§ 1206.362 What are my responsibilities to place production into marketable condition and to market production?

You must place geothermal resources and byproducts in marketable condition and market the geothermal resources or byproducts for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. If you use gross proceeds under an arm’s-length contract in determining royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the geothermal resources or byproducts in marketable condition or to market the geothermal resources or byproducts.

§ 1206.363 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, no audit, review, reconciliation, monitoring, or other like process that results in a redetermination by ONRR of royalty or fees due under this subpart is considered final or binding as against the Federal Government or its beneficiaries until ONRR formally closes the audit period in writing.

§ 1206.364 How do I request a value or gross proceeds determination?

(a) You may request a value determination from ONRR regarding any geothermal resources produced from a Class I lease or for byproducts produced from a Class I, Class II, or Class III lease. You may also request a gross proceeds determination for a Class II or Class III lease. Your request must:

(1) Be in writing;
(2) Identify specifically all leases involved, all owners of interests in those leases, and the operator(s) for those leases;
(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;
(4) Include copies of all relevant documents;
(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and
(6) Suggest your proposed gross proceeds calculation or valuation method.

(b) In response to your request:

(1) The Assistant Secretary, Policy, Management and Budget, may issue a determination; or
(2) ONRR may issue a determination; or
(3) ONRR may inform you in writing that ONRR will not provide a determination. Situations in which ONRR typically will not provide any determination include, but are not limited to:

(i) Requests for guidance on hypothetical situations; and
(ii) Matters that are the subject of pending litigation or administrative appeals.

(c) A determination signed by the Assistant Secretary, Policy, Management and Budget, is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(1) A determination signed by the Assistant Secretary is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(2) A determination issued by ONRR is binding on ONRR and delegated States, but not on you, with respect to the specific situation addressed in the determination unless ONRR (for ONRR-issued determinations) or the Assistant Secretary modifies or rescinds it.

(3) A determination by ONRR is not an appealable decision or order under 30 CFR part 1290 subpart B.

(4) If you receive an order requiring you to pay royalty on the same basis as the determination, you may appeal that order under 30 CFR part 1290 subpart B.

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(e) In making a determination, ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart.

(f) A change in an applicable statute or regulation on which any determination is based takes precedence over the determination after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the determination.

(g) ONRR or the Assistant Secretary generally will not retroactively modify or rescind a determination issued under paragraph (d) of this section, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(h) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under §1206.365.

§1206.451 Definitions.

Ad valorem lease means a lease where the royalty due to the lessor is based upon a percentage of the amount or value of the coal.

Allowance means an approved, or an ONRR-initially accepted deduction in determining value for royalty purposes. Coal washing allowance means an allowance for the reasonable, actual costs incurred by the lessee for coal washing; or an approved or ONRR-initially accepted deduction for the costs of washing coal, determined pursuant to this subpart. Transportation allowance means an allowance for the reasonable, actual costs incurred by the lessee for moving coal to a point of sale or point of delivery remote from both the lease and mine or wash plant, or an...