

FEDERAL OIL AND GAS ROYALTY SIMPLIFICATION AND
FAIRNESS ACT OF 1996

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JULY 11, 1996.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1975]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1975) to improve the management of royalties from Federal and Outer Continental Shelf oil and gas leases, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Oil and Gas Royalty Simplification and Fairness Act of 1996”.

SEC. 2. DEFINITIONS.

Section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended—

(1) by amending paragraph (7) to read as follows:

“(7) ‘lessee’ means any person to whom the United States issues an oil and gas lease or any person to whom operating rights in a lease have been assigned;” and

(2) by striking “and” at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting a semicolon, and by adding at the end the following:

“(17) ‘adjustment’ means an amendment to a previously filed report on an obligation, and any additional payment or credit, if any, applicable thereto, to rectify an underpayment or overpayment on an obligation;

“(18) ‘administrative proceeding’ means any Department of the Interior agency process in which a demand, decision or order issued by the Secretary or a delegated State is subject to appeal or has been appealed;

“(19) ‘assessment’ means any fee or charge levied or imposed by the Secretary or a delegated State other than—

“(A) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

“(B) any interest; or

“(C) any civil or criminal penalty;

“(20) ‘commence’ means—

“(A) with respect to a judicial proceeding, the service of a complaint, petition, counterclaim, crossclaim, or other pleading seeking affirmative relief or seeking credit or recoupment: *Provided*, That if the Secretary commences a judicial proceeding against a designee, the Secretary shall give notice of that commencement to the lessee who designated the designee, but the Secretary is not required to give notice to other lessees who may be liable pursuant to section 102(a) of this Act, for the obligation that is the subject of the judicial proceeding; or

“(B) with respect to a demand, the receipt by the Secretary or a delegated State or a lessee or its designee (with written notice to the lessee who designated the designee) of the demand;

“(21) ‘credit’ means the application of an overpayment (in whole or in part) against an obligation which has become due to discharge, cancel or reduce the obligation;

“(22) ‘demand’ means—

“(A) an order to pay issued by the Secretary or the applicable delegated State to a lessee or its designee (with written notice to the lessee who designated the designee) that has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing; or

“(B) a separate written request by a lessee or its designee which asserts an obligation due the lessee or its designee that provides a reasonable basis to conclude that the obligation in the amount of the demand is due and owing, but does not mean any royalty or production report, or any information contained therein, required by the Secretary or a delegated State;

“(23) ‘designee’ means the person designated by a lessee pursuant to section 102(a) of this Act, with such written designation effective on the date such designation is received by the Secretary and remaining in effect until the Secretary receives notice in writing that the designation is modified or terminated;

“(24) ‘obligation’ means—

“(A) any duty of the Secretary or, if applicable, a delegated State—

“(i) to take oil or gas royalty in kind; or

“(ii) to pay, refund, offset, or credit monies including (but not limited to)—

“(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale; or

“(II) any interest; and

“(B) any duty of a lessee or its designee (subject to the provisions of section 102(a) of this Act)—

“(i) to deliver oil or gas royalty in kind; or

“(ii) to pay, offset or credit monies including (but not limited to)—

“(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

“(II) any interest;

“(III) any penalty; or

“(IV) any assessment,

which arises from or relates to any lease administered by the Secretary for, or any mineral leasing law related to, the exploration, production and development of oil or gas on Federal lands or the Outer Continental Shelf;

“(25) ‘order to pay’ means a written order issued by the Secretary or the applicable delegated State to a lessee or its designee (with notice to the lessee who designated the designee) which—

“(A) asserts a specific, definite, and quantified obligation claimed to be due, and

“(B) specifically identifies the obligation by lease, production month and monetary amount of such obligation claimed to be due and ordered to be paid, as well as the reason or reasons such obligation is claimed to be due, but such term does not include any other communication or action by or on behalf of the Secretary or a delegated State;

“(26) ‘overpayment’ means any payment by a lessee or its designee in excess of an amount legally required to be paid on an obligation and includes the portion of any estimated payment for a production month that is in excess of the royalties due for that month;

“(27) ‘payment’ means satisfaction, in whole or in part, of an obligation;

“(28) ‘penalty’ means a statutorily authorized civil fine levied or imposed for a violation of this Act, any mineral leasing law, or a term or provision of a lease administered by the Secretary;

“(29) ‘refund’ means the return of an overpayment by the drawing of funds from the United States Treasury;

“(30) ‘State concerned’ means, with respect to a lease, a State which receives a portion of royalties or other payments under the mineral leasing laws from such lease;

“(31) ‘underpayment’ means any payment or nonpayment by a lessee or its designee that is less than the amount legally required to be paid on an obligation; and

“(32) ‘United States’ means the United States Government and any department, agency, or instrumentality thereof, the several States, the District of Columbia, and the territories of the United States.”.

SEC. 3. DELEGATION OF ROYALTY COLLECTIONS AND RELATED ACTIVITIES.

(a) GENERAL AUTHORITY.—Section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1735) is amended to read as follows:

“SEC. 205. DELEGATION OF ROYALTY COLLECTIONS AND RELATED ACTIVITIES.

“(a) STATE PROPOSAL.—A State may submit to the Secretary a proposal to perform and enforce all or part of the authorities and responsibilities of the Secretary under this Act to conduct and enforce royalty collections and related activities, including audits, inspections, investigations, production and financial reports, correction of erroneous report data, automated verification, demands, subpoenas, orders to perform restructured accounting (as defined in this Act), production accountability, with respect to all Federal leases within that State.

“(b) DEMONSTRATION OF STATE ABILITY.—In the proposal under subsection (a), the State shall demonstrate the following:

“(1) It is likely that the State will provide adequate resources to achieve the purposes of this Act.

“(2) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary under this Act in accordance with the requirements or subsection (c).

“(3) Such delegation will not create an unreasonable burden on the lessees within the State.

“(4) The State agrees to adopt standardized reporting procedures prescribed by the Secretary, unless the State and all affected parties otherwise agree.

“(5) The State agrees to follow and adhere to regulations issued pursuant to the mineral leasing laws regarding valuation of production.

“(6) The State has enacted laws and promulgated regulations consistent with relevant Federal laws and regulations.

“(7) The State has shown that delegation of the authorities and responsibilities under this Act will result in a cost-savings to the United States.

“(c) REGULATIONS.—After consultation with the States concerned, the Secretary shall by rule promulgate standards within 18 months after the date of enactment of this section pertaining to authorities and responsibilities under subsection (a), including standards pertaining to the royalty collections and related activities enumerated in subsection (a). Such standards shall be designed to provide reasonable assurance that uniformity and effectiveness will prevail among the States, that State participation will ensue in the development of procedures and policies affecting the delegated activity, and that reasonable flexibility will be provided to a State to perform any delegated authority or responsibility in a more efficient and cost-effective manner. The records and accounts maintained pursuant to such regulations shall be sufficient to allow the Secretary to monitor the performance of any State under this section. Such standards shall, to the maximum extent possible, prevent duplication by the Secretary of any activity delegated to a State for all Federal land within a State.

“(d) DELEGATION.—

“(1) PRELIMINARY APPROVAL OR DISAPPROVAL BY SECRETARY.—

“(A) REVIEW.—The Secretary shall review a State’s proposal as to the consistency of such proposal with subsections (b) and (c) and regulations under subsection (c).

“(B) DECISION.—The Secretary shall issue a preliminary approval or disapproval as to the consistency of a State’s proposal with subsections (b) and (c) and regulations under subsection (c) within six months after submission of such proposal. If the Secretary disapproves any State proposal in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefore and state whether he will agree to delegate to the State if the State meets the conditions set forth in the disapproval.

“(C) RESUBMISSION.—The State shall have 60 days in which to resubmit a revised State proposal or portion thereof. The Secretary shall approve or disapprove the resubmitted State proposal or portion thereof within 60 days from the date of resubmission.

“(2) DELEGATION.—After notice and opportunity for a public hearing, if the Secretary determines that a State has satisfied the conditions contained in a preliminary ruling and approves the State’s proposal, the State shall assume and perform such activities and responsibilities pursuant to such approval. The provisions for delegation shall be set forth in a delegation agreement between the Secretary and the State within 90 days after the notice and hearing. The agreement may be amended from time to time to take into account new standards and procedures affecting the delegated activity. Under any such agreement, the Secretary and the State shall share oil or gas information.

“(3) FEDERAL INTERVENTION; WITHDRAWAL OF AUTHORITY.—

“(A) SECRETARIAL INTERVENTION.—If after providing written notice to a delegated State (with a copy to the lessee or its designee) and a reasonable opportunity to take corrective action requested by the Secretary, the Secretary determines that the State has failed to issue a demand or order to a Federal lessee within the State, that such failure will result in an underpayment of an obligation due the United States by such lessee, and that such underpayment will be uncollected without Secretarial intervention, the Secretary may issue such demand or order in accordance with the provisions of this Act prior to or absent the withdrawal of the delegated activity.

“(B) WITHDRAWAL OF DELEGATED ACTIVITY.—Whenever the Secretary determines after public hearing that a State is not performing the delegated activity authorized under this section in accordance with requirements of this section, the Secretary shall provide written notice, together with the reasons therefor, to the State and, if corrective action is not taken within a reasonable time, not to exceed 90 days, the Secretary shall withdraw authorization of such delegated activity and take the necessary actions to administer and enforce such withdrawn activity.

“(4) COURT ACTION.—The State may bring an action in the Federal district court in a judicial district in which a portion of the State is located if—

“(A) the Secretary does not agree to delegate the requested activities, or

“(B) the Secretary withdraws an activity under paragraph (3)(B).

“(e) SAVINGS PROVISION.—Any State operating pursuant to a delegation existing on the date of enactment of this Act may continue to operate under the terms and conditions of the delegation, subject to the requirements of subsection (i), except to the extent that a revision of the existing agreement is adopted pursuant to this section.

“(f) STATE ACTION.—With respect to enforcement of an obligation under this Act, a State bringing an action under this section shall enjoy no greater rights than the Secretary enjoys under this Act.

“(g) RECEIPTS.—The Secretary shall compensate any State for those costs which may be necessary to carry out the delegated activities under this section. Payment shall be made no less than every quarter during the fiscal year. Compensation to a State shall not exceed the Secretary’s reasonably anticipated expenditure for performance of such delegated activities by the Secretary. Such costs shall be allocable for the purposes of section 35(b) of the Act entitled ‘An act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain’, approved February 25, 1920 (commonly known as the Mineral Leasing Act) (30 U.S.C. 191 (b)) to the administration and enforcement of laws providing for the leasing of any onshore lands or interests in land owned by the United States. The Secretary shall compensate any State in the next succeeding fiscal year for the aggregate amount of such costs incurred but not compensated due to such allocation for the current fiscal year. All moneys received from sales, bonuses, rentals, royalties, assessments and interest, including money claimed to be due and owing pursuant to a delegation

under this section, shall be payable and paid to the Treasury of the United States. If a State's cost for actions taken under a delegated activity is subject to such section 35(b), the Secretary shall not charge the State under such section 35(b) for the Secretary's costs for taking the same actions under such activity."

(b) CLERICAL AMENDMENT.—The item relating to section 205 in the table of contents in section 1 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) is amended to read as follows:

"Sec. 205. Delegation of royalty collections and related activities."

SEC. 4. SECRETARIAL AND DELEGATED STATES' ACTIONS AND LIMITATION PERIODS.

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended by adding after section 114 the following new section:

"SEC. 115. SECRETARIAL AND DELEGATED STATES' ACTIONS AND LIMITATION PERIODS.

"(a) IN GENERAL.—The respective duties, responsibilities, and activities with respect to a lease shall be performed by the Secretary, delegated States, and lessees or their designees in a timely manner.

"(b) LIMITATION PERIOD.—

"(1) IN GENERAL.—A judicial proceeding or demand which arises from, or relates to an obligation, shall be commenced within seven years from the date on which the obligation becomes due and if not so commenced shall be barred. If commencement of a judicial proceeding or demand for an obligation is barred by this section, the Secretary, a delegated State, or a lessee or its designee (A) shall not take any other or further action regarding that obligation, including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, payment, principal, interest, assessment, or penalty or the initiation, pursuit or completion of an audit with respect to that obligation; and (B) shall not pursue any other equitable or legal remedy, whether under statute or common law, with respect to an action on or an enforcement of said obligation.

"(2) RULE OF CONSTRUCTION.—A judicial proceeding or demand that is timely commenced under paragraph (1) against a designee shall be considered timely commenced as to any lessee who is liable pursuant to section 102(a) of this Act for the obligation that is the subject of the judicial proceeding or demand.

"(3) APPLICATION OF CERTAIN LIMITATIONS.—The limitations set forth in sections 2401, 2415, 2416, and 2462 of title 28, United States Code, and section 42 of the Mineral Leasing Act (30 U.S.C. 226–2) shall not apply to any obligation to which this Act applies. Section 3716 of title 31, United States Code, may be applied to an obligation the enforcement of which is not barred by this Act, but may not be applied to any obligation the enforcement of which is barred by this Act.

"(c) OBLIGATION BECOMES DUE.—

"(1) IN GENERAL.—For purposes of this Act, an obligation becomes due when the right to enforce the obligation is fixed.

"(2) ROYALTY OBLIGATIONS.—The right to enforce any royalty obligation for any given production month for a lease is fixed for purposes of this Act on the last day of the calendar month following the month in which oil or gas is produced.

"(d) TOLLING OF LIMITATION PERIOD.—The running of the limitation period under subsection (b) shall not be suspended, tolled, extended, or enlarged for any obligation for any reason by any action, other than the following:

"(1) TOLLING AGREEMENT.—A written agreement executed during the limitation period between the Secretary or a delegated State and a lessee or its designee (with notice to the lessee who designated the designee) shall toll the limitation period for the amount of time during which the agreement is in effect.

