary may enter
23 into an interagency agreement that provides for the
24 reimbursement by the user agency or the parties of

1 the full or partial costs of the services of such an
2 employee.

3 (7) LIMITATION ON DISCLOSURE.—Any party
4 (including the United States and its qualified mar-
5 keting agent) to an arbitration proceeding shall keep
6 confidential and shall not disclose the results of the
7 arbitration or any facts, evidence, or information re-
8 lated thereto provided in confidence to the arbitra-
9 tors.

10 (8) INTERIM RATE.—(A) The royalty oil and
11 royalty gas shall be transported at the disputed rate
12 during the interim period, subject to an obligation to
13 refund if the rate is later reduced as a result of arbi-
14 tration.

15 (B) Any refund under subparagraph (A) shall
16 be made with interest at the average short-term rate
17 as specified in section 6621 of the Internal Revenue
18 Code of 1986.

19 (9) DELAY OR CURTAILMENT OF PRODUCTION
20 PROHIBITED.—At no time during such arbitration or
21 dispute shall lease production be delayed or cur-
22 tailed.

23 **SEC. 6. IMBALANCES.**

24 (a) REQUIREMENT TO RESOLVE IMBALANCES.—

1 (1) IN GENERAL.—If the amount of royalty oil
2 or royalty gas production taken by the United States
3 from a lease premises during a calendar month dif-
4 fers from the amount of royalty oil or royalty gas
5 production attributable to that lease premises for
6 that calendar month, and the difference results from
7 the circumstances described in paragraph (2), the
8 difference (in this section referred to as a “royalty
9 share imbalance”) shall be resolved in accordance
10 with this section.

11 (2) CIRCUMSTANCES.—The circumstances re-
12 ferred to in paragraph (1) are the following:

13 (A) A force majeure event at the delivery
14 point that prevents the United States trans-
15 porter from receiving royalty oil or royalty gas;

16 (B) A failure by the United States or its
17 qualified marketing agent to receive, transport,
18 and market its royalty oil or royalty gas ten-
19 dered for a one-time occurrence of not more
20 than 3 consecutive days in any calendar quar-
21 ter; or

22 (C) A difference between the amount made
23 available to the United States at the delivery
24 point by the lease operator on behalf of the les-

1 see and the United States royalty share of total
2 production.

3 (b) IMBALANCE ACCOUNTS.—

4 (1) MAINTENANCE OF INFORMATION.—Each
5 lease operator shall maintain information on the
6 quantity of royalty oil and royalty gas produced
7 from or attributable to each lease premises and the
8 amount of royalty oil or royalty gas production
9 taken by the United States from each lease prem-
10 ises. The information shall include—

11 (A) the quantities of royalty oil and royalty
12 gas taken in kind by the United States at the
13 delivery point;

14 (B) the quantities of royalty oil and roy-
15 alty gas produced from and attributed to the
16 lease premises; and

17 (C) the current month and cumulative roy-
18 alty share imbalances.

19 (2) REPORT.—(A) Each lease operator shall—

20 (i) submit a royalty share imbalance report
21 to the qualified marketing agent for the United
22 States with respect to the lease no later than
23 60 days after the expiration of each month of
24 production from the lease; or

1 (ii) if all information for the report is not
2 available by such date, file or cause to be filed
3 with the qualified marketing agent a report that
4 contains estimated quantities, and file a revised
5 final report showing actual quantities no later
6 than 60 days after information on all actual
7 quantities is received.

8 (B) The royalty share imbalance report submit-
9 ted under subparagraph (A) to the qualified market-
10 ing agent shall constitute formal notice of a royalty
11 share imbalance, which shall be remedied in accord-
12 ance with subsection (c).

13 (c) MANAGING IMBALANCES.—

14 (1) IN GENERAL.—If a royalty share imbalance
15 occurs during any calendar month, the lease opera-
16 tor shall work with the United States (through its
17 qualified marketing agent) to settle the royalty share
18 imbalance in a manner consistent with the existing
19 production balancing agreements or practices among
20 operating rights owners.

21 (2) ROYALTY OIL IMBALANCE.—In the case of
22 a royalty share imbalance with respect to royalty oil,
23 and in the absence of multiple operating rights own-
24 ers, additional quantities of oil may be taken by ei-
25 ther a lessee or the United States through its quali-

1 fied marketing agent to expeditiously settle such roy-
2 alty share imbalance as soon as is reasonably prac-
3 ticable, as determined by the lease operator.

4 (3) ROYALTY GAS IMBALANCE.—(A) In the case
5 of a royalty share imbalance with respect to royalty
6 gas during any calendar month and in the absence
7 of multiple operating rights owners, the lease opera-
8 tor shall work with the United States (through its
9 qualified marketing agent) to arrange for increase or
10 decreased quantities of gas to be taken beginning
11 the month after receipt of such notice by the quali-
12 fied marketing agent, to expeditiously settle such
13 royalty share imbalances as soon as is reasonably
14 practicable.

