

under §1218.54 from the date your payment was due under §1204.202 (b)(2) until the date ONRR receives it.

[69 FR 55088, Sept. 13, 2004, as amended at 78 FR 30200, May 22, 2013]

**§ 1204.211 When may ONRR rescind relief for a property?**

(a) ONRR may retroactively rescind the relief for your property if ONRR determines that your property was not eligible for the relief obtained under this subpart because:

(1) You did not submit a notice or request for relief under §1204.205;

(2) You submitted erroneous information in the notice or request for relief you provided to ONRR under §1204.205 or in your royalty or production reports; or

(3) Your property is no longer eligible for relief because production increased, but you failed to provide the notice required under §1204.209(b).

(b) ONRR may rescind relief for your property if ONRR decides to take royalty in kind.

**§ 1204.212 What if I took relief for which I was ineligible?**

If you took relief under this subpart for a period for which you were not eligible, you:

(a) May owe additional royalties and late payment interest determined under §1218.54 from the date your additional payments were due until the date ONRR receives them; and

(b) May be subject to civil penalties.

**§ 1204.213 May I obtain relief for a property that benefits from other Federal or State incentive programs?**

You may obtain accounting and auditing relief for production from a marginal property under this subpart even if the property benefits from other Federal or State production incentive programs.

**§ 1204.214 Is minimum royalty due on a property for which I took relief?**

(a) If you took cumulative royalty reports and payment relief on a property under this subpart, minimum royalty is still due for that property by the date prescribed in your lease and in the amount prescribed therein.

(b) If you pay minimum royalty on production from a marginal property during a calendar year for which you are taking cumulative royalty reports and payment relief, and:

(1) The annual payment you owe under this subpart is greater than the minimum royalty you paid, you must pay the difference between the minimum royalty you paid and your annual payment due under this subpart; or

(2) The annual payment you owe under this subpart is less than the minimum royalty you paid, you are not entitled to a credit because you must pay at least the minimum royalty amount on your lease each year.

**§ 1204.215 Are the information collection requirements in this subpart approved by the Office of Management and Budget (OMB)?**

OMB approved the information collection requirements contained in this subpart under 44 U.S.C. 3501 *et seq.* ONRR identifies the approved OMB control number in 30 CFR 1210.10.

[78 FR 30200, May 22, 2013]

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### Subpart A—General Provisions and Definitions

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#### § 1206.10 **Has the Office of Management and Budget (OMB) approved the information collection requirements in this part?**

OMB has approved the information collection requirement contained in this part under 44 U.S.C. 3501 *et seq.* See 30 CFR part 1210 for details concerning

the estimated reporting burden and how to comment on the accuracy of the burden estimate.

**§ 1206.20 What definitions apply to this part?**

*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.

*Affiliate* means a person who controls, is controlled by, or is under common control with another person. For the purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of non-control that ONRR may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, ONRR will consider each of the following factors to determine if there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors.

(ii) With respect to the voting securities, or instruments of ownership or other forms of ownership: The percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, if a person is the greatest single owner, or if there is an opposing voting bloc of greater ownership.

(iii) Operation of a lease, plant, pipeline, or other facility.

(iv) The extent of others owners' participation in operations and day-to-day management of a lease, plant, or other facility.

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

*ANS* means Alaska North Slope.

*Area* means a geographic region at least as large as the limits of an oil and/or gas field, in which oil and/or gas

lease products have similar quality and economic characteristics. Area boundaries are not officially designated and the areas are not necessarily named.

*Arm's-length-contract* means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's-length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

*Audit* means an examination, conducted under the generally accepted Governmental Auditing Standards, of royalty reporting and payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases or Indian leases.

*BIA* means the Bureau of Indian Affairs of the Department of the Interior.

*BLM* means the Bureau of Land Management of the Department of the Interior.

*BOEM* means the Bureau of Ocean Energy Management of the Department of the Interior.

*BSEE* means the Bureau of Safety and Environmental Enforcement of the Department of the Interior.

*Coal* means coal of all ranks from lignite through anthracite.

*Coal cooperative* means an entity organized to provide coal or coal-related services to the entity's members (who may or may not also be owners of the entity), partners, and others. The entity may operate as a coal lessee, operator, payor, logistics provider, or electricity generator, or any of their affiliates, and may be organized to be non-profit or for-profit.

*Coal washing* means any treatment to remove impurities from coal. Coal washing may include, but is not limited to, operations, such as flotation, air, water, or heavy media separation; drying; and related handling (or combination thereof).

*Compression* means the process of raising the pressure of gas.

*Condensate* means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum

hydrocarbons existing initially in a gaseous phase in an underground reservoir.

*Constraint* means a reduction in, or elimination of, gas flow, deliveries, or sales required by the delivery system.

*Contract* means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that, with due consideration, creates an obligation.

*Designee* means the person whom the lessee designates to report and pay the lessee's royalties for a lease.

*Exchange agreement* means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Examples of other types of exchange agreements include, but are not limited to, exchanges of produced oil for specific types of crude oil (such as West Texas Intermediate); exchanges of produced oil for other crude oil at other locations (Location Trades); exchanges of produced oil for other grades of oil (Grade Trades); and multi-party exchanges.

*FERC* means Federal Energy Regulatory Commission.

*Field* means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. BOEM names and designates boundaries of OCS fields.

*Gas* means any fluid, either combustible or non-combustible, hydrocarbon or non-hydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or

rarefied state under standard temperature and pressure conditions.

*Gas plant products* means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

*Gathering* means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off of the lease, unit, or communitized area that BLM or BSEE approves for onshore and offshore leases, respectively, including any movement of bulk production from the wellhead to a platform offshore.

*Geographic region* means, for Federal gas, an area at least as large as the defined limits of an oil and or gas field in which oil and/or gas lease products have similar quality and economic characteristics.

*Gross proceeds* means the total monies and other consideration accruing for the disposition of any of the following:

(1) *Oil*. Gross proceeds also include, but are not limited to, the following examples:

(i) Payments for services such as dehydration, marketing, measurement, or gathering which the lessee must perform at no cost to the Federal Government

(ii) The value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf

(iii) Reimbursements for harboring or terminalling fees, royalties, and any other reimbursements

(iv) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation

(v) Payments made to reduce or buy down the purchase price of oil produced in later periods by allocating such payments over the production whose price that the payment reduces and including the allocated amounts as proceeds for the production as it occurs

(vi) Monies and all other consideration to which a seller is contractually or legally entitled but does not seek to collect through reasonable efforts

(2) *Gas, residue gas, and gas plant products*. Gross proceeds also include,

but are not limited to, the following examples:

(i) Payments for services such as dehydration, marketing, measurement, or gathering that the lessee must perform at no cost to the Federal Government

(ii) Reimbursements for royalties, fees, and any other reimbursements

(iii) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation

(iv) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts

(3) *Coal*. Gross proceeds also include, but are not limited to, the following examples:

(i) Payments for services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oil, and other preparation of the coal that the lessee must perform at no cost to the Federal Government or Indian lessor

(ii) Reimbursements for royalties, fees, and any other reimbursements

(iii) Tax reimbursements even though the Federal or Indian royalty interest may be exempt from taxation

(iv) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts

*Index* means:

(1) For gas, the calculated composite price (\$/MMBtu) of spot market sales that a publication that meets ONRR-established criteria for acceptability at the index pricing point publishes

(2) For oil, the calculated composite price (\$/barrel) of spot market sales that a publication that meets ONRR-established criteria for acceptability at the index pricing point publishes.

*Index pricing point* means any point on a pipeline for which there is an index, which ONRR-approved publications may refer to as a trading location.

*Index zone* means a field or an area with an active spot market and published indices applicable to that field or an area that is acceptable to ONRR under § 1206.141(d)(1).

*Indian Tribe* means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of In-

dians for which any minerals or interest in minerals is held in trust by the United States or is subject to Federal restriction against alienation.

*Individual Indian mineral owner* means any Indian for whom minerals or an interest in minerals is held in trust by the United States or who holds title subject to Federal restriction against alienation.

*Keepwhole contract* means a processing agreement under which the processor delivers to the lessee a quantity of gas after processing equivalent to the quantity of gas that the processor received from the lessee prior to processing, normally based on heat content, less gas used as plant fuel and gas unaccounted for and/or lost. This includes, but is not limited to, agreements under which the processor retains all NGLs that it recovered from the lessee's gas.

*Lease* means any contract, profit-sharing arrangement, joint venture, or other agreement issued or approved by the United States under any mineral leasing law, including the Indian Mineral Development Act, 25 U.S.C. 2101-2108, that authorizes exploration for, extraction of, or removal of lease products. Depending on the context, lease may also refer to the land area that the authorization covers.

*Lease products* mean any leased minerals, attributable to, originating from, or allocated to a lease or produced in association with a lease.

*Lessee* means any person to whom the United States, an Indian Tribe, and/or individual Indian mineral owner issues a lease, and any person who has been assigned all or a part of record title, operating rights, or an obligation to make royalty or other payments required by the lease. Lessee includes:

(1) Any person who has an interest in a lease.

(2) In the case of leases for Indian coal or Federal coal, an operator, payor, or other person with no lease interest who makes royalty payments on the lessee's behalf.

*Like quality* means similar chemical and physical characteristics.

*Location differential* means an amount paid or received (whether in money or in barrels of oil) under an exchange

agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

*Market center* means a major point that ONRR recognizes for oil sales, refining, or transshipment. Market centers generally are locations where ONRR-approved publications publish oil spot prices.

*Marketable condition* means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area for Federal oil and gas, and region for Federal and Indian coal.

*Mine* means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of lease products.

*Misconduct* means any failure to perform a duty owed to the United States under a statute, regulation, or lease, or unlawful or improper behavior, regardless of the mental state of the lessee or any individual employed by or associated with the lessee.

*Net output* means the quantity of:

(1) For gas, residue gas and each gas plant product that a processing plant produces.

(2) For coal, the quantity of washed coal that a coal wash plant produces.

*Netting* means reducing the reported sales value to account for an allowance instead of reporting the allowance as a separate entry on the Report of Sales and Royalty Remittance (Form ONRR-2014) or the Solid Minerals Production and Royalty Report (Form ONRR-4430).

*NGLs* means Natural Gas Liquids.

*NYMEX price* means the average of the New York Mercantile Exchange (NYMEX) settlement prices for light sweet crude oil delivered at Cushing, Oklahoma, calculated as follows:

(1) First, sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the

prompt month corresponding to each such day.

(2) Second, divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

*Oil* means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is oil.

*ONRR* means the Office of Natural Resources Revenue of the Department of the Interior.

*ONRR-approved commercial price bulletin* means a publication that ONRR approves for determining NGLs prices.

*ONRR-approved publication* means:

(1) For oil, a publication that ONRR approves for determining ANS spot prices or WTI differentials.

(2) For gas, a publication that ONRR approves for determining index pricing points.

*Outer Continental Shelf (OCS)* means all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

*Payor* means any person who reports and pays royalties under a lease, regardless of whether that person also is a lessee.

*Person* means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

*Processing* means any process designed to remove elements or compounds (hydrocarbon and non-hydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing. The use of a Joule-Thomson (JT) unit to remove NGLs from gas is considered processing



regardless of where the JT unit is located, provided that you market the NGLs as NGLs.

*Processing allowance* means a deduction in determining royalty value for the reasonable, actual costs the lessee incurs for processing gas.

*Prompt month* means the nearest month of delivery for which NYMEX futures prices are published during the trading month.

*Quality differential* means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

*Region* for coal means the eight Federal coal production regions, which the Bureau of Land Management designates as follows: Denver-Raton Mesa Region, Fort Union Region, Green River-Hams Fork Region, Powder River Region, San Juan River Region, Southern Appalachian Region, Uinta-Southwestern Utah Region, and Western Interior Region. See 44 FR 65197 (1979).

*Residue gas* means that hydrocarbon gas consisting principally of methane resulting from processing gas.

*Rocky Mountain Region* means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, except for those portions of the San Juan Basin and other oil-producing fields in the "Four Corners" area that lie within Colorado and Utah.