"(2) SUBPOENA.—

"(A) The issuance of a subpoena to a lessee or its designee (with notice to the lessee who designated the designee, which notice shall not constitute a subpoena to the lessee) in accordance with the provisions of subparagraph (B)(i) shall toll the limitation period with respect to the obligation which is the subject of a subpoena only for the period beginning on the date the lessee or its designee receives the subpoena and ending on the date on which (i) the lessee or its designee has produced such subpoenaed records for the subject obligation, (ii) the Secretary or a delegated State receives written notice that the subpoenaed records for the subject obligation are not in existence or are not in the lessee's or its designee's possession or control, or

(iii) a court has determined in a final decision that such records are not required to be produced, whichever occurs first.

“(B)(i) A subpoena for the purposes of this section which requires a lessee or its designee to produce records necessary to determine the proper reporting and payment of an obligation due the Secretary may be issued only by an Assistant Secretary of the Interior or an Acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations), or the Director or Acting Director of the respective bureau or agency, and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest elected State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such subpoena, but may not delegate such authority to any other person.

“(ii) A subpoena described in clause (i) may only be issued against a lessee or its designee during the limitation period provided in this section and only after the Secretary or a delegated State has in writing requested the records from the lessee or its designee related to the obligation which is the subject of the subpoena and has determined that—

“(I) the lessee or its designee has failed to respond within a reasonable period of time to the Secretary’s or the applicable delegated State’s written request for such records necessary for an audit, investigation or other inquiry made in accordance with the Secretary’s or such delegated State’s responsibilities under this Act; or

“(II) the lessee or its designee has in writing denied the Secretary’s or the applicable delegated State’s written request to produce such records in the lessee’s or its designee’s possession or control necessary for an audit, investigation or other inquiry made in accordance with the Secretary’s or such delegated State’s responsibilities under this Act; or

“(III) the lessee or its designee has unreasonably delayed in producing records necessary for an audit, investigation or other inquiry made in accordance with the Secretary’s or the applicable delegated State’s responsibilities under this Act after the Secretary’s or such delegated State’s written request.

“(C) In seeking records, the Secretary or the applicable delegated State shall afford the lessee or its designee a reasonable period of time after a written request by the Secretary or such delegated State in which to provide such records prior to the issuance of any subpoena.

“(3) MISREPRESENTATION OR CONCEALMENT.—The intentional misrepresentation or concealment of a material fact for the purpose of evading the payment of an obligation in which case the limitation period shall be tolled for the period of such misrepresentation or such concealment.

“(4) ORDER TO PERFORM A RESTRUCTURED ACCOUNTING.—(A)(i) The issuance of a notice under subparagraph (D) that the lessee or its designee has not substantially complied with the requirement to perform a restructured accounting shall toll the limitation period with respect to the obligation which is the subject of the notice only for the period beginning on the date the lessee or its designee receives the notice and ending 120 days after the date on which (I) the Secretary or the applicable delegated State receives written notice the accounting or other requirement has been performed, or (II) a court has determined in a final decision that the lessee is not required to perform the accounting, whichever occurs first.

“(ii) If the lessee or its designee initiates an administrative appeal or judicial proceeding to contest an order to perform a restructured accounting issued under subparagraph (B)(i), the limitation period in subsection (b) shall be tolled from the date the lessee or its designee received the order until a final, non-appealable decision is issued in any such proceeding.

“(B)(i) The Secretary or the applicable delegated State may issue an order to perform a restructured accounting to a lessee or its designee when the Secretary or such delegated State determines during an audit of a lessee or its designee that the lessee or its designee should recalculate royalty due on an obligation based upon the Secretary’s or the delegated State’s finding that the lessee or its designee has made identified underpayments or overpayments which are demonstrated by the Secretary or the delegated State to be based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months with the same type of error which constitutes a pattern of violations and which are likely to result in either significant underpayments or overpayments.

“(ii) The power of the Secretary to issue an order to perform a restructured accounting may not be delegated below the most senior career professional position having responsibility for the royalty management program, which position is currently designated as the ‘Associate Director for Royalty Management’, and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205 of this Act, the State, acting through the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such order to perform, which may not be delegated to any other person. An order to perform a restructured accounting shall—

“(I) be issued within a reasonable period of time from when the audit identifies the systemic, reporting errors;

“(II) specify the reasons and factual bases for such order;

“(III) be specifically identified as an ‘order to perform a restructured accounting’;

“(IV) provide the lessee or its designee a reasonable period of time (but not less than 60 days) within which to perform the restructured accounting; and

“(V) provide the lessee or its designee 60 days within which to file an administrative appeal of the order to perform a restructured accounting.

“(C) An order to perform a restructured accounting shall not mean or be construed to include any other communication or action by or on behalf of the Secretary or a delegated State.

“(D) If a lessee or its designee fails to substantially comply with the requirement to perform a restructured accounting pursuant to this subsection, a notice shall be issued to the lessee or its designee that the lessee or its designee has not substantially complied with the requirements to perform a restructured accounting. A lessee or its designee shall be given a reasonable time within which to perform the restructured accounting. Such notice may be issued under this section only by an Assistant Secretary of the Interior or an acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations) and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest elected State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such notice, which may not be delegated to any other person.

“(e) TERMINATION OF LIMITATIONS PERIOD.—An action or an enforcement of an obligation by the Secretary or delegated State or a lessee or its designee shall be barred under this section prior to the running of the seven-year period provided in subsection (b) in the event—

“(1) the Secretary or a delegated State has notified the lessee or its designee in writing that a time period is closed to further audit; or

“(2) the Secretary or a delegated State and a lessee or its designee have so agreed in writing.

For purposes of this subsection, notice to, or an agreement by, the designee shall be binding on any lessee who is liable pursuant to section 102(a) for obligations that are the subject of the notice or agreement.

“(f) RECORDS REQUIRED FOR DETERMINING COLLECTIONS.—Records required pursuant to section 103 of this Act by the Secretary or any delegated State for the purpose of determining obligations due and compliance with any applicable mineral leasing law, lease provision, regulation or order with respect to oil and gas leases from Federal lands or the Outer Continental Shelf shall be maintained for the same period of time during which a judicial proceeding or demand may be commenced under subsection (b). If a judicial proceeding or demand is timely commenced, the record holder shall maintain such records until the final nonappealable decision in such judicial proceeding is made, or with respect to that demand is rendered, unless the Secretary or the applicable delegated State authorizes in writing an earlier release of the requirement to maintain such records. Notwithstanding anything herein to the contrary, under no circumstance shall a record holder be required to maintain or produce any record relating to an obligation for any time period which is barred by the applicable limitation in this section. In connection with any hearing, administrative proceeding, inquiry, investigation, or audit by the Secretary or a delegated State under this Act, the Secretary or the delegated State shall minimize the submission of multiple or redundant information and make a good faith effort to locate records previously submitted by a lessee or a designee to the Secretary or the delegated State, prior to requiring the lessee or the designee to provide such records.

“(g) TIMELY COLLECTIONS.—In order to most effectively utilize resources available to the Secretary to maximize the collection of oil and gas receipts from lease obliga-

tions to the Treasury within the seven-year period of limitations, and consequently to maximize the State share of such receipts, the Secretary may not perform or require accounting, reporting, or audit activities if the Secretary and the State concerned determines that the cost of conducting or requiring the activity exceeds the expected amount to be collected by the activity, based on the most current 12 months of activity. This subsection shall not provide a defense to a demand or an order to perform a restructured accounting. To the maximum extent possible, the Secretary and delegated States shall reduce costs to the United States Treasury and the States by discontinuing requirements for unnecessary or duplicative data and other information, such as separate allowances and payor information, relating to obligations due. If the Secretary and the State concerned determine that collection will result sooner, the Secretary or the applicable delegated State may waive or forego interest in whole or in part.

“(h) APPEALS AND FINAL AGENCY ACTION.—

“(1) 33-MONTH PERIOD.—Demands or orders issued by the Secretary or a delegated State are subject to administrative appeal in accordance with the regulations of the Secretary. The Secretary shall issue a final decision in any administrative proceeding, including any administrative proceedings pending on the date of enactment of this section, within 33 months from the date such proceeding was commenced or 33 months from the date of such enactment, whichever is later. The 33-month period may be extended by any period of time agreed upon in writing by the Secretary and the appellant.

“(2) EFFECT OF FAILURE TO ISSUE DECISION.—If no such decision has been issued by the Secretary within the 33-month period referred to in paragraph (1)—

“(A) the Secretary shall be deemed to have issued and granted a decision in favor of the appellant as to any nonmonetary obligation and any monetary obligation the principal amount of which is less than \$10,000; and

“(B) the Secretary shall be deemed to have issued a final decision in favor of the Secretary, which decision shall be deemed to affirm those issues for which the agency rendered a decision prior to the end of such period, as to any monetary obligation the principal amount of which is \$10,000 or more, and the appellant shall have a right to judicial review of such deemed final decision in accordance with title 5 of the United States Code.

“(i) COLLECTIONS OF DISPUTED AMOUNTS DUE.—To expedite collections relating to disputed obligations due within the seven-year period beginning on the date the obligation became due, the parties shall hold not less than one settlement consultation and the Secretary and the State concerned may take such action as is appropriate to compromise and settle a disputed obligation, including waiving or reducing interest and allowing offsetting of obligations among leases.

“(j) ENFORCEMENT OF A CLAIM FOR JUDICIAL REVIEW.—In the event a demand subject to this section is properly and timely commenced, the obligation which is the subject of the demand may be enforced beyond the seven-year limitations period without being barred by this statute of limitations. In the event a demand subject to this section is properly and timely commenced, a judicial proceeding challenging the final agency action with respect to such demand shall be deemed timely so long as such judicial proceeding is commenced within 180 days from receipt of notice by the lessee or its designee of the final agency action.

“(k) IMPLEMENTATION OF FINAL DECISION.—In the event a judicial proceeding or demand subject to this section is timely commenced and thereafter the limitation period in this section lapses during the pendency of such proceeding, any party to such proceeding shall not be barred from taking such action as is required or necessary to implement a final unappealable judicial or administrative decision, including any action required or necessary to implement such decision by the recovery or recoupment of an underpayment or overpayment by means of refund or credit.

“(l) STAY OF PAYMENT OBLIGATION PENDING REVIEW.—Any person ordered by the Secretary or a delegated State to pay any obligation (other than an assessment) shall be entitled to a stay of such payment without bond or other surety instrument pending an administrative or judicial proceeding if the person periodically demonstrates to the satisfaction of the Secretary that such person is financially solvent or otherwise able to pay the obligation. In the event the person is not able to so demonstrate, the Secretary may require a bond or other surety instrument satisfactory to cover the obligation. Any person ordered by the Secretary or a delegated State to pay an assessment shall be entitled to a stay without bond or other surety instrument.”

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) is amended by inserting after the item relating to section 114 the following new item:

“Sec. 115. Secretarial and delegated States' actions and limitation periods.”

SEC. 5. ADJUSTMENT AND REFUNDS.

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended by inserting after section 111 the following:

“SEC. 111A. ADJUSTMENTS AND REFUNDS.**(a) ADJUSTMENTS.—**

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

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

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

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

“(4) For purposes of this section, the adjustment period for any obligation shall be the six-year period following the date on which an obligation became due. The adjustment period shall be suspended, tolled, extended, enlarged, or terminated by the same actions as the limitation period in section 115.

“(b) REFUNDS.—

“(1) IN GENERAL.—A request for refund is sufficient if it—

“(A) is made in writing to the Secretary and, for purposes of section 115, is specifically identified as a demand;

“(B) identifies the person entitled to such refund;

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

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

“(2) PAYMENT BY SECRETARY OF THE TREASURY.—The Secretary shall certify the amount of the refund to be paid under paragraph (1) to the Secretary of the Treasury who shall make such refund. Such refund shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such refund attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any recipient prescribed by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.

“(3) PAYMENT PERIOD.—A refund under this subsection shall be paid or denied (with an explanation of the reasons for the denial) within 120 days of the date on which the request for refund is received by the Secretary. Such refund shall be subject to later audit by the Secretary or the applicable delegated State and subject to the provisions of this Act.

“(4) PROHIBITION AGAINST REDUCTION OF REFUNDS OR CREDITS.—In no event shall the Secretary or any delegated State directly or indirectly claim or offset any amount or amounts against, or reduce any refund or credit (or interest accrued thereon) by the amount of any obligation the enforcement of which is barred by section 115 of this Act.”

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) is amended by inserting after the item relating to section 111 the following new item:

“Sec. 111A. Adjustments and refunds.”

SEC. 6. ROYALTY TERMS AND CONDITIONS, INTEREST, AND PENALTIES.

(a) **LESSEE OR DESIGNEE INTEREST.**—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721) is amended by adding after subsection (g) the following:

“(h) Interest shall be allowed and paid or credited on any overpayment, with such interest to accrue from the date such overpayment was made, at the rate obtained by applying the provisions of subparagraphs (A) and (B) of section 6621(a)(1) of the Internal Revenue Code of 1986, but determined without regard to the sentence following subparagraph (B) of section 6621(a)(1). Interest which has accrued on an overpayment may be applied to reduce an underpayment (including any interest thereon). This subsection applies to overpayments made later than six months after the date of enactment of this subsection or September 1, 1996, whichever is later. Such interest shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act, and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such interest payment attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any other recipient designated by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.”.

(b) **LIMITATION ON INTEREST.**—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982, as amended by subsection (a), is further amended by adding at the end the following:

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

(c) **ESTIMATED PAYMENT.**—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by subsections (a) and (b), is further amended by adding at the end the following:

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

(d) **VOLUME ALLOCATION OF OIL AND GAS PRODUCTION.**—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by subsections (a) through (c), is amended by adding at the end the following:

“(k)(1) Except as otherwise provided by this subsection—

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

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

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

“(2) This subsection applies only to requirements for reporting and paying royalties. Nothing in this subsection is intended to alter a lessee’s liability for royalties

on oil or gas production based on the share of production allocated to the lease in accordance with the terms of the lease, a unit or communitization agreement, or any other agreement.