15 (B) Additional quantities taken in a month by
16 either a lessee or the United States to reduce a roy-
17 alty share imbalance with respect to royalty gas
18 shall not exceed 25 percent of that month's royalty
19 gas.

20 (C) Until final settlement pursuant to sub-
21 section (d), royalty share imbalances with respect to
22 royalty gas shall be reduced chronologically in the
23 order in which they were created.

24 (d) FINAL IMBALANCE REPORT AND FINAL SETTLE-
25 MENT.—

1 (1) FINAL IMBALANCE REPORT.—Upon perma-
2 nent cessation of production from a lease, the lease
3 operator shall file a final imbalance report that—

4 (A) contains the information described in
5 subsection (b); and

6 (B) states that the lease premises has per-
7 manently ceased production and that a royalty
8 share imbalance exists.

9 (2) FINAL SETTLEMENT.—The parties to a roy-
10 alty share imbalance shall settle such royalty share
11 imbalance using the same final settlement proce-
12 dures as set forth in the existing production bal-
13 ancing agreement between the operating rights own-
14 ers, if any. In the absence of such an agreement,
15 within 60 days of the final imbalance report, each
16 party that received excess quantities shall, at its op-
17 tion, make delivery of the excess quantities or make
18 a cash payment, to the parties who received insuffi-
19 cient quantities. The cash payment shall be based on
20 the net proceeds (in terms of actual value received)
21 from the sale of such excess quantities for value at
22 the lease premises or the lessee may make delivery
23 of the imbalance volume. No interest shall accrue,
24 prior to the date of any settlement, on any imbal-
25 ance.

1 **SEC. 7. ROYALTY-IN-KIND FOR TRUCKED, TANKERED, OR**
2 **BARGED OIL OR GAS.**

3 (a) APPLICATION.—This section shall apply to roy-
4 alty oil or royalty gas produced from onshore or offshore
5 lease premises for which there is no pipeline connection
6 at the well such that the royalty oil or royalty gas is trans-
7 ported by truck, tanker, or barge from the lease premises.

8 (b) SELECTION OF TRANSPORTER.—

9 (1) IN GENERAL.—To further the efficient and
10 cost-effective taking of royalty oil or royalty gas in
11 kind from such lease premises, the qualified market-
12 ing agent shall select and utilize a transporter who
13 is transporting oil or gas for a lessee from the lease
14 premises, or for the operator of the lease premises.

15 (2) EXCEPTION.—Royalty oil or royalty gas
16 taken in kind may be transported in any other man-
17 ner agreed to by the qualified marketing agent and
18 the lessee or lease operator.

19 (c) RELATIONSHIP TO OTHER LAWS.—

20 (1) LAWS REGARDING OIL OR GAS TRANSPOR-
21 TATION.—This section shall not alter or abridge any
22 State or Federal law regulating the transportation of
23 oil or gas by truck, tanker, or barge.

24 (2) FEDERAL ROYALTY PREPAYMENT PROVI-
25 SIONS.—Nothing in this Act shall modify, abridge,
26 or alter the provisions of section 7(b) of the Federal

1 Oil and Gas Royalty Simplification and Fairness Act
2 (30 U.S.C. 1726) with respect to the prepayment of
3 royalty.

4 **SEC. 8. LIMITATIONS ON APPLICATION.**

5 (a) LEASE ROYALTY CLAUSES AND ROYALTY PAY-
6 MENTS.—This Act does not apply to royalty payments of
7 the following types:

8 (1) Compensatory royalties.

9 (2) Minimum royalties.

10 (3) Net profit share lease royalties prior to pay-
11 out.

12 (b) PRIOR ROYALTY RATE REDUCTION DETERMINA-
13 TIONS.—This Act shall not modify or alter any royalty
14 rate reduction determination made by the Secretary before
15 or after the date of enactment of this Act. The amount
16 of royalty oil and royalty gas taken in kind by the Sec-
17 retary shall be the amount calculated by such reduced roy-
18 alty rate.

19 (c) AUDIT OF ELIGIBLE SMALL REFINER.—The Sec-
20 retary shall have the right to audit the reports of eligible
21 small refiners related to the volume of royalty oil received
22 as are required under the provisions of this Act during
23 normal business hours, at reasonable times, to verify the
24 accuracy of such reports.

1 **SEC. 9. REPORTING.**

2 (a) REPORTING BY LEASE OPERATOR.—A lease oper-
3 ator on behalf of the lessee shall provide or cause to be
4 provided all volume reports required under the oil and gas
5 lease to the United States, but shall be relieved of the obli-
6 gation of providing any royalty related and all royalty-in-
7 value reports for any royalty oil or royalty gas taken in
8 kind by the United States required pursuant to the oil and
9 gas lease terms or applicable statutes. A lease operator
10 on behalf of the lessee shall make available or cause to
11 be made available such information as is customarily pro-
12 vided to third party sellers of lease production on a timely
13 basis.

