§ 1206.457 Washing allowances—general.

(a) For ad valorem leases subject to §1206.456 of this subpart, ONRR shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to wash coal, unless the value determined pursuant to §1206.456 of this subpart was based upon like-quality unwashed coal. Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

(b) If ONRR determines that a lessee has improperly determined a washing allowance authorized by this section, then the lessee shall be liable for any additional royalties, plus interest determined in accordance with §1218.202 of this chapter, or shall be entitled to a credit, without interest.

(c) Lessees shall not disproportionately allocate washing costs to Indian leases.

(d) No cost normally associated with mining operations and which are necessary for placing coal in marketable condition shall be allowed as a cost of washing.

(e) Coal washing costs shall only be recognized as allowances when the washed coal is sold and royalties are reported and paid.


§ 1206.458 Determination of washing allowances.

(a) Arm’s-length contracts. (1) For washing costs incurred by a lessee pursuant to an arm’s-length contract, the washing allowance shall be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. ONRR’ prior approval is not required before a lessee may deduct costs incurred under an arm’s-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4292 is filed with ONRR, unless ONRR approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, ONRR will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the washer for the washing. If the contract reflects more than the total consideration paid, then ONRR may require that the washing allowance be determined in accordance with paragraph (b) of this section.

(3) If ONRR determines that the consideration paid pursuant to an arm’s-length washing contract does not reflect the reasonable value of the washing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then ONRR shall require that the washing allowance be determined in accordance with paragraph (b) of this section. When ONRR determines that the value of the washing may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee’s washing costs.

(4) Where the lessee’s payments for washing under an arm’s-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent. Washing allowances shall be expressed as a cost per ton of coal washed.

(b) Non-arm’s-length or no contract. (1) If a lessee has a non-arm’s-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee’s reasonable actual costs. All washing allowances deducted under a non-arm’s-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior ONRR approval of washing allowances is not required for non-arm’s-length or no contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-