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

“(4) The Secretary or the delegated State shall grant an exception from the reporting and payment requirements for marginal properties by allowing for any calendar year or portion thereof royalties to be paid each month based on the volume of production sold. Interest shall not accrue on the difference for the entire calendar year or portion thereof between the amount of oil and gas actually sold and the share of production allocated to the lease until the beginning of the month following such calendar year or portion thereof. Any additional royalties due or overpaid royalties and associated interest shall be paid, refunded, or credited within six months after the end of each calendar year in which royalties are paid based on volumes of production sold. For the purpose of this subsection, the term ‘marginal property’ means a lease that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 thousand cubic feet of gas per well per day, or a combination thereof, determined by dividing the average daily production of crude oil and natural gas from producing wells on such lease by the number of such wells, unless the Secretary, together with the State concerned, determines that a different production is more appropriate.

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

(e) PRODUCTION ALLOCATION.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by subsections (a) through (d), is amended by adding at the end the following:

“(1) The Secretary shall expeditiously issue all determinations of allocations of production for units and communitization agreements of a request for determination. If the Secretary or the delegated State fails to issue a determination within a reasonable period, the Secretary shall waive interest due on obligations subject to the determination from the date the request was received until the end of the month following the month in which the determination is made.”

(f) NEW ASSESSMENT TO ENCOURAGE PROPER ROYALTY PAYMENTS.—

(1) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by section 4(a), is further amended by adding at the end the following:

“SEC. 116. ASSESSMENTS.

“Upon the date of enactment of this section, to encourage proper royalty payment the Secretary or the delegated State shall impose assessments on a person who chronically submits erroneous reports under this Act. Assessments under this Act may only be issued as provided for in this section.”

(2) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (30 U.S.C. 1701) is amended by adding after the item relating to section 115 the following new item:

“Sec. 116. Assessments.”.

(g) LIABILITY FOR ROYALTY PAYMENTS.—Section 102(a) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1712(a)) is amended to read as follows:

“(a) In order to increase receipts and achieve effective collections of royalty and other payments, a lessee who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary or the applicable delegated State. A lessee may designate a person to make all or part of the payments due under a lease on the lessee’s behalf and shall notify the Secretary or the applicable delegated State in writing of such designation, in which event said designated person may, in its own name, pay, offset or credit monies, make adjustments, request and receive refunds and submit reports with respect to payments required by the lessee. Notwithstanding any other provision of this Act to the contrary, a designee shall not be liable for any payment obligation under the lease. The person owning operating rights in a lease shall be primarily liable for its pro rata share of payment obligations under the lease. If the person owning the legal record title in a lease

is other than the operating rights owner, the person owning the legal record title shall be secondarily liable for its pro rata share of such payment obligations under the lease.”

(h) CLERICAL AMENDMENTS.—(1) The heading of section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721) is amended to read as follows:

“ROYALTY TERMS AND CONDITIONS, INTEREST, AND PENALTIES”.

(2) The item relating to section 111 in the table of contents in section 1 of such Act (30 U.S.C. 1701) is amended to read as follows:

“Sec. 111. Royalty terms and conditions, interest, and penalties.”

SEC. 7. ALTERNATIVES FOR MARGINAL PROPERTIES.

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), as amended by section 6 of this Act, is further amended by adding at the end the following:

“SEC. 117. ALTERNATIVES FOR MARGINAL PROPERTIES.

“(a) DETERMINATION OF BEST INTERESTS OF STATE CONCERNED AND THE UNITED STATES.—The Secretary and the State concerned, acting in the best interests of the United States and the State concerned to promote production, reduce administrative costs, and increase net receipts to the United States and the States, shall jointly determine, on a case by case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof, shall be subject to a prepayment under subsection (b) or regulatory relief under subsection (c). If the State concerned does not consent, such prepayments or regulatory relief shall not be made available under this section for such marginal production: *Provided*, That if royalty payments from a lease or leases, or well or wells is not shared with any State, such determination shall be made solely by the Secretary.

“(b) PREPAYMENT OF ROYALTY.—

“(1) IN GENERAL.—Notwithstanding the provisions of any lease to the contrary, for any lease or leases or well or wells identified by the Secretary and the State concerned pursuant to subsection (a), the Secretary is authorized to accept a prepayment for royalties in lieu of monthly royalty payments under the lease for the remainder of the lease term if the affected lessee so agrees. Any prepayment agreed to by the Secretary, State concerned and lessee which is less than an average \$500 per month in total royalties shall be effectuated under this section not earlier than two years after the date of enactment of this section and, any prepayment which is greater than an average \$500 per month in total royalties shall be effectuated under this section not earlier than three years after the date of enactment of this section. The Secretary and the State concerned may condition their acceptance of the prepayment authorized under this section on the lessee’s agreeing to such terms and conditions as the Secretary and the State concerned deem appropriate and consistent with the purposes of this Act. Such terms may—

“(A) provide for prepayment that does not result in a loss of revenue to the United States in present value terms;

“(B) include provisions for receiving additional prepayments or royalties for developments in the lease or leases or well or wells that deviate significantly from the assumptions and facts on which the valuation is determined; and

“(C) require the lessee or its designee to provide such periodic production reports as may be necessary to allow the Secretary and the State concerned to monitor production for the purposes of subparagraph (B).

“(2) STATE SHARE.—A prepayment under this section shall be shared by the Secretary with any State or other recipient to the same extent as any royalty payment for such lease.

“(3) SATISFACTION OF OBLIGATION.—Except as may be provided in the terms and conditions established by the Secretary under subsection (b), a lessee or its designee who makes a prepayment under this section shall have satisfied in full the lessee’s obligation to pay royalty on the production stream sold from the lease or leases or well or wells.

“(c) ALTERNATIVE ACCOUNTING AND AUDITING REQUIREMENTS.—Within one year after the date of the enactment of this section, the Secretary or the delegated State shall provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop properties subject to subsection (a): *Provided*, That such relief will only be available to lessees in a State that concurs, which concurrence is not required if royalty from the lease or leases or well or wells is not

shared with any State. Prior to granting such relief, the Secretary and, if appropriate, the State concerned shall agree that the type of marginal wells and relief provided under this paragraph is in the best interest of the United States and, if appropriate, the State concerned.”

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (30 U.S.C. 1701) is amended by adding after the item relating to section 116 the following new item:

“Sec. 117. Alternatives for marginal properties.”.

SEC. 8. REPEALS.

(a) FOGRMA.—With respect to Federal lands, sections 202 and 307 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732 and 1755), are no longer applicable. Such inapplicability shall not affect cooperative agreements involving Indian tribes or Indian lands.

(b) OCSLA.—Effective on the date of the enactment of this Act, section 10 of the Outer Continental Shelf Lands Act (43 U.S.C. 1339) is repealed.

SEC. 9. INDIAN LANDS.

The amendments and repeals made by this Act shall not apply with respect to Indian lands, and the provisions of the Federal Oil and Gas Royalty Management Act of 1982 as in effect on the day before the date of enactment of this Act shall continue to apply after such date with respect to Indian lands.

SEC. 10. PRIVATE LANDS.

This Act shall not apply to any privately owned minerals.

SEC. 11. EFFECTIVE DATE.

Except as provided by section 115(f), section 111(h), section 111(k)(5), and section 117 of the Federal Oil and Gas Royalty Management Act of 1982 (as added by this Act), this Act, and the amendments made by this Act, shall apply with respect to the production of oil and gas after the first day of the month following the date of the enactment of this Act.

PURPOSE OF THE BILL

The purpose of H.R. 1975 is to improve the management of royalties from Federal and Outer Continental Shelf (OCS) oil and gas leases. The bill would establish clear and equitable provisions for the effective and efficient administration of leases by the Secretary of the Interior to further exploration and development of oil and gas resources. This Act in no way affects Indian lands or alters how the Federal Oil and Gas Royalty Management Act of 1982 applies to Indian lands.

BACKGROUND AND NEED FOR LEGISLATION

The existing mineral leasing laws, regulations, policies and procedures related to obligations arising from leases administered by the Secretary of the Interior are lacking in clarity, consistency and reciprocity, and contain inequities which impose unnecessary and unreasonable costs and burdens on lessees and Federal Government alike. Because the Federal royalty program is overly complex, burdensome and unfair for oil and gas exploration and development companies who seek to do business with the Department of the Interior, competition for both onshore and offshore leases is diminished.

This complexity is largely an outgrowth of the reforms mandated by conditions in the late 1970s and early 1980s when the Federal agency charged with collecting mineral royalties (the Conservation Division of the U.S. Geological Survey) could not adequately track payments against lease obligations. A Commission on Fiscal Accountability of the Nation’s Energy Resources (known as the Linnowes Commission) was chartered to study possible reforms,

and 60 recommendations were offered. In response to these recommendations, in December 1982, Congress passed the Federal Oil and Gas Royalty Management Act (FOGRMA) to require the Secretary of the Interior to “establish comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties.” FOGRMA’s implementation has clearly improved Federal royalty management with increased revenues to the U.S. Treasury, and to the States via the receipts sharing formula for onshore leases and certain OCS leases, as well.

However, after 13 years of operation, revisions to FOGRMA are now necessary if leasing is to be simplified and made more fair. For example, multiple conflicting statutes of limitation for suits to collect royalty payments and recent court decisions [see *Phillips v. Babbitt*, No. 93-1377 5th Cir. (Sept. 7, 1994) and *IPAA v. Samedan*, U.S. Dist. Ct., D.C. (May 1995)] holding that no statute of limitations applies for royalty purposes] have created uncertainty and unfairness for lessees and operators subject to indefinite audit collection. This is particularly true with respect to the Debt Collection Act for obligations identified after the expiration of a limitations period. The burden of never being free of audit exposure by the Federal Government is grossly unfair as well as the antithesis of simplicity. In addition, current law severely restricts OCS Lands Act lessees’ access to overpayments made to the Federal Government, and does not provide for the time value of lessees’ overpayments. Furthermore, administrative case law concerning who is liable for royalty payments associated with Federal mineral leases is unsettled and needs statutory direction. For example, see the conflicting Interior Board of Land Appeals decisions on Mesa Operating Limited Partnership, 125 IBLA 28 (1992); 128 IBLA 174 (1994).

Lastly, the Linnowes Commission recognized the need for greater involvement of States in the Federal royalty management program. While Section 205 of FOGRMA allows delegation of Secretarial authorities to States with respect to royalty collections, these duties are limited to audits and investigations. Authority to enforce the results of audits has never been delegated to States, with the result that States (as well as the U.S. Treasury) are losing revenue which they have identified as due and owing but for which the Secretary has not taken action to demand payment. H.R. 1975 is in large measure a response to the demands of those States in which the vast preponderance of onshore Federal oil and gas production occurs to require the Secretary to further delegate enforcement responsibility so that royalty obligations are paid promptly. Given that public domain lease revenues are shared 50/50 with the States, it is simply unfair to not allow them a more active role in securing monies owed in a timely manner. Accordingly, 14 Governors of States cumulatively accounting for 99 percent of onshore oil and gas lease revenues are in affirmative support of the bill.

In sum, H.R. 1975 changes procedures and obligations related to the collection of onshore and offshore oil and gas royalty payments from Federal lands to improve efficiency and the collection of payments. These reforms include: expanded delegation of authorities to States, setting a seven-year statute of limitations for commencing

a judicial proceeding or demand relating to a royalty payment; placing a time limit on administrative appeals; establishing a six-year adjustment period to correct overpayments and underpayments; requiring the payment of interest on royalty payments in accordance with similar Internal Revenue Service procedures; revising methods for reporting allocation of oil and gas production among lessees for Federal leases within unit or communitization agreements; and authorizing the Secretary of the Interior to accept prepayments of royalties for marginal leases.

COMMITTEE ACTION

The Subcommittee on Energy and Mineral Resources held an oversight hearing on June 8, 1995, to investigate an Administration "Reinvent Government II" proposal issued on March 29, 1995, concerning the Department of the Interior. Although this proposal was withdrawn in July 1995, citing the need for further discussion, the proposal contained a section to devolve the royalty collection functions of the Minerals Management Service to the respective States, and further, for the States to perform the Bureau of Land Management's inspection and enforcement functions on oil and gas leases.

H.R. 1975 was introduced on June 30, 1995, by Congressman Ken Calvert (R-CA). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources.

On July 18, 1995, the Subcommittee held a legislative hearing on H.R. 1975 where the Administration testified in support of many of the goals of the legislation, but with reservations (H. Hrg. 104-27). In August 1995, Subcommittee Chairman Calvert and Ranking Member Neil Abercrombie (D-HI) met with representatives of the Administration, States, and industry and requested the parties to work together to narrow the differences evidenced by testimony from the hearing.

On February 28, 1996, the Subcommittee on Energy and Minerals met to mark up H.R. 1975. Congressman Calvert offered an amendment in the nature of a substitute reflecting negotiated agreements with the Administration, except for the provisions regarding the manner and degree to which the Secretary of the Interior is to delegate authorities to States. The amendment was adopted by voice vote. No other amendments were offered and the Subcommittee favorably reported the bill, as amended, by voice vote.

On March 28, 1996, the Committee on Resources met to mark up H.R. 1975. Congressman Abercrombie raised a point of order on germaneness against the Subcommittee-reported text. The point of order was not sustained.

Congressman Abercrombie then offered an amendment en bloc of 20 technical and minor changes, which passed by voice vote. These amendments included such changes as deletion of the definition of the United States; clarification that refunds will require a debit from the Federal Treasury; limitation of possible activities which could be delegated to those which are directly and strictly related to the collection of the royalties; and a provision to lengthen the time-period for the Secretary of the Interior to promulgate regulations for delegation of authority to States.

Congressman Calvert offered an amendment to Section 3 of the bill that revised the language for State delegation modeled directly from the State programs provisions of the Surface Mining Control and Reclamation Act of 1977. The amendment was adopted by voice vote.

Congressman Abercrombie offered an amendment to Section 3 of the bill to make royalty collection authority delegation to States discretionary with the Secretary. The amendment failed by voice vote.

Congressman Abercrombie offered an amendment to Section 6 of the bill to limit the circumstances in which a lessee would be allowed to take interest on overpayments to those instances where it can be demonstrated that the overpayment is directly attributable to error by the Federal Government, such as when the Secretary loses an appeal or issues an incorrect bill. The amendment failed by voice vote.