*Roll* means an adjustment to the NYMEX price that is calculated as follows:  $Roll = .6667 \times (P_0 - P_1) + .3333 \times (P_0 - P_2)$ , where:  $P_0$  = the average of the daily NYMEX settlement prices for deliveries during the prompt month that is the same as the month of production, as published for each day during the trading month for which the month of production is the prompt month;  $P_1$  = the average of the daily NYMEX settlement prices for deliveries during the month following the month of production, published for each day during the

trading month for which the month of production is the prompt month; and  $P_2$  = the average of the daily NYMEX settlement prices for deliveries during the second month following the month of production, as published for each day during the trading month for which the month of production is the prompt month. Calculate the average of the daily NYMEX settlement prices using only the days on which such prices are published (excluding weekends and holidays).

(1) *Example 1. Prices in Out Months are Lower Going Forward:* The month of production for which you must determine royalty value is December. December was the prompt month (for year 2011) from October 21 through November 18. January was the first month following the month of production, and February was the second month following the month of production.  $P_0$ , therefore, is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between October 21 and November 18.  $P_1$  is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between October 21 and November 18.  $P_2$  is the average of the daily NYMEX settlement prices for deliveries during February published for each business day between October 21 and November 18. In this example, assume that  $P_0 = \$95.08$  per bbl,  $P_1 = \$95.03$  per bbl, and  $P_2 = \$94.93$  per bbl. In this example (a declining market),  $Roll = .6667 \times (\$95.08 - \$95.03) + .3333 \times (\$95.08 - \$94.93) = \$0.03 + \$0.05 = \$0.08$ . You add this number to the NYMEX price.

(2) *Example 2. Prices in Out Months are Higher Going Forward:* The month of production for which you must determine royalty value is November. November was the prompt month (for year 2012) from September 21 through October 22. December was the first month following the month of production, and January was the second month following the month of production.  $P_0$ , therefore, is the average of the daily NYMEX settlement prices for deliveries during November published for each business day between September 21 and October 22.  $P_1$  is the average of the daily NYMEX settlement prices for

deliveries during December published for each business day between September 21 and October 22.  $P_2$  is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between September 21 and October 22. In this example, assume that  $P_0 = \$91.28$  per bbl,  $P_1 = \$91.65$  per bbl, and  $P_2 = \$92.10$  per bbl. In this example (a rising market),  $\text{Roll} = .6667 \times (\$91.28 - \$91.65) + .3333 \times (\$91.28 - \$92.10) = (-\$0.25) + (-\$0.27) = (-\$0.52)$ . You add this negative number to the NYMEX price (effectively, a subtraction from the NYMEX price).

*Sale* means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil, gas, gas plant product, or coal to the buyer and does not retain any related rights, such as the right to buy back similar quantities of oil, gas, gas plant product, or coal from the buyer elsewhere; and

(2) The buyer pays money or other consideration for the oil, gas, gas plant product, or coal; and

(3) The parties' intent is for a sale of the oil, gas, gas plant product, or coal to occur.

*Section 6 lease* means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

*Short ton* means 2,000 pounds.

*Spot price* means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration.

(2) No cancellation notice is required to terminate the sales agreement.

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

*Tonnage* means tons of coal measured in short tons.

*Trading month* means the period extending from the second business day before the 25th day of the second calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar

month preceding the delivery month (or, if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official website, *www.cmegroup.com*, in which case, the NYMEX definition will apply.

*Transportation allowance* means a deduction in determining royalty value for the reasonable, actual costs that the lessee incurs for moving:

(1) Oil to a point of sale or delivery off of the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

(2) Unprocessed gas, residue gas, or gas plant products to a point of sale or delivery off of the lease, unit area, or communitized area, or away from a processing plant. The transportation allowance does not include gathering costs.

(3) Coal to a point of sale remote from both the lease and mine or wash plant.

*Washing allowance* means a deduction in determining royalty value for the reasonable, actual costs the lessee incurs for coal washing.

*WTI differential* means the average of the daily mean differentials for location and quality between a grade of crude oil at a market center and West Texas Intermediate (WTI) crude oil at Cushing published for each day for which price publications perform surveys for deliveries during the production month, calculated over the number of days on which those differentials are published (excluding weekends and holidays). Calculate the daily mean differentials by averaging the daily high and low differentials for the month in the selected publication. Use only the days and corresponding differentials for which such differentials are published.

EFFECTIVE DATE NOTE: At 86 FR 4652, Jan. 15, 2021, §1206.20 was amended by removing the definitions of "coal cooperative" and "misconduct," and revising the definition of "gathering," effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr.

**Natural Resources Revenue Off., Interior**

**§ 1206.51**

16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.20 What definitions apply to this part?**

\* \* \* \* \*

*Gathering* means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off of the lease, unit, or communitized area that BLM or BSEE approves for onshore and offshore leases, respectively. Excluded from this definition is the movement of bulk production from a wellhead to an offshore platform which may, for valuation purposes, be considered a function for which a Transportation Allowance is properly taken pursuant to §§ 1206.110(a)(1) and 1206.152(a)(1).

\* \* \* \* \*

**Subpart B—Indian Oil**

SOURCE: 80 FR 24805, May 1, 2015, unless otherwise noted.

**§ 1206.50 What is the purpose of this subpart?**

(a) This subpart applies to all oil produced from Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). This subpart does not apply to Federal leases, including Federal leases for which revenues are shared with Alaska Native Corporations. This subpart:

(1) Explains how you as a lessee must calculate the value of production for royalty purposes consistent with Indian mineral leasing laws, other applicable laws, and lease terms.

(2) Ensures the United States discharges its trust responsibilities for administering Indian oil and gas leases under the governing Indian mineral leasing laws, treaties, and lease terms.

(b) If you dispose of or report production on behalf of a lessee, the terms “you” and “your” in this subpart refer to you and not to the lessee. In this circumstance, you must determine and report royalty value for the lessee’s oil by applying the rules in this subpart to your disposition of the lessee’s oil.

(c) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States, Indian lessor, and a lessee resulting from administrative or judicial litigation;

(3) A written agreement between the Indian lessor, lessee, and the ONRR Director establishing a method to determine the value of production from any lease that ONRR expects at least would approximate the value established under this subpart; or

(4) An express provision of an oil and gas lease subject to this subpart then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR or Indian Tribes, which have a cooperative agreement with ONRR to audit under 30 U.S.C. 1732, may audit, or perform other compliance reviews, and require a lessee to adjust royalty payments and reports.

**§ 1206.51 What definitions apply to this subpart?**

For purposes of this subpart:

*Affiliate* means a person who controls, is controlled by, or is under common control with another person.

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of non-control that ONRR may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, ONRR will consider the following factors in determining whether there is control in a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership:

(A) The percentage of ownership or common ownership;

(B) The relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons;

(C) Whether a person is the greatest single owner; and

(D) Whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

*Area* means a geographic region at least as large as the defined limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

*Arm's-length contract* means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's-length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

*Audit* means a review, conducted under the generally accepted *Governmental Auditing Standards*, of royalty reporting and payment activities of lessees, designees, or other persons who pay royalties, rents, or bonuses on Indian leases.

*BLM* means the Bureau of Land Management of the Department of the Interior.

*Condensate* means liquid hydrocarbons (generally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

*Contract* means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

*Designated area* means an area that ONRR designates for purposes of calcu-

lating Location and Crude Type Differentials applied to an IBMP value. ONRR will post designated areas on our Web site at *www.onrr.gov*. ONRR will monitor the market activity in the designated areas and, if necessary, hold a technical conference to review, modify, or add a particular designated area. ONRR will post any change to the designated areas on our Web site at *www.onrr.gov*. Criteria to determine any future changes to designated areas include, but are not limited to: Markets served, examples include refineries and/or market centers, such as Cushing, OK; access to markets, examples include access to similar infrastructure, such as pipelines, rail lines, and trucking; and/or similar geography, examples include no challenging geographical divides, large rivers, and/or mountains.

*Exchange agreement* means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location, as well as other consideration(s). Exchange agreements:

(1) May or may not specify prices for the oil involved;

(2) Frequently specify dollar amounts reflecting location, quality, or other differentials;

(3) Include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement or in separate agreements; and

(4) May include, but are not limited to, exchanges of produced oil for specific types of oil (*e.g.* WTI); exchanges of produced oil for other oil at other locations (location trades); exchanges of produced oil for other grades of oil (grade trades); and multi-party exchanges.

*Field* means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields usually are given names, and

their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located.

*Gathering* means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area or to a central accumulation or treatment point off of the lease, unit, or communitized area, as BLM operations personnel approve.

*Gross proceeds* means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds also include, but are not limited to, the following examples:

(1) Payments for services, such as dehydration, marketing, measurement, or gathering that the lessee must perform—at no cost to the lessor—in order to put the production into marketable condition;

(2) The value of services to put the production into marketable condition, such as salt water disposal, that the lessee normally performs but that the buyer performs on the lessee's behalf

(3) Reimbursements for harboring or terminalling fees;

(4) Tax reimbursements, even though the Indian royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods by allocating those payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled but does not seek to collect through reasonable efforts.

*IBMP* means the Index-Based Major Portion value calculated under §1206.54.

*Indian Tribe* means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any minerals or interest in minerals is held in trust by the United States or that is subject to Federal restriction against alienation.

*Individual Indian mineral owner* means any Indian for whom minerals or an interest in minerals is held in trust by the United States or who holds title

subject to Federal restriction against alienation.

*Lease* means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under an Indian mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products. Depending on the context, lease may also refer to the land area that the authorization covers.

*Lease products* means any leased minerals attributable to, originating from, or allocated to Indian leases.

*Lessee* means any person to whom the United States, a Tribe, or individual Indian mineral owner issues a lease and any person who has been assigned an obligation to make royalty or other payments required by the lease. Lessee includes:

(1) Any person who has an interest in a lease (including operating rights owners).

(2) An operator, purchaser, or other person with no lease interest who reports and/or makes royalty payments to ONRR or the lessor on the lessee's behalf.

*Lessor* means an Indian Tribe or individual Indian mineral owner who has entered into a lease.

*Like-quality oil* means oil that has similar chemical and physical characteristics.

*Location and Crude Type Differential (LCTD)* means the difference in value between the NYMEX Calendar Monthly Average (CMA) and the value that approximates the monthly Major Portion Price for any given month, designated area, and crude oil type.

*Location differential* means an amount paid or received (whether in money or in barrels of oil) under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

*Major Portion Price* means the highest price paid or offered at the time of production for the major portion of oil produced from the same designated area for the same crude oil type.

*Marketable condition* means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

*Net* means to reduce the reported sales value to account for transportation instead of reporting a transportation allowance as a separate entry on Form ONRR-2014.

*NYMEX Calendar Month Average Price* means the average of the New York Mercantile Exchange (NYMEX) daily settlement prices for light sweet oil delivered at Cushing, Oklahoma, calculated as follows:

(1) Sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the nearest month of delivery for which NYMEX futures prices are published corresponding to each such day.

(2) Divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

*Oil* means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil.

*ONRR* means the Office of Natural Resources Revenue of the Department of the Interior.

*Operating rights owner*, also known as a working interest owner, means any person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease until the operating rights have been transferred from record title (see Bureau of Land Management regulations at 43 CFR 3100.0-5(d)).

*Person* means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

*Processing* means any process designed to remove elements or compounds (hydrocarbon and non-hydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field proc-

esses that normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

*Prompt month* means the nearest month of delivery for which NYMEX futures prices are published during the trading month.

*Quality differential* means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

*Roll* means an adjustment to the NYMEX price that is calculated as follows:  $Roll = .6667 \times (P_0 - P_1) + .3333 \times (P_0 - P_2)$ , where:  $P_0$  = the average of the daily NYMEX settlement prices for deliveries during the prompt month that is the same as the month of production, as published for each day during the trading month for which the month of production is the prompt month;  $P_1$  = the average of the daily NYMEX settlement prices for deliveries during the month following the month of production, published for each day during the trading month for which the month of production is the prompt month; and  $P_2$  = the average of the daily NYMEX settlement prices for deliveries during the second month following the month of production, as published for each day during the trading month for which the month of production is the prompt month. Calculate the average of the daily NYMEX settlement prices using only the days on which such prices are published (excluding weekends and holidays). ONRR reserves the option of terminating the use of the roll when ONRR believes that the roll is no longer a common industry practice. ONRR also retains the option to redefine how to calculate the roll to

comport with changes in industry practice. To terminate or otherwise redefine how to calculate the roll, ONRR will explain its rationale for terminating or redefining how to calculate the roll by publishing a notice in the FEDERAL REGISTER, to provide an opportunity for comment.