14 (b) REPORTING BY QUALIFIED MARKETING
15 AGENT.—A qualified marketing agent shall provide or
16 cause to be provided to the United States any valuation
17 or related royalty reports required by the Secretary.

18 **SEC. 10. AUDIT.**

19 (a) AUDIT OF LEASE OPERATOR.—The Secretary
20 shall have the right to audit the reports the Lease Opera-
21 tor files on behalf of lessees related to the volume of oil
22 and gas produced as are required under this Act during
23 normal business hours, at reasonable times, to verify the
24 accuracy of such reports.

25 (b) AUDIT OF QUALIFIED MARKETING AGENT.—The
26 Secretary shall have the right to audit the reports of quali-

1 fied marketing agents required under this Act during nor-
2 mal business hours, at reasonable times, to verify the ac-
3 curacy of such reports. Any information and records re-
4 garding sales of royalty oil and royalty gas shall be ob-
5 tained, where necessary, from a qualified marketing agent.

6 **SEC. 11. LEASE TERMS NOT AFFECTED.**

7 In accordance with the terms of oil and gas leases
8 issued by the Secretary, the Secretary shall exercise the
9 right to be paid oil and gas royalties in amount pursuant
10 to this Act and lessees shall pay such oil and gas royalties
11 in amount pursuant to provisions of this Act. Nothing in
12 this Act shall alter or abridge the rights of a lessee under
13 an oil and gas lease, including the right to explore for,
14 operate, drill for, or produce oil and gas or to otherwise
15 operate the lease. The rights, duties, or obligations that
16 exist between the United States and a lessee which arise
17 under an oil and gas lease with respect to oil or gas used
18 on the lease premises or gas unavoidably lost prior to the
19 delivery point shall not be affected, abridged, or altered
20 by this Act. When oil or gas is used on, or for the benefit
21 of, a lease premises at a facility handling production from
22 more than one lease premises, or at a facility handling
23 unitized or communitized production, the proportionate
24 share of each lease's production (actual or allocated) nec-
25 essary to operate the facility may be used royalty-free.

1 **SEC. 12. ELIGIBLE AND SMALL REFINERS.**

2 (a) SALE OF ROYALTY OIL TO ELIGIBLE SMALL RE-
3 FINERS.—(1) The Secretary shall direct qualified market-
4 ing agents to offer for sale to eligible small refiners the
5 eligible small refiner portion in accordance with the provi-
6 sions set forth in this section.

7 (2) The sale of royalty oil from the eligible small re-
8 finer portion to an eligible small refiner is intended for
9 processing, or trading for equivalent barrels for process-
10 ing, in the eligible small refiner's refineries located in the
11 United States and not for resale in-kind or value.

12 (3) The Secretary shall annually review and recertify
13 or withdraw the continuing eligibility of previously cer-
14 tified eligible small refiners.

15 (4) The eligible small refiner portion shall be offered
16 to eligible small refiners from royalty oil volumes to be
17 sold by each qualified marketing agent. The Secretary
18 shall maintain a current list of all Eligible Small Refiners.
19 Upon the selection of a Qualified Marketing Agent by the
20 Secretary, the Secretary shall promptly notify all Eligible
21 Small Refiners of the selection of the Qualified Marketing
22 Agent. The notification shall contain the name and ad-
23 dress of the Qualified Marketing Agent as well as a brief
24 description of the federal leases and lease products to be
25 marketed by that Qualified Marketing Agent. Within 15
26 days after notice by the Secretary, any Eligible Small Re-

1 finer who is interested in receiving Royalty Oil from the
2 leases of the Qualified Marketing Agent, shall submit a
3 Notice of Interest to the Qualified Marketing Agent. The
4 Notice shall generally state the volumes location and qual-
5 ity of Royalty Oil desired by the Small Refiner. When mar-
6 keting Royalty Oil, the Qualified Marketing Agent shall
7 contact the Small Refiner(s) who has (have) submitted a
8 Note of Interest and shall offer to sell the 40% portion
9 to the Small Refiner(s) who submitted a Notice. The
10 Small Refiner shall purchase such Royalty Oil at the
11 weighted average price for the remaining volumes of like
12 quality at the same location sold by the Qualified Market-
13 ing Agent.

14 (5) Nothing in this section shall preclude any eligible
15 small refiner from participating in any open and adver-
16 tised or negotiated sale by qualified marketing agents.
17 Royalty oil volumes obtained by any eligible small refiner
18 in any open and advertised or negotiated sale shall not
19 be included in calculating limitations on eligibility as de-
20 fined in subsection (b).