Congressman Sam Gejdenson (D-CT) offered an amendment to repeal the Deep Water Royalty Relief Act (Public Law 104-58). A point of order of germaneness was sustained against the amendment.

The Committee then ordered the bill as amended favorably reported to the House of Representatives by a roll call vote of 20-7, as follows:

COMMITTEE ON RESOURCES—104TH CONGRESS

ROLLCALL VOTE NO. 1

Bill: H.R. 1975, Federal Oil and Gas Royalty.

Members	Yeas	Nays	Present	Members	Yeas	Nays	Present
Mr. Young (Chairman)	X	.....	.....	Mr. Miller .....	.....	X	.....
Mr. Tauzin	X	.....	.....	Mr. Markey .....	.....	.....	.....
Mr. Hansen	X	.....	.....	Mr. Rahall .....	.....	.....	.....
Mr. Saxton	X	.....	.....	Mr. Vento .....	.....	X	.....
Mr. Gallegly .....	.....	.....	.....	Mr. Kildee .....	.....	X	.....
Mr. Duncan .....	.....	.....	.....	Mr. Williams .....	.....	.....	.....
Mr. Helfley .....	.....	.....	.....	Mr. Gejdenson .....	.....	X	.....
Mr. Doolittle	X	.....	.....	Mr. Richardson	X	.....	.....
Mr. Allard	X	.....	.....	Mr. DeFazio .....	.....	.....	.....
Mr. Gilchrest .....	.....	.....	.....	Mr. Faleomavaega .....	.....	.....	.....
Mr. Calvert	X	.....	.....	Mr. Johnson .....	.....	.....	.....
Mr. Pombo .....	.....	.....	.....	Mr. Abercrombie .....	.....	X	.....
Mr. Torkildsen .....	.....	.....	.....	Mr. Studds .....	.....	.....	.....
Mr. Hayworth	X	.....	.....	Mr. Ortiz	X	.....	.....
Mr. Cremeans	X	.....	.....	Mr. Pickett .....	.....	.....	.....
Mrs. Cubin	X	.....	.....	Mr. Pallone .....	.....	.....	.....
Mr. Cooley	X	.....	.....	Mr. Dooley	X	.....	.....
Mrs. Chenoweth .....	.....	.....	.....	Mr. Romero-Barcelo .....	.....	.....	.....
Mrs. Smith .....	.....	.....	.....	Mr. Hinchey .....	.....	X	.....
Mr. Radanovich .....	.....	.....	.....	Mr. Underwood .....	.....	.....	.....
Mr. Jones .....	.....	.....	.....	Mr. Farr .....	.....	X	.....
Mr. Thornberry	X	.....	.....	Mr. Kennedy .....	.....	.....	.....
Mr. Hastings	X	.....	.....		
Mr. Metcalf	X	.....	.....		
Mr. Longley	X	.....	.....		
Mr. Shadegg	X	.....	.....		
Mr. Ensign	X	.....	.....		

A provision similar to H.R. 1975 was included in the Committee on Resources input to the 1996 budget reconciliation bill (Title IX,

H.R. 2517, the Seven-Year Balanced Budget Reconciliation Act of 1995) which was vetoed by the President.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

The Act may be cited as the “Federal Oil and Gas Royalty Simplification and Fairness Act of 1996”.

SECTION 2. DEFINITIONS

This section amends Section 3 of FOGRMA to add new definitions and to amend the existing definition of “lessee.” The defined terms provide guidance and clarity and are critical to the underlying concepts throughout the bill. Under the provisions of the bill, the definitions apply to all Federal leases, but not to Indian lands.

A “lessee” is the person having record title or operating right interest in the lease. A “designee” is the person allowed to act as a third party to pay royalties on behalf of the lessee. The term “obligation” includes all of the duties which arise under a lease issued by the Federal Government. The term “order to pay” has been expressly defined for the tolling of the seven year statute of limitations. The definition of “United States” is clarified to include any department, agency, or instrumentality, the several States, the District of Columbia and the territories.

SECTION 3. DELEGATION OF ROYALTY COLLECTION AND RELATED ACTIVITIES

This section amends Section 205 of FOGRMA to provide for broader delegation of royalty collection authority to those States which do seek to perform those duties and are able to demonstrate to the Secretary of the Interior that an adequate State program exists to effectively perform such duties.

States currently may perform limited royalty audit activities if they enter into an agreement with the Secretary of the Interior. This section allows a State to enter into a cooperative agreement with the Secretary of the Interior to perform legally delegable royalty-related activities. If a royalty-related activity is not deemed to be inherently Federal, an interested State may pursue an agreement with the Secretary of the Interior to perform such activity and funding shall be consistent with current delegation of authority agreements. A State’s compensation to perform delegated activities shall be subject to the net receipt sharing formula, and the State shall receive compensation for State costs allocated to a State’s net receipts during the following fiscal year, subject to appropriations. This compensation shall not exceed the Secretary of the Interior’s reasonable expectation of the Federal Government’s cost to perform similar duties. All State actions must conform with the provisions of this bill. To be delegated duties under this section, a State must demonstrate that it can cost-effectively perform the activities. Additionally, the Secretary of the Interior shall not include in the net receipts sharing formula the Federal costs to perform redundant activities for which a State has been delegated authority.

SECTION 4. SECRETARIAL AND DELEGATED STATES' ACTIONS AND
LIMITATION PERIODS

This section adds a new Section 115 to FOGRMA to establish limitations periods. New Section 115 requires the collection of royalties and enforcement of royalty claims, including judicial proceedings, within seven years of the month following the date of production of oil or gas upon which the obligation arises. To determine the amount owing, section 115 requires lessees or their designees to provide records related to an obligation during the seven-year period and provides the Secretary of the Interior and States a mechanism to toll the statute and protect collections if a lessee: (1) does not provide records; (2) does not substantially perform required accounting; (3) appeals a restructured accounting order; (4) intentionally misrepresents or conceals facts to evade payment; or (5) mutually agrees to toll the statute. To ensure timely collections, the Debt Collection Act applies only to obligations that are enforced prior to the expiration of the seven-year limitations period. The statute of limitations established here is prospective only, meaning that obligations arising from production of oil or gas from Federal leases prior to enactment of this bill are not affected.

Moreover, new Section 115 requires the Secretary of the Interior (and the State concerned if delegation of authority has occurred) to perform cost-effective accounting, reporting and audit activities. The Committee intends that the Secretary or State should not conduct an activity if the cost of its performance is reasonably expected to exceed the amount to be collected by the action. However, this provision is expressly barred as a defense by a lessee to evade payment of a royalty obligation. Additionally, the Secretary of the Interior and the State concerned shall make good faith efforts to avoid requiring unnecessary or duplicative data from lessees, especially with regard to records for audit purposes.

Furthermore, new Section 115 requires the Secretary of the Interior to take a final departmental action on appealed claims within 33 months and provides a framework for settling litigated cases. To accommodate this timeframe, the Secretary of the Interior may need to adopt a one-tier, third-party review process. All appeals decided by the Secretary of the Interior shall be binding on the State(s) concerned. The appeal and settlement timeframes are a necessary part of this section's purpose, which is to ensure timely collection of all disputed royalty amounts due the U.S. (and States through the net receipts sharing provisions of law with States) and eliminate losses associated with stale and uncollectible claims.

SECTION 5. ADJUSTMENT AND REFUNDS

This section adds a new Section 111A to FOGRMA to ensure all royalty obligations are identified within the seven-year limitations period, and all adjustments to royalty payments are required to be made by the lessee within six years. The six-year period for lessee adjustments can be extended if the limitations period is tolled pursuant to the provisions of this bill. Each adjustment is to be made on a lease-by-lease basis on the royalty report and will serve as sufficient notice to the Secretary of the Interior. A key component of additional royalties being cost-effectively collected within the

seven years is the requirement that interest be calculated and paid by the lessee at the time of any adjustment, subject to a determination that this requirement does not impose a hardship on small business oil and gas lessees.

Pursuant to this Act, refunds are permitted where a lessee (or designee) may not be able to make an adjustment to their royalty report. In such instances, requests for refunds must provide enough detail for the Secretary of the Interior to identify the overpayment and reasons for the request. To expedite claims and to reduce interest costs to the Federal Government, requests for refunds must be paid or denied by the Secretary of the Interior within 120 days of receipt of the refund request. The request, if granted, will be subject to audit pursuant to other provisions of this Act.

SECTION 6. ROYALTY TERMS AND CONDITIONS, INTEREST AND PENALTIES

This section adds new subsections (h) through (l) to Section 111 of FOGRMA to establish a mechanism (analogous to that of the Internal Revenue Service of the Department of the Treasury) for payment of interest on overpaid and underpaid royalties, thereby encouraging royalties to be paid accurately the month following the month of production. The interest rate for underpayments will be the Federal short term rate plus three percentage points and for overpayments the interest rate will be the Federal short term rate plus two percentage points, regardless of the amounts of the under- or overpayment. Interest shall accrue on the date the underpayment became due or the date the overpayment was made. Increased receipts to the U.S. Treasury and the States are achieved by the establishment of a more efficient and cost-effective accounting system which is necessary so that royalties paid can be verified within the limitation period. If the Secretary of the Interior determines that a lessee has paid in excess of 10 percent of its total royalty obligation for all of its leases subject to this Act and further determines that such excessive payment was made for the purpose of receiving interest, the Secretary of the Interior shall not pay interest on the amounts paid in excess of 110 percent of the obligation.

Lessees will be allowed to submit an approximate amount of royalties to allow additional time to determine the actual amount due and owing. When an estimated payment is made, the royalty payment becomes due at the end of the month following the period covered by the estimated payment.

To provide clarity and establish simpler reporting on the most complex properties, royalty payment requirements are established for Federal leases contained in unit or communitization agreements. These requirements resolve the long-standing debate surrounding the proper volumetric basis for these properties for reporting and payment of royalties. In addition to providing clarity and simplicity, these requirements accelerate collections of royalties to the Federal Government. During a calendar year, for properties which have marginal production, royalties can be paid on actual sales volumes and compared at the end of the year to the entitled volumes to determine if the obligation due has been over or underpaid.

Within two years of enactment of this Act, the Secretary of the Interior shall resolve and issue demands on all outstanding payment disputes resulting from unitization and communitization agreements. Pursuant to the terms of Federal unit and communitization agreements, the Secretary of the Interior receives requests for approval of allocation schedules for participating areas and communitization agreements. Delaying approval of this request delays determination of royalty value and results in costly retroactive adjustments. This section requires the Secretary of the Interior to approve such requests expeditiously. If the Secretary of the Interior does not approve the request within a reasonable time period, the Secretary shall waive interest on the obligation from the date the request was received until the request is approved.

This section also adds a new Section 116 to FOGRMA to impose a statutory assessment on lessees who chronically submit erroneous reports, thereby encouraging proper payment and increasing revenues. These are the only type of assessments that may be imposed upon oil and gas lessees by the Secretary of the Interior.

Furthermore, to eliminate delays in collecting royalties from liable parties, this section amends Section 102(a) of FOGRMA to clarify that lessees, defined as record title and/or operating rights owners, are liable for their pro rata share of a royalty obligation. The provision allows a lessee to designate a third party to report and pay royalties on its behalf (a codification of current practice), but does not establish liability for the designee, but rather the lessee who designated the third-party payor remains responsible for the obligation.

SECTION 7. ALTERNATIVES FOR MARGINAL PROPERTIES

This section adds a new Section 117 to FOGRMA to provide that the Secretary of the Interior and the State concerned, when in agreement and as applicable, shall offer to lessees of marginal properties (i.e., very low volume oil or gas wells) the opportunity to make a prepayment in lieu of royalties for the remainder of the lease term, based on the present value of projected royalty share of remaining production. The definition of marginal production shall be jointly determined by the Secretary of the Interior and the State concerned. This alternative for marginal wells will eliminate costly royalty accounting for marginal wells and provide the Secretary of the Interior and States additional resources to aggressively collect royalties from more prolific properties within the seven-year period. A subsequent payment may be required if the production volume of a well significantly increases above the projections used to determine the amount of the payment.

Additionally, the Secretary of the Interior and the State concerned are required to enact other types of accounting, reporting, and auditing relief that will encourage lessees to continue to develop and produce oil and gas from marginal properties. For example, certain regulatory and payment obligations should be waived if it can be demonstrated such a waiver could aid in maintaining production that might otherwise be abandoned. However, if a State concerned does not consent, the prepayments or regulatory relief cannot be made. This reform for marginal properties results in additional receipts from oil and gas production that would otherwise

be abandoned. This section increases oil and gas production on Federal lands by creating economic efficiencies to make Federal leases more competitive with private leases.

SECTION 8. REPEALS

This section repeals provisions in conflict with the Act. With respect to the repeal of section 10 of the Outer Continental Shelf Lands Act (OCSLA), the Committee intends the prospective elimination of the OCSLA-imposed bar to lessees seeking refunds of overpayments more than two years later and the establishment of the same limitations period for OCS leases as for onshore Federal leases. Therefore, royalties which may have been overpaid for OCSLA lease production prior to enactment of this Act are not affected by this section.

SECTION 9. INDIAN LANDS

This section clarifies that the Act does not apply to Indian lands. Upon enactment, there will essentially be two Federal Oil and Gas Royalty Management Acts. The 1982 version, unamended by this Act, will continue to apply to all Indian leases and production occurring on or before the date of enactment.

SECTION 10. PRIVATE LANDS

This section clarifies that the Act does not apply to private lands.

SECTION 11. EFFECTIVE DATE

This section establishes the date upon which the provisions of the Act become effective. Generally, the Act will apply to production of oil and gas after the first day of the month following the date of enactment of the Act. The Committee does not intend the provisions of this Act to alter rights or obligations of the Secretary of the Interior for production occurring prior to the date of enactment, unless expressly noted otherwise in the Act.