(1) *Example 1: Prices in out months are lower going forward.* The month of production for which you must determine royalty value is December 2012. December was the prompt month from October 23 through November 20. January was the first month following the month of production, and February was the second month following the month of production.  $P_0$  therefore, is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between October 23 and November 20.  $P_1$  is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between October 23 and November 20.  $P_2$  is the average of the daily NYMEX settlement prices for deliveries during February published for each business day between October 23 and November 20. In this example, assume that  $P_0 = \$95.08$  per bbl;  $P_1 = \$95.03$  per bbl; and  $P_2 = \$94.93$  per bbl. In this example (a declining market),  $\text{Roll} = .6667 \times (\$95.08 - \$95.03) + .3333 \times (\$95.08 - \$94.93) = \$0.03 + \$0.05 = \$0.08$ . You add this number to the NYMEX price.

(2) *Example 2: Prices in out months are higher going forward.* The month of production for which you must determine royalty value is November 2012. November was the prompt month from September 21 through October 22. December was the first month following the month of production, and January was the second month following the month of production.  $P_0$  therefore, is the average of the daily NYMEX settlement prices for deliveries during November published for each business day between September 21 and October 22.  $P_1$  is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between September 21 and October 22.  $P_2$  is the average of the daily NYMEX settlement prices for deliveries during January published for each

business day between September 21 and October 22. In this example, assume that  $P_0 = \$91.28$  per bbl;  $P_1 = \$91.65$  per bbl; and  $P_2 = \$92.10$  per bbl. In this example (a rising market),  $\text{Roll} = .6667 \times (\$91.28 - \$91.65) + .3333 \times (\$91.28 - \$92.10) = (-\$0.25) + (-\$0.27) = (-\$0.52)$ . You add this negative number to the NYMEX price (effectively a subtraction from the NYMEX price).

*Sale* means a contract between two persons where:

- (1) The seller unconditionally transfers title to the oil to the buyer and does not retain any related rights, such as the right to buy back similar quantities of oil from the buyer elsewhere.
- (2) The buyer pays money or other consideration for the oil.
- (3) The parties' intent is for a sale of the oil to occur.

*Sales type code* means the contract type or general disposition (e.g. arm's-length or non-arm's-length) of production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm's-length or non-arm's-length nature of a transportation allowance.

*Trading month* means the period extending from the second business day before the 25th day of the second calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official Web site, [www.nymex.com](http://www.nymex.com), in which case, the NYMEX definition will apply.

*Transportation allowance* means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off of the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

*WTI* means West Texas Intermediate.

§ 1206.52

30 CFR Ch. XII (7-1-21 Edition)

You means a lessee, operator, or other person who pays royalties under this subpart.

**§ 1206.52 How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract?**

(a) The value of production for royalty purposes for your lease is the higher of either the value determined under this section or the IBMP value calculated under § 1206.54. The value of oil under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the arm's-length contract, less applicable allowances determined under § 1206.56 or § 1206.57. You must use this paragraph (a) to value oil when:

(1) You sell under an arm's-length sales contract.

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the higher of the volume-weighted average of the values established under this section for all contracts for the sale of oil produced from that lease or the IBMP value calculated under § 1206.54.

(c) If ONRR determines that the gross proceeds accruing to you or your affiliate does not reflect the reasonable value of the production due to either:

(1) Misconduct by or between the parties to the arm's-length contract; or

(2) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor, ONRR will establish a value based on other relevant matters.

(i) ONRR will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(ii) The fact that the price received by the seller under an arm's-length contract is less than other measures of market price is insufficient to establish breach of the duty to market unless ONRR finds additional evidence

that the seller acted unreasonably or in bad faith in the sale of oil produced from the lease.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the oil.

(f) You must base value on the highest price that you or your affiliate can receive through legally enforceable claims under the oil sales contract.

(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate make timely application for a price increase or benefit allowed under your or your affiliate's contract—but the purchaser refuses—and you or your affiliate take reasonable documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph (f)(2) to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or in a timely manner, for a quantity of oil.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) This provision applies notwithstanding any other provisions in this title 30 of the *Code of Federal Regulations* to the contrary.

(h) If you or your affiliate enter(s) into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, then you must value your oil under this paragraph (h).

(1) If you or your affiliate exchange(s) oil at arm's length for WTI



or equivalent oil at Cushing, Oklahoma, you must value the oil using the NYMEX price, adjusted for applicable location and quality differentials under paragraph (h)(3) of this section and any transportation costs under paragraph (h)(4) of this section and §§1206.56 and 1206.57 or §1206.58.

(2) If you do not exchange oil for WTI or equivalent oil at Cushing, but exchange it at arm's length for oil at another location and following the arm's-length exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you must use the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s), adjusted for applicable location and quality differentials under paragraph (h)(3) of this section and any transportation costs under paragraph (h)(4) of this section and §§1206.56 and 1206.57 or §1206.58.

(3) You must adjust your gross proceeds for any location or quality differential, or other adjustments, that you received or paid under the arm's-length exchange agreement(s). If ONRR determines that any exchange agreement does not reflect reasonable location or quality differentials, ONRR may adjust the differentials that you used based on relevant information. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(4) If you value oil under this paragraph (h), ONRR will allow a deduction, under §§1206.56 and 1206.57 or §1206.58, for the reasonable, actual costs to transport the oil:

(i) From the lease to a point where oil is given in exchange.

(ii) If oil is not exchanged to Cushing, Oklahoma, from the point where oil is received in exchange to the point where the oil received in exchange is sold.

(5) If you or your affiliate exchange(s) your oil at arm's length, and neither paragraph (h)(1) nor (2) of this section applies, ONRR will establish a value for the oil based on relevant matters. After ONRR establishes the value, you must report and pay royalties and any late payment interest owed based on that value.

**§ 1206.53 How do I calculate royalty value for oil that I or my affiliate do(es) not sell under an arm's-length contract?**

(a) The value of production for royalty purposes for your lease is the higher of either the value determined under this section or the IBMP value calculated under §1206.54. The unit value of your oil not sold under an arm's-length contract under this section for royalty purposes is the volume-weighted average of the gross proceeds paid or received by you or your affiliate, including your refining affiliate, for purchases or sales under arm's-length contracts.

(1) When calculating that unit value, use only purchases or sales of other like-quality oil produced from the field (or the same area if you do not have sufficient arm's-length purchases or sales of oil produced from the field) during the production month.

(2) You may adjust the gross proceeds determined under paragraph (a) of this section for transportation costs under paragraph (c) of this section and §§1206.56 and 1206.57 or §1206.58 before including those proceeds in the volume-weighted average calculation.

(3) If you have purchases away from the field(s) and cannot calculate a price in the field because you cannot determine the seller's cost of transportation that would be allowed under paragraph (c) of this section and §§1206.56 and 1206.57 or §1206.58, you must not include those purchases in your volume-weighted average calculation.

(b) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arm's-length purchases or sales to the same gravity as that of the oil produced from the lease. Use applicable gravity adjustment tables for the field (or the same general area for like-quality oil if you do not have gravity adjustment tables for the specific field) to normalize for gravity, as shown in the example below.

(1) *Example 1.* Assume that a lessee, who owns a refinery and refines the oil produced from the lease at that refinery, purchases like-quality oil from other producers in the same field at arm's length for use as feedstock in its

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refinery. Further assume that the oil produced from the lease that is being valued under this section is Wyoming general sour with an API gravity of 23.5°. Assume that the refinery pur-

chases at arm's-length oil (all of which must be Wyoming general sour) in the following volumes of the API gravities stated at the prices and locations indicated:

|                  |       |                   |   |
|------------------|-------|-------------------|---|
| 10,000 bbl ..... | 24.5° | \$34.70/bbl ..... | Purchased in the field.   |
| 8,000 bbl .....  | 24.0° | \$34.00/bbl ..... | Purchased at the refinery after the third-party producer transported it to the refinery, and the lessee does not know the transportation costs. |
| 9,000 bbl .....  | 23.0° | \$33.25/bbl ..... | Purchased in the field.   |
| 4,000 bbl .....  | 22.0° | \$33.00/bbl ..... | Purchased in the field.   |

(2) *Example 2.* Because the lessee does not know the costs that the seller of the 8,000 bbl incurred to transport that volume to the refinery, that volume will not be included in the volume-weighted average price calculation. Further assume that the gravity adjustment scale provides for a deduction

of \$0.02 per 1/10 degree API gravity below 34°. Normalized to 23.5° (the gravity of the oil being valued under this section), the prices of each of the volumes that the refiner purchased that are included in the volume-weighted average calculation are as follows:

|                  |       |                   |   |
|------------------|-------|-------------------|---|
| 10,000 bbl ..... | 24.5° | \$34.50/bbl ..... | (1.0° difference over 23.5° = \$0.20 deducted). |
| 9,000 bbl .....  | 23.0° | \$33.35/bbl ..... | (0.5° difference under 23.5° = \$0.10 added).   |
| 4,000 bbl .....  | 22.0° | \$33.30/bbl ..... | (1.5° difference under 23.5° = \$0.30 added).   |

(3) *Example 3.* The volume-weighted average price is ((10,000 bbl × \$34.50/bbl) + (9,000 bbl × \$33.35/bbl) + (4,000 bbl × \$33.30/bbl)) / 23,000 bbl = \$33.84/bbl. That price will be the value of the oil produced from the lease and refined prior to an arm's-length sale under this section.

(c) If you value oil under this section, ONRR will allow a deduction, under §§ 1206.56 and 1206.57 or § 1206.58, for the reasonable, actual costs:

(1) That you incur to transport oil that you or your affiliate sell(s), which is included in the volume-weighted average price calculation, from the lease to the point where the oil is sold.

(2) That the seller incurs to transport oil that you or your affiliate purchase(s), which is included in the volume-weighted average cost calculation, from the property where it is produced to the point where you or your affiliate purchase(s) it. You may not deduct any costs of gathering as part of a transportation deduction or allowance.

(d) If paragraphs (a) and (b) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, ONRR's Director may establish an alternative valuation method.

**§ 1206.54 How do I fulfill the lease provision regarding valuing production on the basis of the major portion of like-quality oil?**

(a) This section applies to any Indian leases that contain a major portion provision for determining value for royalty purposes. This section also applies to any Indian leases that provide that the Secretary may establish value for royalty purposes. The value of production for royalty purposes for your lease is the higher of either the value determined under this section or the gross proceeds you calculated under § 1206.52 or § 1206.53.

(b) You must submit a monthly Form ONRR-2014 using the higher of the IBMP value determined under this section or your gross proceeds under

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§1206.52 or §1206.53. Your Form ONRR-2014 must meet the requirements of 30 CFR 1210.61.

(c) ONRR will determine the monthly IBMP value for each designated area and crude oil type and post those val-

ues on our Web site at *www.onrr.gov*. The monthly IBMP value by designated area and crude oil type is calculated as follows:

(1) For Indian leases located in Oklahoma:

$$\left[ \left( \frac{\text{NYMEX CMA}}{\text{Price}} \right) \pm (\text{Roll}) \right] \times (1 - \text{LCTD})$$

(2) For all other Indian leases:

$$\left( \frac{\text{NYMEX CMA}}{\text{Price}} \right) \times (1 - \text{LCTD})$$

(d) ONRR will calculate the initial LCTD for each designated area (the same designated areas posted on its

Web site at *www.onrr.gov*) and crude oil type using the following formula:

$$\frac{\left[ \text{Average of Monthly NYMEX CMA for Previous 12 Months} - \text{Average of Monthly Major Portion Prices for Previous 12 Months} \right]}{\text{Average of Monthly NYMEX CMA for Previous 12 Months}}$$

(1) For the first full production month after July 1, 2015, ONRR will calculate the monthly Major Portion Prices using data reported on the Form ONRR-2014 for the previous 12 production months prior to July 1, 2015 (Previous Twelve Months). To the extent that ONRR does not have data on the Form ONRR-2014 regarding the crude oil type for the entire previous twelve months, ONRR will assume the crude oil type is the same for those months for which ONRR does not have data as the months for which the crude oil type was reported on the Form ONRR-2014 for the same leases and/or agreements.