21 (b) LIMITATIONS ON ELIGIBILITY.—No eligible small
22 refiner may purchase royalty oil from the eligible small
23 refiner portion for delivery at a rate that exceeds 60 per-
24 cent of the combined crude oil and condensate distillation
25 capacity of that eligible small refiner's currently operating

1 refineries located in the United States unless the Sec-
2 retary determines that it is in the public interest to allow
3 all eligible small refiners to purchase royalty oil at a great-
4 er rate. The Secretary shall promulgate rules and regula-
5 tions to determine an eligible small refiner's current oper-
6 ating capacity.

7 (c) FEES, CREDITWORTHINESS, AND SURETY RE-
8 QUIREMENTS.—(1) The purchase of royalty oil from the
9 eligible small refiner portion pursuant to this section shall
10 not be subject to any fees or charges not required of all
11 purchasers of royalty oil.

12 (2) The Secretary shall establish conditions for each
13 eligible small refiner's creditworthiness at the time of de-
14 termining and reviewing eligibility.

15 (3) Creditworthiness requirements for eligible small
16 refiners shall not exceed standard industry requirements
17 governing non-Federal crude oil purchasers, and the Sec-
18 retary may not require surety in excess of the estimated
19 value of 60 days anticipated deliveries of royalty oil from
20 the eligible small refiner portion to individual small refin-
21 ers.

22 (d) ELIGIBLE SMALL REFINER ADVISORY PANEL.—
23 The Secretary shall convene an eligible small refiner advi-
24 sory panel to assist in developing policies and procedures
25 to implement the provisions of this Act. The eligible small

1 refiner advisory panel shall be comprised of representa-
2 tives from 3 small refiners, 3 qualified marketing agents
3 and 3 lessees who have participated in the small refiner
4 program established pursuant to section 36 of the Mineral
5 Leasing Act (30 U.S.C. 192) or section 1353 of the Outer
6 Continental Shelf Lands Act (43 U.S.C. 1353).

7 (e) Pursuant to the recommendations of the Small
8 Refiner's Advisory Group, the Secretary shall develop and
9 implement procedures to ensure a fair and equitable op-
10 portunity for interested eligible small refiners to purchase
11 royalty oil from the eligible small refiner portion.

12 (f) REPORTS ON RIK.—The Secretary may require
13 any eligible small refiner to submit a report demonstrating
14 the eligible small refiner's compliance with subsection
15 (a)(2).

16 (g) REPEAL OF EXISTING ROYALTY-IN-KIND AU-
17 THORITY.—Section 36 of the Mineral Leasing Act (30
18 U.S.C. 192) and section 1353 of the Outer Continental
19 Shelf Lands Act (43 U.S.C. 1353) are repealed.

20 **SEC. 13. APPLICABLE LAWS.**

21 (a) MOVEMENT, DISPOSITION, AND SALE OF ROY-
22 ALTY OIL AND ROYALTY GAS.—In arranging for the
23 movement, disposition and sale of royalty oil and royalty
24 gas, the United States and its qualified marketing agents

1 shall be subject to all laws that apply to the movement,
2 disposition, and sale of oil and gas.

3 (b) NO ADDITIONAL PRIORITY OF SERVICE OR
4 MOVEMENT.—In any pipeline, truck, barge, railroad, or
5 other carrier downstream of the delivery point, royalty oil
6 and royalty gas shall not be afforded a priority of service
7 or movement, nor assigned a capacity right which is supe-
8 rior to that identified in—

9 (1) the contract for carriage of royalty oil and
10 royalty gas entered into by the transporter with the
11 United States or the qualified marketing agent; or

12 (2) the tariff applicable to such carrier, if any.

13 (c) MEANING OF TERMS USED.—The meaning of the
14 terms used in this Act shall be supplemented by reference
15 to generally accepted accounting principles and prevailing
16 industry practices and procedures.

17 (d) LAWS APPLICABLE TO STRIPPER OR MARGINAL
18 PRODUCTION NOT AFFECTED.—Nothing in this Act shall
19 modify, abridge or alter the provisions of the Deep Water
20 Royalty Relief Act of 1995 (43 U.S.C. 1337), or any other
21 Federal law applicable to stripper or marginal production.

22 **SEC. 14. INDIAN LANDS.**

23 This act shall not apply with respect to Indian lands.

1 **SEC. 15. EFFECTIVE DATE; REGULATIONS.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), this Act shall become no later than effective 18
4 months after the date of enactment of this Act, and shall
5 apply with respect to the production of oil and gas on or
6 after the first day of the month following the effective date
7 of this Act.

8 (b) REGULATIONS.—The Secretary shall issue all
9 regulations required for implementation of this Act within
10 one year after the date of enactment of this Act.

○