Following the Resources Committee mark up of H.R. 1975, a technical error in this section was identified which could lead to an ambiguous interpretation of the records retention provision of the statute of limitations section of the bill. The Committee intends to offer a technical amendment when H.R. 1975 is considered by the House of Representatives to correct this ambiguity, as the Committee's intent has always been to make the newly established statute of limitations completely prospective only.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of

H.R. 1975 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 1975. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 1975 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. Enactment of H.R. 1975 would accelerate the collection of offsetting receipts to the U.S. Treasury by \$80 million over the 1997–2002 time period, net of payments due States. Enactment of the bill would result in a new decrease in direct spending of approximately \$36 million over 1997–2002. The bill could also result in additional appropriated spending of approximately \$1 million per year starting in fiscal year 1998, assuming appropriations of the estimated amounts.

2. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1975.

3. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1975 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 30, 1996.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1975, the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

Enactment of H.R. 1975 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1975.
2. Bill title: Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.
3. Bill status: As ordered reported by the House Committee on Resources on March 28, 1996.
4. Bill purpose: H.R. 1975 would make a number of changes to procedures and obligations related to the collection of royalty payments on oil and gas extracted from federal lands, both onshore and offshore. The bill would:

Expand the Secretary of the Interior's authority to delegate to the states the collection of royalties and related activities, and revise how the federal government reimburses states for the costs of carrying out royalty-related activities;

Set a seven-year statute of limitations for commencing a judicial proceeding or demand related to a royalty obligation, starting from the date on which the obligation becomes due;

Require the Secretary to complete administrative appeals, including those pending when the bill is enacted, within 33 months, unless the Secretary and the appellant agree to an extension;

Establish a six-year adjustment period, beginning on the date an obligation becomes due, within which lessees may request correction of an overpayment or underpayment;

Require the federal government to pay lessees interest on royalty overpayments at the rate specified in the Internal Revenue Code;

For federal leases within unit or communization agreements, revise the method of reporting the allocation of oil and gas production among lessees upon which royalty payments are based; and

For marginal properties, authorize the Secretary to accept a prepayment for royalties instead of continued monthly royalty payments on actual production.

5. Estimated cost to the Federal Government: CBO estimates that enacting H.R. 1975 would result in a net decrease in direct spending of about \$36 million over the 1997–2002 period. Most of that estimated change would result from accelerating payments to the government that would otherwise be made in later years. Additional appropriated spending of about \$1 million per year starting in fiscal year 1998 could also result from enacting the bill, assuming appropriations of the estimated amounts. The following table summarizes the estimated budgetary impact of H.R. 1975.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
DIRECT SPENDING							
Spending Under Current Law:							
Offsetting receipts:							
Estimated budget authority	-3,758	-3,923	-3,665	-3,705	-3,556	-3,706	-3,934
Estimated outlays	-3,758	-3,923	-3,665	-3,705	-3,556	-3,706	-3,934
Spending: States' Share of receipts:							
Estimated budget authority	508	515	499	506	520	535	551
Estimated outlays	508	515	499	506	520	535	551
Net direct spending:							
Estimated budget authority	-3,250	-3,408	-3,166	-3,199	-3,036	-3,171	-3,383
Estimated outlays	-3,250	-3,408	-3,166	-3,199	-3,036	-3,171	-3,383
Proposed changes:							
Offset receipts:							
Estimated budget authority		-2	-4	-10	-11	-10	-8
Estimated outlays		-2	-4	-10	-11	-10	-8
Spending: States' share of receipts:							
Estimated budget authority		1	3	2	2	1	(¹)
Estimated outlays		1	3	2	2	1	(¹)
Net direct spending:							
Estimated budget authority		-1	-1	-8	-9	-9	-8
Estimated outlays		-1	-1	-8	-9	-9	-8
Spending Under H.R. 1975:							
Offsetting receipts:							
Estimated budget authority	-3,758	-3,925	-3,669	-3,715	-3,567	-3,716	-3,942
Estimated outlays	-3,758	-3,925	-3,669	-3,715	-3,567	-3,716	-3,942
Spending: States's share of receipts:							
Estimated budget authority	508	516	502	508	522	536	551
Estimated outlays	508	516	502	508	522	536	551
Net direct spending:							
Estimated budget authority	-3,250	-3,409	-3,167	-3,207	-3,045	-3,180	-3,391
Estimated outlays	-3,250	-3,409	-3,167	-3,207	-3,045	-3,180	-3,391
CHANGES IN DISCRETIONARY SPENDING							
Estimated authorization level			1	1	1	1	1
Estimated outlays			1	1	1	1	1

¹ Less than \$500,000.

The effects of this bill fall within budget functions 300, 800, and 950.

6. Basis of estimate:

Direct Spending (including offsetting receipts)

CBO estimates that enacting H.R. 1975 would accelerate the collection of offsetting receipts to the Treasury by \$80 million over the 1997–2002 period, net of payments to states of 50 percent of additional onshore collections. Lessees' royalty obligations would generally remain the same under this bill, but some payments would be shifted forward in time.

We estimate that provisions in the bill that fix the statute of limitations at seven years, require appeals to be completed within 33 months, establish a six-year adjustment period, clarify the policy on allocating volumes of production among certain lessees, and allow for royalty prepayments on marginal properties, would shift the collection of about \$72 million in offsetting receipts from years after 2002 into the 1997–2002 period. These amounts are net of payments to states of their portion of onshore collections. The bill also would allow the federal government to retain more royalty receipts by modifying the calculation of administrative costs to be borne by states. CBO estimates this change would increase the fed-

eral government’s share of offsetting receipts by about \$8 million over the 1997–2002 period.

Section 6 of the bill would expand the obligations of the federal government to lessees. Beginning September 1, 1996, or six months after enactment (whichever is later), the federal government would be required to pay or credit interest on lessees’ overpayments at the rate specified in the Internal Revenue Code. The bill would disallow payment of interest if a lessee’s overpayments for a given month exceed 10 percent of the total royalties due on all its federal leases. Such interest payments would be deducted from receipts from bonuses, rents, and royalties, including interest charges collected on underpayments. (The share borne by states would be deducted from their receipts.) According to data provided by the Minerals Management Service, overpayments average about 3 percent of the royalties paid each year. For the purposes of this estimate, we assume that the amount of overpayments would increase slightly (to nearly 5 percent) because any excess payments would now earn interest at a rate 2 percent above the Treasury’s rate for short-term (90-day) borrowing. CBO estimates that this provision would increase direct spending, net of reduced payments to states, by about \$44 million over the 1997–2002 period.

Discretionary Spending

As part of the revised method of calculating the share of administrative costs borne by states, the bill appears to authorize the appropriation of funds to reimburse states for their costs for royalty-related activities in the year following the year in which costs were incurred. CBO estimates this would increase discretionary spending by about \$1 million per year beginning in fiscal year 1998, assuming appropriation of the necessary amounts.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending and receipts through 1998. CBO estimates that enacting H.R. 1975 would affect direct spending by changing the amounts collected as offsetting receipts (which are recorded as negative outlays), and direct payments to states for their share of such collections. Therefore, pay-as-you-go procedures would apply to the bill. CBO estimates that enacting this bill would reduce direct spending by about \$2 million over the 1996–1998 period.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays		-1	-1
Change in receipts		(¹)	

¹ Not applicable.

8. Estimated impact on State, local and tribal governments: H.R. 1975 contains no intergovernmental mandates as defined in Public Law 104–4 and would impose no direct costs on state, local, or tribal governments.

CBO estimates that the net impact of this bill would be a \$15 million increase in payments to state governments over the 1997–2002 period, assuming appropriation of the amounts authorized for reimbursement of administrative costs. States share 50 percent of

the royalties from oil and gas leases on federal lands within their borders. They would therefore benefit from provisions in this bill that shift the collection of federal oil and gas royalty receipts from years after 2002 into the 1997–2002 period. At the same time, states would pay a larger portion of the administrative costs and would share in the federal government’s expanded obligations to lessees as a result of the bill’s provision requiring the payment of interest on lessees’ overpayments.

H.R. 1975 would expand the opportunities for states to seek delegation of responsibility for enforcing and collecting royalties. A state that seeks and accepts delegation would do so voluntarily. As under current law, the federal government would reimburse that state for the costs of carrying out these delegated responsibilities. By changing the procedure used to calculate states’ share of royalty receipts, however, the bill would appear to shift some of these costs back to the states that accept delegation in the year they are incurred and authorize appropriations for payments to restore these funds to those states in the following year.

9. Estimated impact on the private sector: The bill would impose no new private sector mandates, as defined in Public Law 104–4.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal Cost Estimate: Victoria V. Heid. State and Local Government Impact: Marjorie Miller. Private Sector Impact: Amy Downs.

12. Estimate approved by: Robert A. Sunshine, for Paul N. Van de Water, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

H.R. 1975 contains no unfunded mandates.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the “Federal Oil and Gas Royalty Management Act of 1982”.

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.

* * * * *

TITLE I—FEDERAL ROYALTY MANAGEMENT AND ENFORCEMENT

Sec. 101. Duties of the Secretary.

* * * * *

[Sec. 111. Royalty interest, penalties and payments.]

Sec. 111. Royalty terms and conditions, interest, and penalties.

- Sec. 111A. *Adjustments and refunds.*
- * * * * *
- Sec. 115. *Secretarial and delegated States' actions and limitation periods.*
- Sec. 116. *Assessments.*
- Sec. 117. *Alternatives for marginal properties.*

TITLE II—STATES AND INDIAN TRIBES

- Sec. 201. Application of title.
- * * * * *
- Sec. 205. Delegation to States.**
- Sec. 205. *Delegation of royalty collections and related activities.*
- * * * * *

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(1) * * *

* * * * *

[(7) “lessee” means any person to whom the United States, an Indian tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease;]

(7) *“lessee” means any person to whom the United States issues an oil and gas lease or any person to whom operating rights in a lease have been assigned;*

* * * * *

(15) “Secretary” means the Secretary of the Interior or his designee; [and]

(16) “State” means the several States of the Union, the District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands[.];

(17) *“adjustment” means an amendment to a previously filed report on an obligation, and any additional payment or credit, if any, applicable thereto, to rectify an underpayment or overpayment on an obligation;*

(18) *“administrative proceeding” means any Department of the Interior agency process in which a demand, decision or order issued by the Secretary or a delegated State is subject to appeal or has been appealed;*

(19) *“assessment” means any fee or charge levied or imposed by the Secretary or a delegated State other than—*

(A) *the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;*

(B) *any interest; or*

(C) *any civil or criminal penalty;*

(20) *“commence” means—*

(A) *with respect to a judicial proceeding, the service of a complaint, petition, counterclaim, crossclaim, or other pleading seeking affirmative relief or seeking credit or recoupment: Provided, That if the Secretary commences a judicial proceeding against a designee, the Secretary shall give notice of that commencement to the lessee who designated the designee, but the Secretary is not required to give notice to other lessees who may be liable pursuant to*

section 102(a) of this Act, for the obligation that is the subject of the judicial proceeding; or

(B) with respect to a demand, the receipt by the Secretary or a delegated State or a lessee or its designee (with written notice to the lessee who designated the designee) of the demand;

(21) “credit” means the application of an overpayment (in whole or in part) against an obligation which has become due to discharge, cancel or reduce the obligation;

(22) “demand” means—

(A) an order to pay issued by the Secretary or the applicable delegated State to a lessee or its designee (with written notice to the lessee who designated the designee) that has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing; or

(B) a separate written request by a lessee or its designee which asserts an obligation due the lessee or its designee that provides a reasonable basis to conclude that the obligation in the amount of the demand is due and owing, but does not mean any royalty or production report, or any information contained therein, required by the Secretary or a delegated State;

(23) “designee” means the person designated by a lessee pursuant to section 102(a) of this Act, with such written designation effective on the date such designation is received by the Secretary and remaining in effect until the Secretary receives notice in writing that the designation is modified or terminated;

(24) “obligation” means—

(A) any duty of the Secretary or, if applicable, a delegated State—

(i) to take oil or gas royalty in kind; or

(ii) to pay, refund, offset, or credit monies including (but not limited to)—

(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale; or

(II) any interest; and

(B) any duty of a lessee or its designee (subject to the provisions of section 102(a) of this Act)—

(i) to deliver oil or gas royalty in kind; or

(ii) to pay, offset or credit monies including (but not limited to)—

(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(II) any interest;

(III) any penalty; or

(IV) any assessment,

which arises from or relates to any lease administered by the Secretary for, or any mineral leasing law related to, the exploration, production and development of oil or gas on Federal lands or the Outer Continental Shelf;

(25) “order to pay” means a written order issued by the Secretary or the applicable delegated State to a lessee or its des-

ignee (with notice to the lessee who designated the designee) which—

(A) asserts a specific, definite, and quantified obligation claimed to be due, and

(B) specifically identifies the obligation by lease, production month and monetary amount of such obligation claimed to be due and ordered to be paid, as well as the reason or reasons such obligation is claimed to be due, but such term does not include any other communication or action by or on behalf of the Secretary or a delegated State;

(26) “overpayment” means any payment by a lessee or its designee in excess of an amount legally required to be paid on an obligation and includes the portion of any estimated payment for a production month that is in excess of the royalties due for that month;

(27) “payment” means satisfaction, in whole or in part, of an obligation;

(28) “penalty” means a statutorily authorized civil fine levied or imposed for a violation of this Act, any mineral leasing law, or a term or provision of a lease administered by the Secretary;

(29) “refund” means the return of an overpayment by the dragging of funds from the United States Treasury;

(30) “State concerned” means, with respect to a lease, a State which receives a portion of royalties or other payments under the mineral leasing laws from such lease;

(31) “underpayment” means any payment or nonpayment by a lessee or its designee that is less than the amount legally required to be paid on an obligation; and

(32) “United States” means the United States Government and any department, agency, or instrumentality thereof, the several States, the District of Columbia, and the territories of the United States.

TITLE I—FEDERAL ROYALTY MANAGEMENT AND ENFORCEMENT

* * * * *

DUTIES OF LESSEES, OPERATORS, AND MOTOR VEHICLE TRANSPORTERS

SEC. 102. [(a) A lessee—

[(1) who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary; and

[(2) shall notify the Secretary, in the time and manner as may be specified by the Secretary, of any assignment the lessee may have made of the obligation to make any royalty or other payment under a lease or under the mineral leasing laws.]