(i) ONRR will array the calculated prices net of transportation by month from highest to lowest price for each designated area and crude oil type. For each month, ONRR will calculate the Major Portion Price as that price at which 25 percent plus 1 barrel (by volume) of the oil (starting from the highest) is sold.

(ii) To calculate the average of the monthly Major Portion Prices for the previous 12 months, ONRR will add the

monthly Major Portion Prices calculated in paragraph (d)(1)(i) of this section and divide by 12.

(2) For every month following the first full production month after July 1, 2015, ONRR will monitor the LCTD using data reported on the Form ONRR-2014 for the month ending two months before the current production month.

(i) ONRR will use the oil sales volume that lessees report on Form ONRR-2014 to monitor and, if necessary, to modify the LCTD used in the IBMP value.

(ii) ONRR will monitor oil sales volumes not reported under the sales type code OINX, as provided in 30 CFR 1210.61(a) and (b), on the Form ONRR-2014 on a monthly basis by designated area and crude oil type.

(iii) If the monthly oil sales volumes not reported under the sales type code OINX varies more than ±3 percent from 25 percent of the total reported oil sales volume for the month, then ONRR will revise the LCTD prospectively starting with the following month.

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(A) If monthly oil sales volumes not reported under the sales type code OINX on Form ONRR-2014 by the designated area and crude oil type fall below 22 percent, ONRR will increase the LCTD by 10 percent every month until the monthly oil sales volumes reported under the sales type code for gross proceeds on Form ONRR-2014 fall within the ±3 percent range. In Example 1, assume that the IBMP value is \$81.06 and the LCTD for the designated area is 14.28 percent. In the table below, the Percent of Volume not re-

ported as OINX is less than 22 percent, which triggers a modification to the LCTD. ONRR will adjust the LCTD upward by 10 percent (14.28 percent × 1.10). Therefore, for the next month, the LCTD will be 15.71 percent. In the following month, the IBMP value will equal the next month's NYMEX CMA multiplied by (1 - 0.1571). ONRR will continue to make adjustments in subsequent months until monthly sales volumes not reported as OINX fall within 22-28 percent of the total monthly sales volume.

EXAMPLE 1—DIFFERENTIAL ADJUSTMENT WHEN ARMS SALES VOLUME FOR THE CURRENT MONTH FALLS BELOW 22% OF TOTAL MONTHLY SALES VOLUME

| Lease   | Sales volume | Unit price | Sales type code | Cumulative volume | Percent of volume |
|---------|--------------|------------|-----------------|-------------------|-------------------|
| 1 ..... | 220          | 81.95      | ARMS .....      | 220               | 9.02              |
| 2 ..... | 275          | 81.71      | ARMS .....      | 495               | 20.29             |
| 3 ..... | 400          | 81.06      | OINX .....      | 895               | 36.68             |
| 4 ..... | 425          | 81.06      | OINX .....      | 1,320             | 54.10             |
| 5 ..... | 370          | 81.06      | OINX .....      | 1,690             | 69.26             |
| 6 ..... | 400          | 81.06      | OINX .....      | 2,090             | 85.66             |
| 7 ..... | 350          | 81.06      | OINX .....      | 2,440             | 100.00            |
|         | 2,440        |            |                 |                   |                   |

(B) If monthly oil sales volumes not reported under the sales type code OINX on Form ONRR-2014 by designated area and crude oil type exceed 28 percent, then ONRR will decrease the LCTD by 10 percent every month until the monthly oil sales volumes reported under the sales type code for gross proceeds on Form ONRR-2014 fall within the ±3 percent range. In Example 2, assume that the IBMP value is \$81.06 and the LCTD is 14.28 percent. As noted in the table below, however, the Percent of Volume not reported as

OINX is 32.69 percent, exceeding the 28 percent threshold, which triggers a modification to the LCTD. ONRR will adjust the LCTD downward by 10 percent (14.28 percent × 0.90). Therefore, for the next month, the LCTD will be 12.85 percent. In the following month, the IBMP will equal the next month's NYMEX CMA multiplied by (1 - 0.1285). ONRR will continue to make adjustments in subsequent months until monthly sales volumes reported as ARMS fall within 22-28 percent of the total monthly sales volume.

EXAMPLE 2—DIFFERENTIAL ADJUSTMENT WHEN ARMS SALES VOLUME NOT REPORTED AS OINX FOR THE CURRENT MONTH EXCEEDS 28% OF TOTAL MONTHLY SALES VOLUME

| Lease   | Sales volume | Unit price | Sales type code | Cumulative volume | Percent of volume |
|---------|--------------|------------|-----------------|-------------------|-------------------|
| 1 ..... | 230          | 81.95      | ARMS .....      | 230               | 11.06             |
| 2 ..... | 275          | 81.71      | ARMS .....      | 505               | 24.28             |
| 3 ..... | 175          | 81.45      | ARMS .....      | 680               | 32.69             |
| 4 ..... | 250          | 81.06      | OINX .....      | 930               | 44.71             |
| 5 ..... | 425          | 81.06      | OINX .....      | 1,355             | 65.14             |
| 6 ..... | 325          | 81.06      | OINX .....      | 1,680             | 80.77             |
| 7 ..... | 400          | 81.06      | OINX .....      | 2,080             | 100.00            |
|         | 2,080        |            |                 |                   |                   |

(e) In designated areas where there is insufficient data reported to ONRR on

Form ONRR-2014 to determine a differential for a specific crude oil type,

ONRR will use its discretion to determine an appropriate IBMP value.

**§ 1206.55 What are my responsibilities to place production into marketable condition and to market production?**

(a) You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor unless the lease agreement provides otherwise.

(b) If you must use gross proceeds under an arm's-length contract or your affiliate's gross proceeds under an arm's-length exchange agreement to determine value under §1206.52 or §1206.53, 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 in order to place the oil in marketable condition or to market the oil.

**§ 1206.56 What general transportation allowance requirements apply to me?**

(a) ONRR will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off of the lease under §1206.52 or §1206.53, as applicable. You may not deduct transportation costs to reduce royalties where you did not incur any costs to move a particular volume of oil. ONRR will not grant a transportation allowance for transporting oil taken as Royalty-In-Kind (RIK).

(b)(1) Except as provided in paragraph (b)(2) of this section, your transportation allowance deduction on the basis of a sales type code may not exceed 50 percent of the value of the oil at the point of sale, as determined under §1206.52. Transportation costs cannot be transferred between sales type codes or to other products.

(2) Upon your request, ONRR may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. You must demonstrate that the transportation costs incurred in excess of the limitation prescribed in paragraph (b)(1) of this section were reasonable, actual, and necessary. An application for exception (using Form ONRR-4393, Request to Exceed Regulatory Al-

lowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination. Under no circumstances may the value, for royalty purposes, under any sales type code, be reduced to zero.

(c) You must express transportation allowances for oil in dollars per barrel. If you or your affiliate's payments for transportation under a contract are not on a dollar-per-barrel basis, you must convert whatever consideration you or your affiliate are paid to a dollar-per-barrel equivalent.

(d) You must allocate transportation costs among all products produced and transported as provided in §1206.57.

(e) All transportation allowances are subject to monitoring, review, audit, and adjustment.

(f) If, after a review or audit, ONRR determines you have improperly determined a transportation allowance authorized by this subpart, then you must pay any additional royalties due plus late payment interest calculated under §1218.54 of this chapter or report a credit for, or request a refund of, any overpaid royalties without interest under §1218.53 of this chapter.

(g) You may not deduct any costs of gathering as part of a transportation deduction or allowance.

**§ 1206.57 How do I determine a transportation allowance if I have an arm's-length transportation contract?**

(a) *Arm's-length transportation.* (1) If you incur transportation costs under an arm's-length contract, your transportation allowance is the reasonable, actual costs that you incur to transport oil under that contract. You have the burden of demonstrating that your contract is arm's-length.

(2) You must submit to ONRR a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date that ONRR receives your report, which claims the allowance on Form ONRR-2014.

(3) If ONRR determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation 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 transportation allowance be determined in accordance with paragraph (b) of this section. When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4)(i) If an arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then you must allocate the total transportation costs in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value). Except as provided in this paragraph (a)(4)(i), you may not take an allowance for the costs of transporting lease production, which is not royalty-bearing, without ONRR's approval.

(ii) Notwithstanding the requirements of paragraph (a)(4)(i) of this section, you may propose to ONRR a cost allocation method on the basis of the values of the products transported. ONRR shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(5) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to ONRR.

(i) You may use the oil transportation allowance determined in accordance with its proposed allocation procedure until ONRR issues its determination on the acceptability of the cost allocation.

(ii) You must submit to ONRR all available data to support your proposal.

(iii) You must submit your initial proposal within 3 months after the last day of the month for which you request a transportation allowance, whichever is later (unless ONRR approves a longer period).

(iv) ONRR will determine the oil transportation allowance based on your proposal and any additional information that ONRR deems necessary.

(6) Where an arm's-length sales contract price includes a provision whereby the listed price is reduced by a transportation factor, ONRR will not consider the transportation factor to be a transportation allowance. You may use the transportation factor to determine your gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without ONRR's approval.

(b) *Reporting requirements.* (1) If ONRR requests, you must submit all data used to determine your transportation allowance. You must provide the data within a reasonable period of time that ONRR will determine.

(2) You must report transportation allowances as a separate entry on Form ONRR-2014. ONRR may approve a different reporting procedure on allotted leases and with lessor approval on Tribal leases.

(3) ONRR may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

**§ 1206.58 How do I determine a transportation allowance if I have a non-arm's-length transportation contract or have no contract?**

(a) *Non-arm's-length or no contract.* (1) If you have a non-arm's-length transportation contract or no contract, including those situations where you or your affiliate perform(s) transportation services for you, the transportation allowance is based on your reasonable, actual costs as provided in this paragraph (a)(1).

(2) You must submit the actual cost information to support the allowance to ONRR on Form ONRR-4110, Oil Transportation Allowance Report, within 3 months after the end of the calendar year to which the allowance applies. However, ONRR may approve a

longer time period. ONRR will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, ONRR may require you to modify your actual transportation allowance deduction.

(3) You must base a transportation allowance for non-arm's-length or non-contract situations on your actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment under paragraph (a)(3)(iv)(A) of this section, or a cost equal to the initial capital investment in the transportation system multiplied by a rate of return under paragraph (a)(3)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense that the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses that the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) You may use either depreciation or a return on depreciable capital investment. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without approval from ONRR.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method, based on the life of equipment or on the life of the re-

serves, which the transportation system services, or on a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. A change in ownership of a transportation system will not alter the depreciation schedule the original transporter/lessee established for the purposes of the allowance calculation. With or without a change in ownership, a transportation system can be depreciated only once. You may not depreciate equipment below a reasonable salvage value.

(B) ONRR will allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (a)(3)(v) of this section. No allowance will be provided for depreciation.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return you must use is the monthly average rate as published in Standard and Poor's Bond Guide for the first month of the reporting period for which the allowance is applicable and is effective during the reporting period. You must redetermine the rate at the beginning of each subsequent transportation allowance reporting period (which is determined under paragraph (b) of this section).

(4)(i) You must determine the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, you must allocate costs to each of the liquid products transported in the same proportion as the ratio of the volume of each liquid product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value) and you must make such allocation in a consistent and equitable manner. Except as provided in this paragraph (a)(4)(i), you may not take an allowance for transporting lease production that is not royalty-bearing without ONRR's approval.

(ii) Notwithstanding the requirements of paragraph (a)(4)(i) of this section, you may propose to ONRR a cost allocation method on the basis of the

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values of the products transported. ONRR will approve the method unless we determine that it is not consistent with the purposes of the regulations in this part.