(a) *In order to increase receipts and achieve effective collections of royalty and other payments, a lessee who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary or the applicable delegated State. A lessee may designate a person to make all or part of the payments due*

under a lease on the lessee's behalf and shall notify the Secretary or the applicable delegated State in writing of such designation, in which event said designated person may, in its own name, pay, offset or credit monies, make adjustments, request and receive refunds and submit reports with respect to payments required by the lessee. Notwithstanding any other provision of this Act to the contrary, a designee shall not be liable for any payment obligation under the lease. The person owning operating rights in a lease shall be primarily liable for its pro rata share of payment obligations under the lease. If the person owning the legal record title in a lease is other than the operating rights owner, the person owning the legal record title shall be secondarily liable for its pro rata share of such payment obligations under the lease.

* * * * *

【ROYALTY INTEREST, PENALTIES AND PAYMENTS】

ROYALTY TERMS AND CONDITIONS, INTEREST, AND PENALTIES

SEC. 111. (a) * * *

* * * * *

(h) Interest shall be allowed and paid or credited on any overpayment, with such interest to accrue from the date such overpayment was made, at the rate obtained by applying the provisions of subparagraphs (A) and (B) of section 6621(a)(1) of the Internal Revenue Code of 1986, but determined without regard to the sentence following subparagraph (B) of section 6621(a)(1). Interest which has accrued on an overpayment may be applied to reduce an underpayment (including any interest thereon). This subsection applies to overpayments made later than six months after the date of enactment of this subsection or September 1, 1996, whichever is later. Such interest shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act, and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such interest payment attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any other recipient designated by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.

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

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

(k)(1) Except as otherwise provided by this subsection—

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

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

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

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

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

(4) The Secretary or the delegated State shall grant an exception from the reporting and payment requirements for marginal properties by allowing for any calendar year or portion thereof royalties to be paid each month based on the volume of production sold. Interest shall not accrue on the difference for the entire calendar year or portion thereof between the amount of oil and gas actually sold and the share of production allocated to the lease until the beginning of the month following such calendar year or portion thereof. Any additional royalties due or overpaid royalties and associated interest shall be paid, refunded, or credited within six months after

the end of each calendar year in which royalties are paid based on volumes of production sold. For the purpose of this subsection, the term "marginal property" means a lease that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 thousand cubic feet of gas per well per day, or a combination thereof, determined by dividing the average daily production of crude oil and natural gas from producing wells on such lease by the number of such wells, unless the Secretary, together with the State concerned, determines that a different production is more appropriate.

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

(l) The Secretary shall expeditiously issue all determinations of allocations of production for units and communitization agreements of a request for determination. If the Secretary or the delegated State fails to issue a determination within a reasonable period, the Secretary shall waive interest due on obligations subject to the determination from the date the request was received until the end of the month following the month in which the determination is made.

SEC. 111A. ADJUSTMENTS AND REFUNDS.

(a) **ADJUSTMENTS.—**

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

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

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

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

appropriate, shall allow a credit or refund in the amount of the overpayment.

(4) For purposes of this section, the adjustment period for any obligation shall be the six-year period following the date on which an obligation became due. The adjustment period shall be suspended, tolled, extended, enlarged, or terminated by the same actions as the limitation period in section 115.

(b) REFUNDS.—

(1) IN GENERAL.—A request for refund is sufficient if it—

(A) is made in writing to the Secretary and, for purposes of section 115, is specifically identified as a demand;

(B) identifies the person entitled to such refund;

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

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

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

(3) PAYMENT PERIOD.—A refund under this subsection shall be paid or denied (with an explanation of the reasons for the denial) within 120 days of the date on which the request for refund is received by the Secretary. Such refund shall be subject to later audit by the Secretary or the applicable delegated State and subject to the provisions of this Act.

(4) PROHIBITION AGAINST REDUCTION OF REFUNDS OR CREDITS.—In no event shall the Secretary or any delegated State directly or indirectly claim or offset any amount or amounts against, or reduce any refund or credit (or interest accrued thereon) by the amount of any obligation the enforcement of which is barred by section 115 of this Act.

* * * * *

SEC. 115. SECRETARIAL AND DELEGATED STATES' ACTIONS AND LIMITATION PERIODS.

(a) IN GENERAL.—The respective duties, responsibilities, and activities with respect to a lease shall be performed by the Secretary, delegated States, and lessees or their designees in a timely manner.

(b) LIMITATION PERIOD.—

(1) *IN GENERAL.*—A judicial proceeding or demand which arises from, or relates to an obligation, shall be commenced within seven years from the date on which the obligation becomes due and if not so commenced shall be barred. If commencement of a judicial proceeding or demand for an obligation is barred by this section, the Secretary, a delegated State, or a lessee or its designee (A) shall not take any other or further action regarding that obligation, including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, payment, principal, interest, assessment, or penalty or the initiation, pursuit or completion of an audit with respect to that obligation; and (B) shall not pursue any other equitable or legal remedy, whether under statute or common law, with respect to an action on or an enforcement of said obligation.

(2) *RULE OF CONSTRUCTION.*—A judicial proceeding or demand that is timely commenced under paragraph (1) against a designee shall be considered timely commenced as to any lessee who is liable pursuant to section 102(a) of this Act for the obligation that is the subject of the judicial proceeding or demand.

(3) *APPLICATION OF CERTAIN LIMITATIONS.*—The limitations set forth in sections 2401, 2415, 2416, and 2462 of title 28, United States Code, and section 42 of the Mineral Leasing Act (30 U.S.C. 226-2) shall not apply to any obligation to which this Act applies. Section 3716 of title 31, United States Code, may be applied to an obligation the enforcement of which is not barred by this Act, but may not be applied to any obligation the enforcement of which is barred by this Act.

(c) *OBLIGATION BECOMES DUE.*—

(1) *IN GENERAL.*—For purposes of this Act, an obligation becomes due when the right to enforce the obligation is fixed.

(2) *ROYALTY OBLIGATIONS.*—The right to enforce any royalty obligation for any given production month for a lease is fixed for purposes of this Act on the last day of the calendar month following the month in which oil or gas is produced.

(d) *TOLLING OF LIMITATION PERIOD.*—The running of the limitation period under subsection (b) shall not be suspended, tolled, extended, or enlarged for any obligation for any reason by any action, other than the following:

(1) *TOLLING AGREEMENT.*—A written agreement executed during the limitation period between the Secretary or a delegated State and a lessee or its designee (with notice to the lessee who designated the designee) shall toll the limitation period for the amount of time during which the agreement is in effect.

(2) *SUBPOENA.*—

(A) The issuance of a subpoena to a lessee or its designee (with notice to the lessee who designated the designee, which notice shall not constitute a subpoena to the lessee) in accordance with the provisions of subparagraph (B)(i) shall toll the limitation period with respect to the obligation which is the subject of a subpoena only for the period beginning on the date the lessee or its designee receives the subpoena and ending on the date on which (i) the lessee or

its designee has produced such subpoenaed records for the subject obligation, (ii) the Secretary or a delegated State receives written notice that the subpoenaed records for the subject obligation are not in existence or are not in the lessee's or its designee's possession or control, or (iii) a court has determined in a final decision that such records are not required to be produced, whichever occurs first.

(B)(i) A subpoena for the purposes of this section which requires a lessee or its designee to produce records necessary to determine the proper reporting and payment of an obligation due the Secretary may be issued only by an Assistant Secretary of the Interior or an Acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations), or the Director or Acting Director of the respective bureau or agency, and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest elected State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such subpoena, but may not delegate such authority to any other person.

(ii) A subpoena described in clause (i) may only be issued against a lessee or its designee during the limitation period provided in this section and only after the Secretary or a delegated State has in writing requested the records from the lessee or its designee related to the obligation which is the subject of the subpoena and has determined that—

(I) the lessee or its designee has failed to respond within a reasonable period of time to the Secretary's or the applicable delegated State's written request for such records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this Act; or

(II) the lessee or its designee has in writing denied the Secretary's or the applicable delegated State's written request to produce such records in the lessee's or its designee's possession or control necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this Act; or

(III) the lessee or its designee has unreasonably delayed in producing records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or the applicable delegated State's responsibilities under this Act after the Secretary's or such delegated State's written request.

(C) In seeking records, the Secretary or the applicable delegated State shall afford the lessee or its designee a reasonable period of time after a written request by the Secretary or such delegated State in which to provide such records prior to the issuance of any subpoena.

(3) *MISREPRESENTATION OR CONCEALMENT.*—*The intentional misrepresentation or concealment of a material fact for the purpose of evading the payment of an obligation in which case the limitation period shall be tolled for the period of such misrepresentation or such concealment.*

(4) *ORDER TO PERFORM A RESTRUCTURED ACCOUNTING.*—*(A)(i) The issuance of a notice under subparagraph (D) that the lessee or its designee has not substantially complied with the requirement to perform a restructured accounting shall toll the limitation period with respect to the obligation which is the subject of the notice only for the period beginning on the date the lessee or its designee receives the notice and ending 120 days after the date on which (I) the Secretary or the applicable delegated State receives written notice the accounting or other requirement has been performed, or (II) a court has determined in a final decision that the lessee is not required to perform the accounting, whichever occurs first.*

(ii) If the lessee or its designee initiates an administrative appeal or judicial proceeding to contest an order to perform a restructured accounting issued under subparagraph (B)(i), the limitation period in subsection (b) shall be tolled from the date the lessee or its designee received the order until a final, non-appealable decision is issued in any such proceeding.

(B)(i) The Secretary or the applicable delegated State may issue an order to perform a restructured accounting to a lessee or its designee when the Secretary or such delegated State determines during an audit of a lessee or its designee that the lessee or its designee should recalculate royalty due on an obligation based upon the Secretary's or the delegated State's finding that the lessee or its designee has made identified underpayments or overpayments which are demonstrated by the Secretary or the delegated State to be based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months with the same type of error which constitutes a pattern of violations and which are likely to result in either significant underpayments or overpayments.

(ii) The power of the Secretary to issue an order to perform a restructured accounting may not be delegated below the most senior career professional position having responsibility for the royalty management program, which position is currently designated as the "Associate Director for Royalty Management", and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205 of this Act, the State, acting through the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such order to perform, which may not be delegated to any other person. An order to perform a restructured accounting shall—

(I) be issued within a reasonable period of time from when the audit identifies the systemic, reporting errors;

(II) specify the reasons and factual bases for such order;

(III) be specifically identified as an "order to perform a restructured accounting";

(IV) provide the lessee or its designee a reasonable period of time (but not less than 60 days) within which to perform the restructured accounting; and

(V) provide the lessee or its designee 60 days within which to file an administrative appeal of the order to perform a restructured accounting.

(C) An order to perform a restructured accounting shall not mean or be construed to include any other communication or action by or on behalf of the Secretary or a delegated State.

(D) If a lessee or its designee fails to substantially comply with the requirement to perform a restructured accounting pursuant to this subsection, a notice shall be issued to the lessee or its designee that the lessee or its designee has not substantially complied with the requirements to perform a restructured accounting. A lessee or its designee shall be given a reasonable time within which to perform the restructured accounting. Such notice may be issued under this section only by an Assistant Secretary of the Interior or an acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations) and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest elected State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such notice, which may not be delegated to any other person.

(e) **TERMINATION OF LIMITATIONS PERIOD.**—An action or an enforcement of an obligation by the Secretary or delegated State or a lessee or its designee shall be barred under this section prior to the running of the seven-year period provided in subsection (b) in the event—

(1) the Secretary or a delegated State has notified the lessee or its designee in writing that a time period is closed to further audit; or

(2) the Secretary or a delegated State and a lessee or its designee have so agreed in writing.

For purposes of this subsection, notice to, or an agreement by, the designee shall be binding on any lessee who is liable pursuant to section 102(a) for obligations that are the subject of the notice or agreement.

(f) **RECORDS REQUIRED FOR DETERMINING COLLECTIONS.**—Records required pursuant to section 103 of this Act by the Secretary or any delegated State for the purpose of determining obligations due and compliance with any applicable mineral leasing law, lease provision, regulation or order with respect to oil and gas leases from Federal lands or the Outer Continental Shelf shall be maintained for the same period of time during which a judicial proceeding or demand may be commenced under subsection (b). If a judicial proceeding or demand is timely commenced, the record holder shall maintain such records until the final nonappealable decision in such judicial proceeding is made, or with respect to that demand is rendered, unless the Secretary or the applicable delegated State authorizes in writing an earlier release of the requirement to maintain such records. Notwithstanding anything herein to the contrary,

under no circumstance shall a record holder be required to maintain or produce any record relating to an obligation for any time period which is barred by the applicable limitation in this section. In connection with any hearing, administrative proceeding, inquiry, investigation, or audit by the Secretary or a delegated State under this Act, the Secretary or the delegated State shall minimize the submission of multiple or redundant information and make a good faith effort to locate records previously submitted by a lessee or a designee to the Secretary or the delegated State, prior to requiring the lessee or the designee to provide such records.