(5) Where both gaseous and liquid products are transported through the same transportation system, you must propose a cost allocation procedure to ONRR.

(i) You may use the oil transportation allowance determined in accordance with its proposed allocation procedure until ONRR issues our determination on the acceptability of the cost allocation.

(ii) You must submit to ONRR all available data to support your proposal.

(iii) You must submit your initial proposal within 3 months after the last day of the month for which you request a transportation allowance (unless ONRR approves a longer period).

(iv) ONRR will determine the oil transportation allowance based on your proposal and any additional information that ONRR deems necessary.

(6) You may apply to ONRR for an exception from the requirement that you compute actual costs under paragraphs (a)(1) through (5) of this section.

(i) ONRR will grant the exception only if you have a tariff for the transportation system the Federal Energy Regulatory Commission (FERC) has approved for Indian leases.

(ii) ONRR will deny the exception request if it determines that the tariff is excessive as compared to arm's-length transportation charges by pipelines, owned by the lessee or others, providing similar transportation services in that area.

(iii) If there are no arm's-length transportation charges, ONRR will deny the exception request if:

(A) No FERC cost analysis exists and the FERC has declined to investigate under ONRR timely objections upon filing.

(B) The tariff significantly exceeds the lessee's actual costs for transportation as determined under this section.

(b) *Reporting requirements.* (1) If ONRR requests, you must submit all data used to determine your transportation allowance. You must provide the data

within a reasonable period of time that ONRR will determine.

(2) You must report transportation allowances as a separate entry on Form ONRR-2014. ONRR may approve a different reporting procedure on allotted leases and with lessor approval on Tribal leases.

(3) ONRR may require you to submit all of the data that you used to prepare your Form ONRR-4110. You must submit the data within a reasonable period of time that ONRR determines.

(4) ONRR may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(5) If you are authorized to use your FERC-approved tariff as your transportation cost under paragraph (a)(6) of this section, you must follow the reporting requirements of §1206.57(b).

(c) Notwithstanding any other provisions of this subpart, for other than arm's-length contracts, no cost will be allowed for oil transportation that results from payments (either volumetric or for value) for actual or theoretical losses. This section does not apply when the transportation allowance is based upon a FERC or State regulatory agency approved tariff.

(d) The provisions of this section will apply to determine transportation costs when establishing value using a netback valuation procedure or any other procedure that requires deduction of transportation costs.

**§ 1206.59 What interest applies if I improperly report a transportation allowance?**

(a) If you deduct a transportation allowance on Form ONRR-2014 without complying with the requirements of §§1206.56 and 1206.57 or §1206.58, you must pay additional royalties due plus late payment interest calculated under §1218.54 of this chapter.

(b) If you erroneously report a transportation allowance that results in an underpayment of royalties, you must pay any additional royalties due plus late payment interest calculated under §1218.54 of this chapter.



**§ 1206.60 What reporting adjustments must I make for transportation allowances?**

(a) If your actual transportation allowance is less than the amount that you claimed on Form ONRR-2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.54 of this chapter from the first day of the first month that you were authorized to deduct a transportation allowance to the date that you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on Form ONRR-2014 for any month during the period reported on the allowance form, you may report a credit for, or request a refund of, any overpaid royalties without interest under § 1218.53 of this chapter.

(c) If you make an adjustment under paragraph (a) or (b) of this section, then you must submit a corrected Form ONRR-2014 to reflect actual costs, together with any payment, using instructions that ONRR provides.

**§ 1206.61 How will ONRR determine if my royalty payments are correct?**

(a)(1) ONRR may monitor, review, and audit the royalties that you report, and, if ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR may direct you to use a different measure of royalty value.

(2) If ONRR directs you to use a different royalty value, you must pay any additional royalties due plus late payment interest calculated under § 1218.54 of this chapter, or you may report a credit for, or request a refund of, any overpaid royalties without interest under § 1218.53 of this chapter.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the oil. If ONRR determines that a contract does not reflect the total consideration, you must value the oil sold as the total consideration accruing to you or your affiliate.

**§ 1206.62 How do I request a value determination?**

(a) You may request a value determination from ONRR regarding any oil produced. Your request must:

- (1) Be in writing.
- (2) Identify specifically all leases involved, all interest owners of those leases, the designee(s), 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).
- (6) Suggest your proposed valuation method.

(b) In response to your request, ONRR may:

- (1) Request that the Assistant Secretary for Indian Affairs issue a valuation determination.
- (2) Decide that ONRR will issue guidance.

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

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

(c)(1) A value determination that the Assistant Secretary for Indian Affairs signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a value determination, you must make any adjustments to royalty payments that follow from the determination, and, if you owe additional royalties, you must pay the additional royalties due plus late payment interest calculated under § 1218.54 of this chapter.

(3) A value determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701-706.

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(d) Guidance that ONRR issues is not binding on ONRR, the Indian lessor, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

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

(e) ONRR or the Assistant Secretary may use any of the applicable valuation criteria in this subpart to provide guidance or make a determination.

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

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

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

(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 § 1206.65.

## § 1206.63 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of oil as measured at the point of royalty settlement that BLM approves.

(b) If you determine the value of oil under § 1206.52, § 1206.53, or § 1206.54 based on a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement that BLM approves for the lease, you must adjust that value for the differences in quantity and/or quality.

(c) You may not make any deductions from the royalty volume or royalty value for actual or theoretical

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losses incurred before the royalty settlement point unless BLM determines that any actual loss was unavoidable.

## § 1206.64 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.

(a) You must show:

(1) How you calculated the value that you reported, including all adjustments for location, quality, and transportation.

(2) How you complied with these rules.

(b) On request, you must make available sales, volume, and transportation data for production that you sold, purchased, or obtained from the field or area. You must make this data available to ONRR, Indian representatives, or other authorized persons.

(c) You can find recordkeeping requirements in §§ 1207.5, 1212.50, and 1212.51 of this chapter.

(d) ONRR, Indian representatives, or other authorized persons may review and audit your data, and ONRR will direct you to use a different value if they determine that the reported value is inconsistent with the requirements of this subpart.

## § 1206.65 Does ONRR protect information that I provide?

(a) Certain information that you or your affiliate submit(s) to ONRR regarding the valuation of oil, including transportation allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

## Subpart C—Federal Oil

SOURCE: 85 FR 62023, Oct. 1, 2020, unless otherwise noted.

**§ 1206.100 What is the purpose of this subpart?**

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the OCS. It explains how you, as a lessee, must calculate the value of production for royalty purposes consistent with mineral leasing laws, other applicable laws, and lease terms.

(b) If you are a designee and if you dispose of production on behalf of a lessee, the terms “you” and “your” in this subpart refer to you and not to the lessee. In this circumstance, you must determine and report royalty value for the lessee’s oil by applying the rules in this subpart to your disposition of the lessee’s oil.

(c) If you are a designee and only report for a lessee and do not dispose of the lessee’s production, references to “you” and “your” in this subpart refer to the lessee and not the designee. In this circumstance, you as a designee must determine and report royalty value for the lessee’s oil by applying the rules in this subpart to the lessee’s disposition of its oil.

(d) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR’s Director establishing a method to determine the value of production from any lease that ONRR expects would at least approximate the value established under this subpart; express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(e) ONRR may audit, monitor, or review and adjust all royalty payments.

**§ 1206.101 How do I calculate royalty value for oil I or my affiliate sell(s) under an arm’s-length contract?**

(a) The value of oil under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the arm’s-length contract less applicable allowances determined under § 1206.111 or § 1206.112. This value does not apply if you exercise an option

to use a different value provided in paragraph (c)(1) or (c)(2)(i) of this section or if ONRR decides to value your oil under § 1206.105. You must use this paragraph (a) to value oil when:

(1) You sell under an arm’s-length sales contract; OR

(2) You sell or transfer to your affiliate or another person under a non-arm’s-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm’s-length contract, unless you exercise the option provided in paragraph (c)(2)(i) of this section.

(b) If you have multiple arm’s-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the volume-weighted average of the values established under this section for each contract for the sale of oil produced from that lease.

(c)(1) If you enter into an arm’s-length exchange agreement, or multiple sequential arm’s-length exchange agreements, and following the exchange(s) that you or your affiliate sell(s) the oil received in the exchange(s) under an arm’s-length contract, then you may use either paragraph (a) of this section or § 1206.102 to value your production for royalty purposes. If you fail to make the election required under this paragraph, you may not make a retroactive election, and ONRR may decide your value under § 1206.105.

(i) If you use paragraph (a) of this section, your gross proceeds are the gross proceeds under your or your affiliate’s arm’s-length sales contract after the exchange(s) occur(s). You must adjust your gross proceeds for any location or quality differential, or other adjustments, that you received or paid under the arm’s-length exchange agreement(s). If ONRR determines that any arm’s-length exchange agreement does not reflect reasonable location or quality differentials, ONRR may decide your value under § 1206.105. You may not otherwise use the price or differential specified in an arm’s-length exchange agreement to value your production.

(ii) When you elect under paragraph (c)(1) of this section to use paragraph (a) of this section or § 1206.102, you

must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) sold under arm's-length contracts following arm's-length exchange agreements. You may not change your election more often than once every two years.

(2)(i) If you sell or transfer your oil production to your affiliate, and that affiliate or another affiliate then sells the oil under an arm's-length contract, you may use either paragraph (a) of this section or §1206.102 to value your production for royalty purposes.

(ii) When you elect under paragraph (c)(2)(i) of this section to use paragraph (a) of this section or §1206.102, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that your affiliates resell at arm's-length. You may not change your election more often than once every two years.

EFFECTIVE DATE NOTE: At 86 FR 4653, Jan. 15, 2021, §1206.101 was amended by revising paragraphs (a) introductory text, (c)(1) introductory text, and (c)(1)(i), and adding paragraph (d), effective Feb. 12, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the added and revised text is set forth as follows:

**§ 1206.101 How do I calculate royalty value for oil I or my affiliate sell(s) under an arm's-length contract?**

(a) The value of oil under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the arm's-length contract less applicable allowances determined under §1206.111 or 1206.112. This value does not apply if you exercise an option to use a different value provided in paragraph (c)(1) or (c)(2)(i) of this section, or if one of the exceptions in paragraph (d) of this section applies. You must use this paragraph (a) to value oil when:

\* \* \* \* \*

(c)(1) If you enter into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, and following the exchange(s) that you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you may use either paragraph (a) of this section or §1206.102 to value your pro-

duction for royalty purposes. If you fail to make the election required under this paragraph, you may not make a retroactive election.

(i) If you use paragraph (a) of this section, your gross proceeds are the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s). You must adjust your gross proceeds for any location or quality differential, or other adjustments, that you received or paid under the arm's-length exchange agreement(s). If ONRR determines that any arm's-length exchange agreement does not reflect reasonable location or quality differentials, ONRR may require you to value the oil under §1206.102. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

\* \* \* \* \*

(d) This paragraph contains exceptions to the valuation rule in paragraph (a) of this section. Apply these exceptions on an individual contract basis.

(1) In conducting reviews and audits, if ONRR determines that any arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, ONRR may require that you value the oil sold under that contract either under §1206.102 or at the total consideration received.

(2) You must value the oil under §1206.102 if ONRR determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

- (i) Misconduct by or between the parties to the arm's-length contract; or
- (ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

**§ 1206.102 How do I value oil not sold under an arm's-length contract?**

This section explains how to value oil that you may not value under §1206.101 or that you elect under §1206.101(c)(1) to value under this section, unless ONRR decides to value your oil under 1206.105. First, determine if paragraph (a), (b), or (c) of this section applies to production from your lease, or if you may apply paragraph (d) or (e) of this section with ONRR's approval.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean ANS spot prices published in any ONRR-approved publication during the trading month most concurrent

with the production month. For example, if the production month is June, calculate the average of the daily mean prices using the daily ANS spot prices published in the ONRR-approved publication for all of the business days in June.

(1) To calculate the daily mean spot price, you must average the daily high and low prices for the month in the selected publication.

(2) You must use only the days and corresponding spot prices for which such prices are published.

(3) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under §1206.111.

(4) After you select an ONRR-approved publication, you may not select a different publication more often than once every two years, unless the publication you use is no longer published or ONRR revokes its approval of the publication. If you must change publications, you must begin a new two-year period.

(b) *Production from leases in the Rocky Mountain Region.* This paragraph provides methods and options for valuing your production under different factual situations. You must consistently apply paragraph (b)(2) or (3) of this section to value all of your production from the same unit, communitization agreement, or lease (if the lease or a portion of the lease is not part of a unit or communitization agreement) that you cannot value under §1206.101 or that you elect under §1206.101(c)(1) to value under this section.

(1) You may elect to value your oil under either paragraph (b)(2) or (3) of this section. After you select either paragraph (b)(2) or (3) of this section, you may not change to the other method more often than once every two years, unless the method you have been using is no longer applicable and you must apply the other paragraph. If you change methods, you must begin a new two-year period.

(2) Value is the volume-weighted average of the gross proceeds accruing to the seller under your or your affiliate's arm's-length contracts for the purchase or sale of production from the field or area during the production month.

(i) The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliate's production from both Federal and non-Federal leases in the same field or area during that month.

(ii) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arm's-length purchases or sales to the same gravity as that of the oil produced from the lease.

(3) Value is the NYMEX price (without the roll), adjusted for applicable location and quality differentials and transportation costs under §1206.113.

(4) If you demonstrate to ONRR's satisfaction that paragraphs (b)(2) through (3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, ONRR's Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Region.*

(1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under §1206.113.

(2) If ONRR's Director determines that the use of the roll no longer reflects prevailing industry practice in crude oil sales contracts or that the most common formula that industry uses to calculate the roll changes, ONRR may terminate or modify the use of the roll under paragraph (c)(1) of this section at the end of each two-year period as of January 1, 2017, through a notice published in the FEDERAL REGISTER not later than 60 days before the end of the two-year period. ONRR will explain the rationale for terminating or modifying the use of the roll in this notice.

(d) *Unreasonable value.* If ONRR determines that the NYMEX price or ANS spot price does not represent a reasonable royalty value in any particular case, ONRR may decide to value your oil under §1206.105.

(e) *Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value.* If ONRR determines that the NYMEX price or ANS spot price does not represent a

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reasonable royalty value in any particular case, ONRR may decide to value your oil under § 1206.105.

EFFECTIVE DATE NOTE: At 86 FR 4653, Jan. 15, 2021, § 1206.102 was amended by revising the introductory text and paragraphs (d) and (e), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.102 How do I value oil not sold under an arm's-length contract?**

This section explains how to value oil that you may not value under § 1206.101 or that you elect under § 1206.101(c)(1) to value under this section. First, determine if paragraph (a), (b), or (c) of this section applies to production from your lease, or if you may apply paragraph (d) or (e) with ONRR's approval.

\* \* \* \* \*

(d) *Unreasonable value.* If ONRR determines that the NYMEX price or ANS spot price does not represent a reasonable royalty value in any particular case, ONRR may establish a reasonable royalty value based on other relevant matters.

(e) *Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value.* (1) Instead of valuing your production under paragraph (a), (b), or (c) of this section, you may apply to ONRR to establish a value representing the market at the refinery if:

- (i) You transport your oil directly to your or your affiliate's refinery, or exchange your oil for oil delivered to your or your affiliate's refinery; and
- (ii) You must value your oil under this section at the NYMEX price or ANS spot price; and
- (iii) You believe that use of the NYMEX price or ANS spot price results in an unreasonable royalty value.

(2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to:

- (i) Costs of acquiring other crude oil at or for the refinery;
- (ii) How adjustments for quality, location, and transportation were factored into the price paid for other oil;
- (iii) Volumes acquired for and refined at the refinery; and
- (iv) Any other appropriate evidence or documentation that ONRR requires.

(3) If ONRR establishes a value representing market value at the refinery, you may not take an allowance against that value under § 1206.113(b) unless it is included in ONRR's approval.

**§ 1206.103 What publications does ONRR approve?**

(a) ONRR will periodically publish on *www.onrr.gov* a list of ONRR-approved publications for the NYMEX price and ANS spot price based on certain criteria including, but not limited to:

- (1) Publications buyers and sellers frequently use.
- (2) Publications frequently mentioned in purchase or sales contracts.
- (3) Publications that use adequate survey techniques, including development of estimates based on daily surveys of buyers and sellers of crude oil, and, for ANS spot prices, buyers and sellers of ANS crude oil.
- (4) Publications independent from ONRR, other lessors, and lessees.

(b) Any publication may petition ONRR to be added to the list of acceptable publications.

(c) ONRR will specify the tables that you must use in the acceptable publications.

(d) ONRR may revoke its approval of a particular publication if we determine that the prices or differentials published in the publication do not accurately represent NYMEX prices or differentials or ANS spot market prices or differentials.

**§ 1206.104 How will ONRR determine if my royalty payments are correct?**

(a)(1) ONRR may monitor, review, and audit the royalties that you report, and, if ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR may direct you to use a different measure of royalty value or decide your value under § 1206.105.

(2) If ONRR directs you to use a different royalty value, you must either pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter), or report a credit for—or request a refund of—any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or to

your affiliate for the oil. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under §1206.105.

(c) ONRR may decide your value under §1206.105 if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties; or

(2) You have breached your duty to market the oil for the mutual benefit of yourself and the lessor by selling your oil at a value that is unreasonably low. ONRR may consider a sales price to be unreasonably low if it is 10 percent less than the lowest reasonable measures of market price including—but not limited to—index prices and prices reported to ONRR for like quality oil; or

(3) ONRR cannot determine if you properly valued your oil under §1206.101 or §1206.102 for any reason including—but not limited to—your or your affiliate’s failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(d) You have the burden of demonstrating that your or your affiliate’s contract is arm’s-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate’s contract include all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the oil.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate apply in a timely manner for a price increase or benefit allowed under your or your affiliate’s contract, but the purchaser refuses and you or your affiliate take reasonable documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment ob-

ligation in situations where a purchaser fails to pay, in whole or in part or in a timely manner, for a quantity of oil.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may determine your value under §1206.105.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

EFFECTIVE DATE NOTE: At 86 FR 4653, Jan. 15, 2021, §1206.104 was amended by revising paragraphs (a)(1), (b), (c) introductory text, (c)(2), and (g)(1), and (2), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.104 How will ONRR determine if my royalty payments are correct?**

(a)(1) ONRR may monitor, review, and audit the royalties that you report, and, if ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR may establish a reasonable royalty value based on other relevant matters.

\* \* \* \* \*

(b) ONRR may examine whether your or your affiliate’s contract reflects the total consideration transferred for Federal oil, either directly or indirectly, from the buyer to you or your affiliate. If ONRR determines that additional consideration beyond that reflected in the contract was transferred, or that any portion of the consideration was not included in gross proceeds reported, ONRR may establish a reasonable royalty value based on other relevant matters.

(c) ONRR may establish a reasonable royalty value based on other relevant matters if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

\* \* \* \* \*

§ 1206.105

(2) You have breached your duty to market the oil for the mutual benefit of yourself and the lessor; or

\* \* \* \* \*

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may establish a reasonable royalty value based on other relevant matters.

\* \* \* \* \*

§ 1206.105 How will ONRR determine the value of my oil for royalty purposes?

If ONRR decides that we will value your oil for royalty purposes under §1206.104, or any other provision in this subpart, then we will determine value, for royalty purposes, by considering any information that we deem relevant, which may include, but is not limited to, the following:

- (a) The value of like-quality oil in the same field or nearby fields or areas
(b) The value of like-quality oil from the refinery or area
(c) Public sources of price or market information that ONRR deems reliable
(d) Information available and reported to ONRR, including but not limited to on form ONRR-2014 and the Oil and Gas Operations Report (Form ONRR-4054)
(e) Costs of transportation or processing if ONRR determines that they are applicable
(f) Any information that ONRR deems relevant regarding the particular lease operation or the salability of the oil

EFFECTIVE DATE NOTE: At 86 FR 4654, Jan. 15, 2021, §1206.105 was removed, effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021.

§ 1206.106 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.

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(a) You must show both of the following:

(1) How you calculated the value that you reported, including all adjustments for location, quality, and transportation.

(2) How you complied with these rules.

(b) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c) ONRR may review and audit your data, and ONRR will direct you to use a different value if we determine that the reported value is inconsistent with the requirements of this subpart.

§ 1206.107 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal government.

(b) If you use gross proceeds under an arm's-length contract in determining value, 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 oil in marketable condition or to market the oil.

§ 1206.108 How do I request a valuation determination?

(a) You may request a valuation determination from ONRR regarding any oil produced. Your request must:

- (1) Be in writing;
(2) Identify, specifically, all leases involved, all interest owners of those leases, the designee(s), 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 valuation method.

(b) In response to your request, ONRR may:



(1) Request that the Assistant Secretary for Policy, Management and Budget issue a valuation determination;

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to, the following:

(i) Requests for guidance on hypothetical situations

(ii) Matters that are the subject of pending litigation or administrative appeals

(c)(1) A valuation determination that the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a valuation determination, you must make any adjustments to royalty payments that follow from the determination and, if you owe additional royalties, you must pay the additional royalties due, plus late payment interest calculated under §§1218.54 and 1218.102 of this chapter.

(3) A valuation determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701-706.

(d) Guidance that ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

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

(e) ONRR or the Assistant Secretary may use any of the applicable valuation criteria in this subpart to provide guidance or to make a determination.

(f) A change in an applicable statute or regulation on which ONRR or the Assistant Secretary based any deter-

mination or guidance takes precedence over the determination or guidance, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the determination or guidance.

(g) ONRR or the Assistant Secretary generally will not retroactively modify or rescind a valuation 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 §1206.109.

EFFECTIVE DATE NOTE: At 86 FR 4654, Jan. 15, 2021, §1206.108 was amended by revising paragraphs (a) introductory text and (a)(5), and removing the words "Assistant Secretary" in paragraphs (c)(2), (c)(3), (d)(1), (e), (f), and (g) and adding in their place the words "Assistant Secretary for Policy, Management and Budget", effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.108 How do I request a valuation determination?**

(a) You may request a valuation determination from ONRR regarding any oil produced. Your request must comply with all of the following:

\* \* \* \* \*

(5) Provide your analysis of the issue(s);

\* \* \* \* \*

**§ 1206.109 Does ONRR protect information that I provide?**

(a) Certain information that you or your affiliate submit(s) to ONRR regarding valuation of oil, including transportation allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the

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Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

### **§ 1206.110 What general transportation allowance requirements apply to me?**

(a) ONRR will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off of the lease under §1206.110, §1206.111, or §1206.112, as applicable. You may not deduct transportation costs that you incur to move a particular volume of production to reduce royalties that you owe on production for which you did not incur those costs. This paragraph applies when:

(1)(i) The movement to the sales point is not gathering;

(ii) For oil produced on the OCS, the movement of oil from the wellhead to the first platform is not transportation; and

(2) You value oil under §1206.101 based on a sale at a point off of the lease, unit, or communitized area where the oil is produced; or

(3) You do not value your oil under §1206.102(a)(3) or (b)(3).

(b) You must calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. If your or your affiliate's transportation contract includes more than one liquid product, you must allocate costs consistently and equitably to each of the liquid products that are transported. Your allocation must use the same proportion as the ratio of the volume of each liquid product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to ONRR a prospective cost allocation method based on the values of the liquid products transported. ONRR will approve the method if it is consistent with the purposes of the regulations in this subpart.

(3) You may use your proposed procedure to calculate a transportation allowance beginning with the production

month following the month when ONRR received your proposed procedure until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your form ONRR-2014 for the months that you used the rejected method and pay any additional royalty due, plus late payment interest.

(c)(1) Where you or your affiliate transport(s) both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR.

(2) You may use your proposed procedure to calculate a transportation allowance until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your form ONRR-2014 for the months when you used the rejected method and pay any additional royalty and interest due.

(3) You must submit your initial proposal, including all available data, within three months after you first claim the allocated deductions on form ONRR-2014.

(d)(1) Your transportation allowance may not exceed 50 percent of the value of the oil, as determined under §1206.101 of this subpart.