(g) *TIMELY COLLECTIONS.—In order to most effectively utilize resources available to the Secretary to maximize the collection of oil and gas receipts from lease obligations to the Treasury within the seven-year period of limitations, and consequently to maximize the State share of such receipts, the Secretary may not perform or require accounting, reporting, or audit activities if the Secretary and the State concerned determines that the cost of conducting or requiring the activity exceeds the expected amount to be collected by the activity, based on the most current 12 months of activity. This subsection shall not provide a defense to a demand or an order to perform a restructured accounting. To the maximum extent possible, the Secretary and delegated States shall reduce costs to the United States Treasury and the States by discontinuing requirements for unnecessary or duplicative data and other information, such as separate allowances and payor information, relating to obligations due. If the Secretary and the State concerned determine that collection will result sooner, the Secretary or the applicable delegated State may waive or forego interest in whole or in part.*

(h) *APPEALS AND FINAL AGENCY ACTION.—*

(1) *33-MONTH PERIOD.—Demands or orders issued by the Secretary or a delegated State are subject to administrative appeal in accordance with the regulations of the Secretary. The Secretary shall issue a final decision in any administrative proceeding, including any administrative proceedings pending on the date of enactment of this section, within 33 months from the date such proceeding was commenced or 33 months from the date of such enactment, whichever is later. The 33-month period may be extended by any period of time agreed upon in writing by the Secretary and the appellant.*

(2) *EFFECT OF FAILURE TO ISSUE DECISION.—If no such decision has been issued by the Secretary within the 33-month period referred to in paragraph (1)—*

(A) *the Secretary shall be deemed to have issued and granted a decision in favor of the appellant as to any non-monetary obligation and any monetary obligation the principal amount of which is less than \$10,000; and*

(B) *the Secretary shall be deemed to have issued a final decision in favor of the Secretary, which decision shall be deemed to affirm those issues for which the agency rendered a decision prior to the end of such period, as to any monetary obligation the principal amount of which is \$10,000 or more, and the appellant shall have a right to judicial review of such deemed final decision in accordance with title 5 of the United States Code.*

(i) *COLLECTIONS OF DISPUTED AMOUNTS DUE.*—To expedite collections relating to disputed obligations due within the seven-year period beginning on the date the obligation became due, the parties shall hold not less than one settlement consultation and the Secretary and the State concerned may take such action as is appropriate to compromise and settle a disputed obligation, including waiving or reducing interest and allowing offsetting of obligations among leases.

(j) *ENFORCEMENT OF A CLAIM FOR JUDICIAL REVIEW.*—In the event a demand subject to this section is properly and timely commenced, the obligation which is the subject of the demand may be enforced beyond the seven-year limitations period without being barred by this statute of limitations. In the event a demand subject to this section is properly and timely commenced, a judicial proceeding challenging the final agency action with respect to such demand shall be deemed timely so long as such judicial proceeding is commenced within 180 days from receipt of notice by the lessee or its designee of the final agency action.

(k) *IMPLEMENTATION OF FINAL DECISION.*—In the event a judicial proceeding or demand subject to this section is timely commenced and thereafter the limitation period in this section lapses during the pendency of such proceeding, any party to such proceeding shall not be barred from taking such action as is required or necessary to implement a final unappealable judicial or administrative decision, including any action required or necessary to implement such decision by the recovery or recoupment of an underpayment or overpayment by means of refund or credit.

(l) *STAY OF PAYMENT OBLIGATION PENDING REVIEW.*—Any person ordered by the Secretary or a delegated State to pay any obligation (other than an assessment) shall be entitled to a stay of such payment without bond or other surety instrument pending an administrative or judicial proceeding if the person periodically demonstrates to the satisfaction of the Secretary that such person is financially solvent or otherwise able to pay the obligation. In the event the person is not able to so demonstrate, the Secretary may require a bond or other surety instrument satisfactory to cover the obligation. Any person ordered by the Secretary or a delegated State to pay an assessment shall be entitled to a stay without bond or other surety instrument.

SEC. 116. ASSESSMENTS.

Upon the date of enactment of this section, to encourage proper royalty payment the Secretary or the delegated State shall impose assessments on a person who chronically submits erroneous reports under this Act. Assessments under this Act may only be issued as provided for in this section.

SEC. 117. ALTERNATIVES FOR MARGINAL PROPERTIES.

(a) *DETERMINATION OF BEST INTERESTS OF STATE CONCERNED AND THE UNITED STATES.*—The Secretary and the State concerned, acting in the best interests of the United States and the State concerned to promote production, reduce administrative costs, and increase net receipts to the United States and the States, shall jointly determine, on a case by case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof,

shall be subject to a prepayment under subsection (b) or regulatory relief under subsection (c). If the State concerned does not consent, such prepayments or regulatory relief shall not be made available under this section for such marginal production: Provided, That if royalty payments from a lease or leases, or well or wells is not shared with any State, such determination shall be made solely by the Secretary.

(b) PREPAYMENT OF ROYALTY.—

(1) IN GENERAL.—Notwithstanding the provisions of any lease to the contrary, for any lease or leases or well or wells identified by the Secretary and the State concerned pursuant to subsection (a), the Secretary is authorized to accept a prepayment for royalties in lieu of monthly royalty payments under the lease for the remainder of the lease term if the affected lessee so agrees. Any prepayment agreed to by the Secretary, State concerned and lessee which is less than an average \$500 per month in total royalties shall be effectuated under this section not earlier than two years after the date of enactment of this section and, any prepayment which is greater than an average \$500 per month in total royalties shall be effectuated under this section not earlier than three years after the date of enactment of this section. The Secretary and the State concerned may condition their acceptance of the prepayment authorized under this section on the lessee's agreeing to such terms and conditions as the Secretary and the State concerned deem appropriate and consistent with the purposes of this Act. Such terms may—

(A) provide for prepayment that does not result in a loss of revenue to the United States in present value terms;

(B) include provisions for receiving additional prepayments or royalties for developments in the lease or leases or well or wells that deviate significantly from the assumptions and facts on which the valuation is determined; and

(C) require the lessee or its designee to provide such periodic production reports as may be necessary to allow the Secretary and the State concerned to monitor production for the purposes of subparagraph (B).

(2) STATE SHARE.—A prepayment under this section shall be shared by the Secretary with any State or other recipient to the same extent as any royalty payment for such lease.

(3) SATISFACTION OF OBLIGATION.—Except as may be provided in the terms and conditions established by the Secretary under subsection (b), a lessee or its designee who makes a prepayment under this section shall have satisfied in full the lessee's obligation to pay royalty on the production stream sold from the lease or leases or well or wells.

(c) ALTERNATIVE ACCOUNTING AND AUDITING REQUIREMENTS.—Within one year after the date of the enactment of this section, the Secretary or the delegated State shall provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop properties subject to subsection (a): Provided, That such relief will only be available to lessees in a State that concurs, which concurrence is not required if royalty from the lease or leases or well or wells is not shared with any State. Prior to granting such relief, the Secretary and, if appropriate, the State con-

cerned shall agree that the type of marginal wells and relief provided under this paragraph is in the best interest of the United States and, if appropriate, the State concerned.

TITLE II—STATES AND INDIAN TRIBES

* * * * *

【DELEGATION TO STATES

【SEC. 205. (a) Upon written request of any State, the Secretary is authorized to delegate, in accordance with the provisions of this section, all or part of the authorities and responsibilities of the Secretary under this Act to conduct inspection, audits, and investigations to any State with respect to all Federal lands or Indian lands within the State; except that the Secretary may not undertake such a delegation with respect to any Indian lands, except with the permission of the Indian tribe allottee involved.

【(b) After notice and opportunity for a hearing, the Secretary is authorized to delegate such authorities and responsibilities granted under this section as the State has requested, if the Secretary finds that—

【(1) it is likely that the State will provide adequate resources to achieve the purposes of this Act;

【(2) the State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary under this Act in accordance with the requirements of subsections (c) and (d) of this section; and

【(3) such delegation will not create an unreasonable burden on any lessee,

with respect to the Federal lands and Indian lands within the State.

【(c) The Secretary shall promulgate regulations which define those functions, if any, which must be carried out jointly in order to avoid duplication of effort, and any delegation to any State must be made in accordance with those requirements.

【(d) The Secretary shall by rule promulgate standards and regulations, pertaining to the authorities and responsibilities under subsection (a), including standards and regulations pertaining to:

【(1) audits performed;

【(2) records and accounts to be maintained; and

【(3) reporting procedures to be required by States under this section.

Such standards and regulations shall be designed to provide reasonable assurance that a uniform and effective royalty management system will prevail among the States. The records and accounts under paragraph (2) shall be sufficient to allow the Secretary to monitor the performance of any State under this section.

【(e) If, after notice and opportunity for a hearing, the Secretary finds that any State to which any authority or responsibility of the Secretary has been delegated under this section is in violation of any requirement of this section or any rule thereunder, or that an affirmative finding by the Secretary under subsection (b) can no longer be made, the Secretary may revoke such delegation.

[(f) The Secretary shall compensate any State for those costs which may be necessary to carry out the delegated activities under this section. Payment shall be made no less than every quarter during the fiscal year.]

SEC. 205. DELEGATION OF ROYALTY COLLECTIONS AND RELATED ACTIVITIES.

(a) *STATE PROPOSAL.*—A State may submit to the Secretary a proposal to perform and enforce all or part of the authorities and responsibilities of the Secretary under this Act to conduct and enforce royalty collections and related activities, including audits, inspections, investigations, production and financial reports, correction of erroneous report data, automated verification, demands, subpoenas, orders to perform restructured accounting (as defined in this Act), production accountability, with respect to all Federal leases within that State.

(b) *DEMONSTRATION OF STATE ABILITY.*—In the proposal under subsection (a), the State shall demonstrate the following:

(1) It is likely that the State will provide adequate resources to achieve the purposes of this Act.

(2) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary under this Act in accordance with the requirements or subsection (c).

(3) Such delegation will not create an unreasonable burden on the lessees within the State.

(4) The State agrees to adopt standardized reporting procedures prescribed by the Secretary, unless the State and all affected parties otherwise agree.

(5) The State agrees to follow and adhere to regulations issued pursuant to the mineral leasing laws regarding valuation of production.

(6) The State has enacted laws and promulgated regulations consistent with relevant federal laws and regulations.

(7) The State has shown that delegation of the authorities and responsibilities under this Act will result in a cost-savings to the United States.

(c) *REGULATIONS.*—After consultation with the States concerned, the Secretary shall by rule promulgate standards within 18 months after the date of enactment of this section pertaining to authorities and responsibilities under subsection (a), including standards pertaining to the royalty collections and related activities enumerated in subsection (a). Such standards shall be designed to provide reasonable assurance that uniformity and effectiveness will prevail among the States, that State participation will ensue in the development of procedures and policies affecting the delegated activity, and that reasonable flexibility will be provided to a State to perform any delegated authority or responsibility in a more efficient and cost-effective manner. The records and accounts maintained pursuant to such regulations shall be sufficient to allow the Secretary to monitor the performance of any State under this section. Such standards shall, to the maximum extent possible, prevent duplication by the Secretary of any activity delegated to a State for all Federal land within a State.

(d) *DELEGATION.*—

(1) *PRELIMINARY APPROVAL OR DISAPPROVAL BY SECRETARY.—*

(A) *REVIEW.*—The Secretary shall review a State's proposal as to the consistency of such proposal with subsections (b) and (c) and regulations under subsection (c).

(B) *DECISION.*—The Secretary shall issue a preliminary approval or disapproval as to the consistency of a State's proposal with subsections (b) and (c) and regulations under subsection (c) within six months after submission of such proposal. If the Secretary disapproves any State proposal in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefore and state whether he will agree to delegate to the State if the State meets the conditions set forth in the disapproval.

(C) *RESUBMISSION.*—The State shall have 60 days in which to resubmit a revised State proposal or portion thereof. The Secretary shall approve or disapprove the resubmitted State proposal or portion thereof within 60 days from the date of resubmission.

(2) *DELEGATION.*—After notice and opportunity for a public hearing, if the Secretary determines that a State has satisfied the conditions contained in a preliminary ruling and approves the State's proposal, the State shall assume and perform such activities and responsibilities pursuant to such approval. The provisions for delegation shall be set forth in a delegation agreement between the Secretary and the State within 90 days after the notice and hearing. The agreement may be amended from time to time to take into account new standards and procedures affecting the delegated activity. Under any such agreement, the Secretary and the State shall share oil or gas information.

(3) *FEDERAL INTERVENTION; WITHDRAWAL OF AUTHORITY.—*

(A) *SECRETARIAL INTERVENTION.*—If after providing written notice to a delegated State (with a copy to the lessee or its designee) and a reasonable opportunity to take corrective action requested by the Secretary, the Secretary determines that the State has failed to issue a demand or order to a Federal lessee within the State, that such failure will result in an underpayment of an obligation due the United States by such lessee, and that such underpayment will be uncollected without Secretarial intervention, the Secretary may issue such demand or order in accordance with the provisions of this Act prior to or absent the withdrawal of the delegated activity.

(B) *WITHDRAWAL OF DELEGATED ACTIVITY.*—Whenever the Secretary determines after public hearing that a State is not performing the delegated activity authorized under this section in accordance with requirements of this section, the Secretary shall provide written notice, together with the reasons therefor, to the State and, if corrective action is not taken within a reasonable time, not to exceed 90 days, the Secretary shall withdraw authorization of such delegated activity and take the necessary actions to administer and enforce such withdrawn activity.

(4) *COURT ACTION.*—The State may bring an action in the Federal district court in a judicial district in which a portion of the State is located if—

(A) the Secretary does not agree to delegate the requested activities, or

(B) the Secretary withdraws an activity under paragraph (3)(B).

(e) *SAVINGS PROVISION.*—Any State operating pursuant to a delegation existing on the date of enactment of this Act may continue to operate under the terms and conditions of the delegation, subject to the requirements of subsection (i), except to the extent that a revision of the existing agreement is adopted pursuant to this section.

(f) *STATE ACTION.*—With respect to enforcement of an obligation under this Act, a State bringing an action under this section shall enjoy no greater rights than the Secretary enjoys under this Act.

(g) *RECEIPTS.*—The Secretary shall compensate any State for those costs which may be necessary to carry out the delegated activities under this section. Payment shall be made no less than every quarter during the fiscal year. Compensation to a State shall not exceed the Secretary's reasonably anticipated expenditure for performance of such delegated activities by the Secretary. Such costs shall be allocable for the purposes of section 35(b) of the Act entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain", approved February 25, 1920 (commonly known as the Mineral Leasing Act) (30 U.S.C. 191 (b)) to the administration and enforcement of laws providing for the leasing of any onshore lands or interests in land owned by the United States. The Secretary shall compensate any State in the next succeeding fiscal year for the aggregate amount of such costs incurred but not compensated due to such allocation for the current fiscal year. All moneys received from sales, bonuses, rentals, royalties, assessments and interest, including money claimed to be due and owing pursuant to a delegation under this section, shall be payable and paid to the Treasury of the United States. If a State's cost for actions taken under a delegated activity is subject to such section 35(b), the Secretary shall not charge the State under such section 35(b) for the Secretary's costs for taking the same actions under such activity.