(2) If ONRR approved your request to take a transportation allowance in excess of the 50-percent limitation under former §1206.109(c), that approval is terminated as of January 1, 2017.

(e) You must express transportation allowances for oil as a dollar-value equivalent. If your or your affiliate's payments for transportation under a contract are not on a dollar-per-unit basis, you must convert whatever consideration you or your affiliate are paid to a dollar-value equivalent.

(f) ONRR may determine your transportation allowance under §1206.105 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the oil for the mutual benefit of yourself and the lessor by transporting your oil at a cost that is unreasonably high. We

may consider a transportation allowance to be unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs including, but not limited to, transportation allowances reported to ONRR and tariffs for gas, residue gas, or gas plant product transported through the same system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under §1206.111 or §1206.112 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(g) You do not need ONRR's approval before reporting a transportation allowance.

EFFECTIVE DATE NOTE: At 86 FR 4654, Jan. 15, 2021, §1206.110 was amended by revising paragraphs (a), (f) introductory text and (f)(2), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.110 What general transportation allowance requirements apply to me?**

(a)(1) ONRR will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off of the lease under §1206.110, 1206.111, or 1206.112, as applicable. You may not deduct transportation costs that you incur to move a particular volume of production to reduce royalties that you owe on production for which you did not incur those costs. This paragraph applies when:

(i) You value oil under §1206.101 based on a sale at a point off of the lease, unit, or communitized area from which the oil is produced; or

(ii) You do not value your oil under §1206.102(a)(3) or (b)(3).

(2) You may not include any gathering costs in your transportation allowance under §1206.110, 1206.111, or 1206.112, as applicable, except those reasonable, actual gathering costs you incur for oil produced from a lease or unit on the OCS, any part of which lies in waters deeper than 200 meters, that meet all of the following criteria:

(i) The gathering costs are for oil for which you are entitled to take a transportation allowance under paragraph (a)(1) of this section;

(ii) The gathering costs are for movement of oil beyond a central accumulation point. For purposes of paragraph (a)(2) of this section, a central accumulation point may be a

single well, a subsea manifold, the last well in a group of wells connected in a series, or a platform extending above the surface of the water;

(iii) The gathering costs are for movement of oil to a facility that is not located on a lease or unit adjacent to the lease or unit on which the production originates. For purposes of paragraph (a)(2) of this section, an adjacent lease or unit is any lease or unit with at least one point of contact with the producing lease or unit. Typically, for a single OCS lease, there are 8 adjacent leases; and

(iv) The gathering costs are only those allocable to the royalty-bearing oil. Gathering costs properly allocable to non-royalty bearing substances, or any royalty-bearing substance other than oil, may not be included in your transportation allowance under this section.

\* \* \* \* \*

(f) ONRR may direct you to modify your transportation allowance if:

\* \* \* \* \*

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the oil for the mutual benefit of yourself and the lessor by transporting your oil at a cost that is unreasonably high; or

\* \* \* \* \*

**§ 1206.111 How do I determine a transportation allowance if I have an arm's-length transportation contract?**

(a)(1) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred, as more fully explained in paragraph (b) of this section, except as provided in §1206.110(f) and subject to the limitation in §1206.110(d).

(2) You must be able to demonstrate that your or your affiliate's contract is at arm's-length.

(3) You do not need ONRR's approval before reporting a transportation allowance for costs incurred under an arm's-length transportation contract.

(b) Subject to the requirements of paragraph (c) of this section, you may

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include, but are not limited to, the following costs to determine your transportation allowance under paragraph (a) of this section; you may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section including, but not limited to:

(1) The amount that you pay under your arm's-length transportation contract or tariff.

(2) Fees paid (either in volume or in value) for actual or theoretical line losses.

(3) Fees paid for administration of a quality bank.

(4) Fees paid to a terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance.

(5) Fees paid for short-term storage (30 days or less) incidental to transportation as a transporter requires.

(6) Fees paid to pump oil to another carrier's system or vehicles as required under a tariff.

(7) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub. These fees do not include title transfer fees.

(8) Payments for a volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower gravity crude oil for transportation.

(9) Costs of securing a letter of credit, or other surety, that the pipeline requires you, as a shipper, to maintain.

(10) Hurricane surcharges that you or your affiliate actually pay(s).

(11) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you, as a shipper, to maintain and that you do maintain in the line as line fill. You must calculate this cost as follows:

(i) First, multiply the volume that the pipeline requires you to maintain—and that you do maintain—in the pipeline by the value of that volume for the current month calculated under § 1206.101 or § 1206.102, as applicable.

(ii) Second, multiply the value calculated under paragraph (b)(11)(i) of this section by the monthly rate of return, calculated by dividing the rate of return specified in § 1206.112(i)(3) by 12.

(c) You may not include the following costs to determine your transportation allowance under paragraph (a) of this section:

(1) Fees paid for long-term storage (more than 30 days)

(2) Administrative, handling, and accounting fees associated with terminalling

(3) Title and terminal transfer fees

(4) Fees paid to track and match receipts and deliveries at a market center or to avoid paying title transfer fees

(5) Fees paid to brokers

(6) Fees paid to a scheduling service provider

(7) Internal costs, including salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production

(8) Gauging fees

(d) If you have no written contract for the arm's-length transportation of oil, then ONRR will determine your transportation allowance under § 1206.105. You may not use this paragraph (d) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.108(a).

(2) You may use that method to determine your allowance until ONRR issues its determination.

EFFECTIVE DATE NOTE: At 86 FR 4654, Jan. 15, 2021, § 1206.111 was amended by:

- a. Removing paragraph (d)(1)
- b. Redesignating paragraph (d) introductory text as (d)(1);
- c. Revising newly redesignated paragraph (d)(1); and
- d. Removing the word "may" in paragraph (d)(2) and adding in its place the word "must".

The amendments were effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.111 How do I determine a transportation allowance if I have an arm's length transportation contract?**

\* \* \* \* \*

(d)(1) If you have no written contract for the arm's-length transportation of oil, you must propose to ONRR a method to determine the allowance using the procedures in §1206.108(a).

\* \* \* \* \*

**§ 1206.112 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?**

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include the following:

(1) Capital costs and operating and maintenance expenses under paragraphs (e), (f), and (g) of this section.

(2) Overhead under paragraph (h) of this section.

(3)(i) Depreciation and a return on undepreciated capital investment under paragraph (i)(1) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (i)(2) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(ii) A return on the reasonable salvage value under paragraph (i)(1)(iii) of this section after you have depreciated the transportation system to its reasonable salvage value.

(c) To the extent not included in costs identified in paragraphs (e) through (h) of this section.

(1) If you or your affiliate incur(s) the following actual costs under your or your affiliate's non-arm's-length contract, you may include these costs in your calculations under this section:

(i) Fees paid to a non-affiliated terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance

(ii) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub; these fees do not include title transfer fees

(iii) A volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower gravity crude oil for transportation

(iv) Fees paid to a non-affiliated quality bank administrator for administration of a quality bank

(v) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you, as a shipper, to maintain—and that you do maintain—in the line as line fill; you must calculate this cost as follows:

(A) First, multiply the volume that the pipeline requires you to maintain—and that you do maintain—in the pipeline by the value of that volume for the current month calculated under §1206.101 or §1206.102, as applicable.

(B) Second, multiply the value calculated under paragraph (c)(1)(v)(A) of this section by the monthly rate of return, calculated by dividing the rate of return specified in paragraph (i)(3) of this section by 12.

(2) You may not include in your transportation allowance:

(i) Any of the costs identified under §1206.111(c); and/or

(ii) Fees paid (either in volume or in value) for actual or theoretical line losses.

(d) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(e) Allowable capital investment costs are generally those for depreciable fixed assets (including the costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(f) Allowable operating expenses include the following:

- (1) Operations supervision and engineering
- (2) Operations labor
- (3) Fuel

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- (4) Utilities
- (5) Materials
- (6) Ad valorem property taxes
- (7) Rent
- (8) Supplies
- (9) Any other directly allocable and attributable operating expense that you can document
- (g) Allowable maintenance expenses include the following:
  - (1) Maintenance of the transportation system
  - (2) Maintenance of equipment
  - (3) Maintenance labor
  - (4) Other directly allocable and attributable maintenance expenses that you can document
- (h) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.
  - (i)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method (based on the life of equipment or on the life of the reserves that the transportation system services), or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.
    - (i) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for purposes of the allowance calculation.
    - (ii) You may depreciate a transportation system, with or without a change in ownership, only once.
    - (iii)(A) To calculate the return on undepreciated capital investment, you may use an amount equal to the undepreciated capital investment in the transportation system multiplied by the rate of return that you determine under paragraph (i)(3) of this section.
      - (B) After you have depreciated a transportation system to the reasonable salvage value, you may continue

to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (i)(3) of this section.

(2) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (i)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must re-determine the rate at the beginning of each subsequent calendar year.

**§ 1206.113 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?**

This section applies when you use NYMEX prices or ANS spot prices to calculate the value of production under § 1206.102. As specified in this section, you must adjust the NYMEX price to reflect the difference in value between your lease and Cushing, Oklahoma, or adjust the ANS spot price to reflect the difference in value between your lease and the appropriate ONRR-recognized market center at which the ANS spot price is published (for example, Long Beach, California, or San Francisco, California). Paragraph (a) of this section explains how you adjust the value between the lease and the market center, and paragraph (b) of this section explains how you adjust the value between the market center and Cushing when you use NYMEX prices. Paragraph (c) of this section explains how adjustments may be made for quality differentials that are not accounted for through exchange agreements. Paragraph (d) of this section gives some examples. References in this section to "you" include your affiliates, as applicable.

(a) To adjust the value between the lease and the market center:

(1)(i) For oil that you exchange at arm's-length between your lease and the market center (or between any intermediate points between those locations), you must calculate a lease-to-market center differential by the applicable location and quality differentials derived from your arm's-length exchange agreement applicable to production during the production month.

(ii) For oil that you exchange between your lease and the market center (or between any intermediate points between those locations) under an exchange agreement that is not at arm's-length, you must obtain approval from ONRR for a location and quality differential. Until you obtain such approval, you may use the location and quality differential derived from that exchange agreement applicable to production during the production month. If ONRR prescribes a different differential, you must apply ONRR's differential to all periods for which you used your proposed differential. You must pay any additional royalties due resulting from using ONRR's differential, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties, plus interest, under 30 U.S.C. 1721(h).

(2) For oil that you transport between your lease and the market center (or between any intermediate points between those locations), you may take an allowance for the cost of transporting that oil between the relevant points, as determined under § 1206.111 or 1206.112, as applicable.

(3) If you transport or exchange at arm's-length (or both transport and exchange) at least 20 percent—but not all—of your oil produced from the lease to a market center, you must determine the adjustment between the lease and the market center for the oil that is not transported or exchanged (or both transported and exchanged) to or through a market center as follows:

(i) Determine the volume-weighted average of the lease-to-market center adjustment calculated under paragraphs (a)(1) and (2) of this section for the oil that you do transport or exchange (or both transport and ex-

change) from your lease to a market center.

(ii) Use that volume-weighted average lease-to-market center adjustment as the adjustment for the oil that you do not transport or exchange (or both transport and exchange) from your lease to a market center.

(4) If you transport or exchange (or both transport and exchange) less than 20 percent of the crude oil produced from your lease between the lease and a market center, you must propose to ONRR an adjustment between the lease and the market center for the portion of the oil that you do not transport or exchange (or both transport and exchange) to a market center. Until you obtain such approval, you may use your proposed adjustment. If ONRR prescribes a different adjustment, you must apply ONRR's adjustment to all periods for which you used your proposed adjustment. You must pay any additional royalties due resulting from using ONRR's adjustment, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(5) You may not both take a transportation allowance and use a location and quality adjustment or exchange differential for the same oil between the same points.

(b) For oil that you value using NYMEX prices, you must adjust the value between the market center and Cushing, Oklahoma, as follows:

(1) If you have arm's-length exchange agreements between the market center and Cushing under which you exchange to Cushing at least 20 percent of all of the oil that you own at the market center during the production month, you must use the volume-weighted average of the location and quality differentials from those agreements as the adjustment between the market center and Cushing for all of the oil that you produce from the leases during that production month for which that market center is used.