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SECTION 10 OF THE OUTER CONTINENTAL SHELF LANDS ACT

[SEC. 10. REFUNDS.—(a) Subject to the provisions of subsection (b) hereof, when it appears to the satisfaction of the Secretary that any person has made a payment to the United States in connection with any lease under this Act in excess of the amount he was lawfully required to pay, such excess shall be repaid without interest to such person or his legal representative, if a request for repayment of such excess is filed with the Secretary within two years after the making of the payment, or within ninety days after the effective date of this Act. The Secretary shall certify the amounts of all such repayments to the Secretary of the Treasury, who is authorized and directed to make such repayments out of any moneys

in the special account established under section 9 of this Act and to issue his warrant in settlement thereof.

【(b) No refund of or credit for such excess payment shall be made until after the expiration of thirty days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts upon which the determination of the Secretary was made is submitted to the President of the Senate and the Speaker of the House of Representatives for transmittal to the appropriate legislative committee of each body, respectively: *Provided*, That if the Congress shall not be in session on the date of such submission or shall adjourn prior to the expiration of thirty days from the date of such submission, then such payment or credit shall not be made until thirty days after the opening day of the next succeeding session of Congress.】

DISSENTING VIEWS ON H.R. 1975

The decision by this Committee to favorably report H.R. 1975, the ill-named royalty “fairness” bill, is yet another example of Republican corporate welfare, in this instance benefiting oil and gas producers operating on public lands. Obscured behind a screen of hypocrisy, such as creating “a more aggressive framework” for oil and gas royalty collection, and tortuously technical language, the bill contains many provisions that would enhance industry’s position at the public’s cost.

According to the CBO cost estimate, pay-as-you-go procedures would apply to the bill. The CBO anticipates that the bill will increase receipts during the 1997 to 2002 period by \$36 million. However, this would be accomplished only by accelerating the collection of royalties already due and payable to the United States. The bill creates no new receipts but does create new costs to the federal government. For instance, according to the CBO, requiring the federal government to pay interest on any overpayment made by a federal lessee would cost \$44 million in direct spending during the 1997–2002 period. In addition, the interest provision would cost an additional \$10 million in direct spending every year thereafter—more than \$200 million to be paid out over the next two decades! An outcome vigorously opposed by those who support deficit reduction and balanced budgets.

H.R. 1975, as reported, will place unnecessary and costly burdens on MMS, and by extension, on the States which share in the revenues generated by onshore federal leases. Further, by requiring the Secretary of the Interior to delegate royalty functions to the States, the bill will significantly diminish the Secretary’s authority over the management of the public lands and garner a Presidential veto. The bill will also require the Department of Interior (DOI) to reimburse the States for costs incurred through voluntary assumption of federal royalty functions without making such reimbursement subject to appropriations. This requirement violates House Rules as they apply to the jurisdictional scope of the Appropriations Committee. Yet, without violation of House Rule 21, the bill would impose unfunded mandates upon the States.

BACKGROUND

Congress, with the support of the Reagan Administration, enacted the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), a law that reformed the system for collecting royalties for oil and gas produced on federal lands, tightening the government’s grip on hundreds of millions of dollars in revenue previously lost or stolen. According to the bipartisan Linowes Commission in its 1981 report, the program was losing between \$200 million and \$500 million annually due to theft and royalty underpayments by federal lessees. Today the program raises close to five billion dol-

lars annually and has raised a total of \$81 billion since 1982, including more than \$1.5 billion in underpayments. Only taxes and customs raise more revenues for the U.S. Treasury. In the case of federal onshore mineral revenues, 50 percent of the net revenue generated is paid back to the States in which the leased acreage is located (except for Alaska which receives 90 percent of the revenue generated by its leases.)

CORPORATE WELFARE

H.R. 1975 creates new spending obligations by requiring the federal government to pay interest on overpayments made by oil and gas companies. This new obligation will cost an estimated \$44 million between 1997 and 2002 and more than \$15 million in direct spending every year after that.

Currently, the Minerals Management Service (MMS) refunds amounts overpaid by lessees but does not pay the additional interest costs. Further, in order to be even more responsive to industry concerns about the time value of money, MMS provides a grace period after the royalty payment due date when lessees can make adjustments without penalty (or interest charges) on the amount the lessees have underpaid their royalty obligations. This policy primarily accommodates natural gas producers who by necessity must pay estimated royalties before knowing the exact price garnered from the sale of the resource.

The Reagan-Bush Administrations opposed legislative proposals to allow even a limited payment of interest on overpayments and for good reason. As CBO's cost estimate states, "Section 6 of the bill would expand the obligations of the federal government to lessees." According to H.R. 1975, the federal government will be required to pay or credit interest on lessees' over payments at the rate specified by the Internal Revenue Code for overpayments on income tax. Contrary to the Majority's assertion, this provision is not "analogous" to IRS practice. Rather, the IRS pays interest on overpayments only when the IRS is shown to be in error and only after the taxpayer notifies them of such error and the IRS fails to act within a specified period of time. H.R. 1975 will allow lessees to unilaterally deduct from a current or future payment, the interest owed on a past royalty obligation whenever the lessee discovers the overpayment without prior notice to or permission from the U.S. Also, the interest will accrue from the date the overpayment is made, rather than the IRS practice of accruing interest from the date the mistake is discovered. Clearly this will not simply royalty management nor will it contribute to "increased receipts."

The bill will prohibit payment of interest only if a lessee's overpayments for a given month exceed 10 percent of the total royalties due on all its federal leases and only if the DOI subsequently determines that such payment was made for the purposes of receiving interest. Typically, a major oil and gas corporation's monthly obligations are about \$25 million; a medium sized business pays about \$4 million and a small business pays about \$150,000. Therefore, as long as a major corporation, such as Exxon, keeps its overpayments under \$2.5 million per month, it will be able to collect 7 to 8 percent interest on the amount overpaid. Such interest payments will be deducted from receipts, including interest charges collected by

MMS on underpayments made by lessees. The States will share in paying for this corporate benefit and their share of receipts will be adjusted downwards accordingly in the month following the payment or credit.

Currently, with benefit to be gained, overpayments average about 3 percent of the royalties paid each year. For purposes of the cost estimate, CBO assumed that the amount of overpayments would increase at least 2 percentage points since any overpayment would earn interest at a rate 2 percent *above* the Treasury's rate for short-term (90-day) borrowing. CBO estimates that this provision will increase direct spending, net of reduced payments to States, by about \$44 million over the 1997–2002 period and at least an additional \$10 million every year after that. The States can expect similar losses. The bill as reported will inevitably add to the deficit—especially in the long term—an outcome vigorously opposed by those advocating deficit reduction and balanced budgets.

STATE DELEGATION

The bill as introduced included no provision to delegate royalty functions to the States presumably because Section 205 of the FOGPMA already allows the Secretary to enter into cooperative agreements with States that want to do such activities. During the past fourteen years, the DOI has successfully negotiated a cooperative agreement with every State that has sought delegation of royalty function. However, despite the lack of evidentiary need and over the objections of the Minority, the Majority added a section to H.R. 1975 that will require the Secretary to transfer royalty management activities when a State requests and qualifies for such delegation of duties on federal lands. This section will also expand the duties the Secretary may delegate to the States. Mandating the Secretary's approval is unnecessary and will garner a Presidential veto of the bill. The Minority unsuccessfully attempted during Committee consideration of the bill to negotiate an amendment to make the Secretary's decision to make delegation discretionary as requested by the Administration (amendment #3). On May 2, the Senate Energy Committee adopted this approach. The Administration has consequently withdrawn its veto-threat if the Senate language prevails. Nevertheless, the Resources Committee Majority has been unwilling to agree to this option.

STATUTE OF LIMITATIONS

The statute of limitations provision of H.R. 1975 responds to several lawsuits now underway between that DOI and several oil and gas companies. The dispute centers on the question of whether the general federal statute of limitations for contract claims applies to federal oil and gas leases. Last year, the Tenth Circuit Court of Appeals ruled against the companies' claims the DOI has only six years from the date of an underpayment to seek collection. Instead, the Court reasonably found that the 6-year period does not run until the MMS completes its audit and that the audit must be initiated within six years of the underpayment. The DOI also maintains that the statute of limitations does not apply at all in the context of oil and gas royalty collections. The industry claims that it does. The Fifth Circuit Court of Appeals recently ruled in the DOI's

favor on this issue, but the plaintiffs plan to seek a rehearing before the court. Under other laws, oil and gas lessees are required to keep their records for six years. They may dispose of records after that if the DOI has not put them on notice to retain such records for an outgoing audit.

In response to this problem, the MMS has set up a policy of completing all audits within six years of the obligation's due date. In addition, the Administration has been considering issuance of an Executive Order that would impose a "statute of limitations." The Majority objects to an Executive Order since it would preempt H.R. 1975 and allow the President to resolve the issue. The Majority mistakenly argues that an Executive Order does not carry the same weight as a public law. However, Executive Branch agencies must follow an Executive Order in the same manner as a public law and Executive Orders are not easily overturned or revoked.

Besides the litigation surrounding the question of whether a statute of limitations exists for federal oil and gas leases, there is also the issue of alleged underpayments by seven integrated oil companies operating in California. Indeed, the industry's desire for a statute of limitations stems from this specific case. The State of California and the City of Long Beach sued these companies in 1975 alleging that they had conspired to keep posted prices low and thus underpaid their royalty obligations. After many years of litigation, six of the companies (ARCO, Shell, Chevron, Mobil, Texaco and Unocal) reached settlements to end the litigation without acknowledging any guilt. Exxon the seventh company, went to trial and was exonerated. The DOI is currently reviewing the issue to decide whether to pursue claims by public interest groups that as much as \$856 million is due MMS from oil and gas companies for production of crude oil on federal lands in California during the period of 1978 to 1993. A number of other States, including Texas and New Mexico, are currently engaged in similar litigation.

Since MMS has collected underpayments worth more than \$1.5 billion since 1982, there is little question that underpayment by oil and gas lessees is a significant problem for the federal government. Had the statute of limitations been in effect, the DOI would have been unable to investigate the alleged conspiracy in California without a determination of fraud or intentional misrepresentation with the intent to avoid payment. H.R. 1975 requires that the MMS audit leases held oil companies within the specified seven-year period after the date the royalty payment is due, unless the MMS meets the very limited requirements for tolling the audit period provided in great detail by H.R. 1975.

We believe the statute of limitations provision in H.R. 1975 will serve to undermine the federal government's ability to collect monies owed and will result in endless and costly litigation.

SPECIFIC RESPONSE TO MAJORITY VIEWS

While the Majority is to be generally commended for a relatively factual and detailed report on this bill, there are a number of liberties taken with the truth that need to be addressed. One, while the Subcommittee did favorably report the bill to the full Committee without amendment on February 28, 1996, Rep. Abercrombie noted at the time, that he would forego offering amendments that

afternoon as the House was taking up the Farm bill (H.R. 2854, "the Agriculture Market Transition Act") that day. Further, he notified the Majority of his intent to offer a number of amendments and reserved the right to do so during full Committee consideration. In response, Chairman Calvert agreed to discuss such amendments during the interim period. As a result, 22 amendments were accepted and offered "en bloc" (amendment #1) during full Committee consideration of the bill on March 28, 1996.

Two, the Majority states that the seven-year statute of limitations will accrue from the date on which the royalty payment is made. This, it should be noted, departs from precedent and existing practice in other federal statutes of limitation. The Majority further states that "the seven-year period is a key component of this bill because it is a driving mechanism to increase revenues to the U.S. treasury and the States." This is simply not correct. According to the CBO, the seven-year period simply accelerates payments to the U.S. and will not actually "increase" revenues.

Three, the Majority states that the 33-month appeal process specified in the bill also increase revenues to the U.S. treasury and the States. Again, this assertion is misleading at best. According to the CBO, the 33-month appeal process simply accelerates payments to the U.S. and will not actually "increase" revenues.

Four, as noted by the Majority, a lessee may take refunds or make adjustments on its obligations for a six-year period following the date the obligation is due. However, a lessee can also extend that period indefinitely. On the other hand, the U.S. is limited to auditing leases to seven-years.

Five, the Majority report credits the bill with providing several benefits to lessees which are already current practice. For instance, the Majority boasts that the bill will allow lessees to make estimated payments without penalty. And, the bill will allow refunds to be permitted where a lessee may not be able to make an adjustment to their report. The report indicates that the bill places a new statutory assessment (fee) on chronically tardy payers. Again this is current practice. Omitted from the Majority's explanation is the fact the bill actually limits the MMS from charging a cost-recovery fee to "bad apple" lessees for any other purpose.

CONCLUSION

Should H.R. 1975 be enacted, it will be more difficult, not easier, for the MMS to more aggressively audit and collect federal oil and gas royalties and other monies owed the United States, as the Majority says is the goal of H.R. 1975. If the MMS is rife with mismanagement and is guilty of failing to collect up to \$1 billion in unpaid royalties, as the majority has recently asserted during a Resources Committee hearing on the fiscal year 1997 budget, then enactment of H.R. 1975 would be counterproductive since it will weaken the framework Congress enacted in 1982.

The bill as reported, while making it easier for oil and gas lessees to pay royalties, runs the risk of taking the federal royalty program "back to the future" and will replicate the conditions Congress encountered in 1982, when the bipartisan Linowes Commission found the program to be "in disarray" and "a failure." Improvement is always in order. Yet H.R. 1975, if enacted, will dis-

mantle an existing program that is working well. Such action does not serve the public interest. Simply put, H.R. 1975 goes too far in altering a program that, according to the fiscal year 1996 Appropriations Committee Report, "is very well run and should not be dismantled simply for the sake of change."

GEORGE MILLER,
Ranking Democrat, Re-
sources Committee.

NEIL ABERCROMBIE,
Ranking Democrat, Sub-
committee on Energy and
Minerals.

SAM GEJDENSON.
MAURICE D. HINCHEY.
EDWARD J. MARKEY.
NICK J. RAHALL.
BRUCE F. VENTO.
FRANK PALLONE, Jr.

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