(2) If paragraph (b)(1) of this section does not apply, you must use the WTI differential published in an ONRR-approved publication for the market center nearest to your lease, for crude oil

most similar in quality to your production, as the adjustment between the market center and Cushing. For example, for light sweet crude oil produced offshore of Louisiana, you must use the WTI differential for Light Louisiana Sweet crude oil at St. James, Louisiana. After you select an ONRR-approved publication, you may not select a different publication more often than once every two years, unless the publication you use is no longer published or ONRR revokes its approval of the publication. If you must change publications, you must begin a new two-year period.

(3) If neither paragraph (b)(1) nor (2) of this section applies, you may propose an alternative differential to ONRR. Until you obtain such approval, you may use your proposed differential. If ONRR prescribes a different differential, you must apply ONRR's differential to all periods for which you used your proposed differential. You must pay any additional royalties due resulting from using ONRR's differential, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(c)(1) If you adjust for location and quality differentials or for transportation costs under paragraphs (a) and (b) of this section, you also must adjust the NYMEX price or ANS spot price for quality based on premiums or penalties determined by pipeline quality bank specifications at intermediate commingling points or at the market center if those points are downstream of the royalty measurement point that BSEE or BLM, as applicable, approve. You must make this adjustment only if, and to the extent that, such adjustments were not already included in the location and quality differentials determined from your arm's-length exchange agreements.

(2) If the quality of your oil, as adjusted, is still different from the quality of the representative crude oil at the market center after making the quality adjustments described in paragraphs (a), (b), and (c)(1) of this section, you may make further gravity adjustments using posted price gravity tables. If quality bank adjustments do

not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, of 5.0 cents per one-tenth percent difference in sulfur content.

(i) You may request prior ONRR approval to use a different adjustment.

(ii) If ONRR approves your request to use a different quality adjustment, you may begin using that adjustment for the production month following the month when ONRR received your request.

(d) The examples in this paragraph illustrate how to apply the requirement of this section.

(1) *Example 1.* Assume that a Federal lessee produces crude oil from a lease near Artesia, New Mexico. Further, assume that the lessee transports the oil to Roswell, New Mexico, and then exchanges the oil to Midland, Texas. Assume that the lessee refines the oil received in exchange at Midland. Assume that the NYMEX price is \$86.21/bbl, adjusted for the roll; that the WTI differential (Cushing to Midland) is -\$2.27/bbl; that the lessee's exchange agreement between Roswell and Midland results in a location and quality differential of -\$0.08/bbl; and that the lessee's actual cost of transporting the oil from Artesia to Roswell is \$0.40/bbl. In this example, the royalty value of the oil is  $\$86.21 - \$2.27 - \$0.08 - \$0.40 = \$83.46/\text{bbl}$ .

(2) *Example 2.* Assume the same facts as in the example in paragraph (d)(1) of this section, except that the lessee transports and exchanges to Midland 40 percent of the production from the lease near Artesia and transports the remaining 60 percent directly to its own refinery in Ohio. In this example, the 40 percent of the production would be valued at \$83.46/bbl, as explained in the previous example. In this example, the other 60 percent also would be valued at \$83.46/bbl.

(3) *Example 3.* Assume that a Federal lessee produces crude oil from a lease near Bakersfield, California. Further, assume that the lessee transports the oil to Hynes Station and then exchanges the oil to Cushing, which it further exchanges with oil that it refines. Assume that the ANS spot price



is \$105.65/bbl and that the lessee's actual cost of transporting the oil from Bakersfield to Hynes Station is \$0.28/bbl. The lessee must request approval from ONRR for a location and quality adjustment between Hynes Station and Long Beach. For example, the lessee likely would propose using the tariff on Line 63 from Hynes Station to Long Beach as the adjustment between those points. Assume that adjustment to be \$0.72, including the sulfur and gravity bank adjustments, and that ONRR approves the lessee's request. In this example, the preliminary (because the location and quality adjustment is subject to ONRR's review) royalty value of the oil is  $\$105.65 - \$0.72 - \$0.28 = \$104.65$ /bbl. The fact that oil was exchanged to Cushing does not change the use of ANS spot prices for royalty valuation.

**§ 1206.114 How will ONRR identify market centers?**

ONRR will monitor market activity and, if necessary, add to or modify the list of market centers that we publish to *www.onrr.gov*. ONRR will consider the following factors and conditions in specifying market centers:

- (a) Points where ONRR-approved publications publish prices useful for index purposes
- (b) Markets served
- (c) Input from industry and others knowledgeable in crude oil marketing and transportation
- (d) Simplification
- (e) Other relevant matters

**§ 1206.115 What are my reporting requirements under an arm's-length transportation contract?**

(a) You must use a separate entry on form ONRR-2014 to notify ONRR of an allowance based on transportation costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

**§ 1206.116 What are my reporting requirements under a non-arm's-length transportation contract?**

(a) You must use a separate entry on form ONRR-2014 to notify ONRR of an allowance based on transportation costs that you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.118 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You may find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d) If you are authorized under § 1206.112(j) to use an exception to the requirement to calculate your actual transportation costs, you must follow the reporting requirements of § 1206.115.

**§ 1206.117 What interest and penalties apply if I improperly report a transportation allowance?**

(a) If you deduct a transportation allowance on form ONRR-2014 that exceeds 50 percent of the value of the oil transported, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter, on the excess allowance amount taken from the date when that amount is taken to the date when you pay the additional royalties due.

(b) If you improperly net a transportation allowance against the oil instead of reporting the allowance as a separate entry on form ONRR-2014, ONRR may assess a civil penalty under 30 CFR part 1241.

EFFECTIVE DATE NOTE: At 86 FR 4654, Jan. 15, 2021, § 1206.117 was amended by revising paragraph (a), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021,

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at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.117 What interest and penalties apply if I improperly report a transportation allowance?**

(a) If you deduct a transportation allowance on form ONRR-2014 that exceeds 50 percent of the value of the oil transported without obtaining ONRR's prior approval under §1206.110(d)(2), you must pay additional royalties due, plus late payment interest calculated under §§1218.54 and 1218.102 of this chapter, on the excess allowance amount taken from the date when that amount is taken to the date when you file an exception request that ONRR approves. If you do not file an exception request, or if ONRR does not approve your request, you must pay late payment interest on the excess allowance amount taken from the date that amount is taken until the date you pay the additional royalties owed.

\* \* \* \* \*

**§ 1206.118 What reporting adjustments must I make for transportation allowances?**

(a) If your actual transportation allowance is less than the amount that you claimed on form ONRR-2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §§1218.54 and 1218.102 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on form ONRR-2014 for any month during the period reported on the allowance form, you are entitled to a credit plus interest.

**§ 1206.119 How do I determine royalty quantity and quality?**

(a) You must calculate royalties based on the quantity and quality of oil as measured at the point of royalty settlement that BLM or BSEE approves for onshore leases and OCS leases, respectively.

(b) If you base the value of oil determined under this subpart on a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement that BLM or BSEE approves, you must adjust

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that value for the differences in quantity and/or quality.

(c) You may not make any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that you sustain before the royalty settlement metering or measurement point is not subject to royalty if BLM or BSEE, whichever is appropriate, determines that such loss was unavoidable.

(d) You must pay royalties on 100 percent of the volume measured at the approved point of royalty settlement. You may not claim a reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that you claim to have taken place either before or after the approved point of royalty settlement.

**Subpart D—Federal Gas**

SOURCE: 85 FR 62030, Oct. 1, 2020, unless otherwise noted.

**§ 1206.140 What is the purpose and scope of this subpart?**

(a) This subpart applies to all gas produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how you, as a lessee, must calculate the value of production for royalty purposes consistent with mineral leasing laws, other applicable laws, and lease terms.

(b) The terms “you” and “your” in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR's Director establishing a method to determine the value of production from any lease that ONRR expects would at least approximate the value established under this subpart; express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR may audit and order you to adjust all royalty payments.

**§ 1206.141 How do I calculate royalty value for unprocessed gas that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?**

(a) This section applies to unprocessed gas. Unprocessed gas is:

- (1) Gas that is not processed;
- (2) Any gas that you are not required to value under §1206.142 or that ONRR does not value under §1206.144; or
- (3) Any gas that you sell prior to processing based on a price per MMBtu or Mcf when the price is not based on the residue gas and gas plant products.

(b) The value of gas under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract less a transportation allowance determined under §1206.152. This value does not apply if you exercise the option in paragraph (c) of this section or if ONRR decides to value your gas under §1206.144. You must use this paragraph (b) to value gas when:

- (1) You sell under an arm's-length contract;
- (2) You sell or transfer unprocessed gas to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or an affiliate of either of them, then sells the gas under an arm's-length contract, unless you exercise the option provided in paragraph (c) of this section;
- (3) You, your affiliate, or another person sell(s) unprocessed gas produced from a lease under multiple arm's-length contracts, and that gas is valued under this paragraph. Unless you exercise the option provided in paragraph (c) of this section, the value of the gas is the volume-weighted average of the values, established under this paragraph, for each contract for the sale of gas produced from that lease; or
- (4) You or your affiliate sell(s) under a pipeline cash-out program. In that case, for over-delivered volumes within the tolerance under a pipeline cash-out program, the value is the price that the pipeline must pay you or your affiliate under the transportation contract. You must use the same value for volumes that exceed the over-delivery tolerances, even if those volumes are subject to a lower price under the transportation contract.

(c) If you do not sell under an arm's-length contract, you may elect to value your gas under this paragraph (c). You may not change your election more often than once every two years.

(1)(i) If you can only transport gas to one index pricing point published in an ONRR-approved publication, available at *www.onrr.gov*, your value, for royalty purposes, is the highest reported monthly bidweek price for that index pricing point for the production month.

(ii) If you can transport gas to more than one index pricing point published in an ONRR-approved publication available at *www.onrr.gov*, your value, for royalty purposes, is the highest reported monthly bidweek price for the index pricing points to which your gas could be transported for the production month, whether or not there are constraints for that production month.

(iii) If there are sequential index pricing points on a pipeline, you must use the first index pricing point at or after your gas enters the pipeline.

(iv) You must reduce the number calculated under paragraphs (c)(1)(i) and (c)(1)(ii) of this section by 5 percent for sales from the OCS Gulf of Mexico and by 10 percent for sales from all other areas, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu.

(v) After you select an ONRR-approved publication available at *www.onrr.gov*, you may not select a different publication more often than once every two years.

(vi) ONRR may exclude an individual index pricing point found in an ONRR-approved publication if ONRR determines that the index pricing point does not accurately reflect the values of production. ONRR will publish a list of excluded index pricing points available at *www.onrr.gov*.

(2) You may not take any other deductions from the value calculated under this paragraph (c).

(d) If some of your gas is used, lost, unaccounted for, or retained as a fee under the terms of a sales or service agreement, that gas will be valued for royalty purposes using the same royalty valuation method for valuing the rest of the gas that you do sell.

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(e) If you have no written contract for the sale of gas or no sale of gas subject to this section and:

(1) There is an index pricing point for the gas, then you must value your gas under paragraph (c) of this section; or

(2) There is not an index pricing point for the gas, then ONRR will decide the value under §1206.144.

(i) You must propose to ONRR a method to determine the value using the procedures in §1206.148(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues our decision.

(iii) After ONRR issues our determination, you must make the adjustments under §1206.143(a)(2).

EFFECTIVE DATE NOTE: At 86 FR 4654, Jan. 15, 2021, §1206.141 was amended by:

a. Revising paragraphs (a)(2), (b) introductory text, (b)(2), (b)(3), (c) introductory text, (c)(1)(i), (c)(1)(ii), (c)(1)(iv), (c)(1)(vi), and (e)(2) introductory text;

b. Removing the word “may” in paragraph (e)(2)(ii) and adding in its place the word “must”; and

c. Adding paragraphs (f) and (g).

The amendments were effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the added and revised text is set forth as follows:

§ 1206.141 How do I calculate royalty value for unprocessed gas that I or my affiliate sell(s) under an arm’s-length or non-arm’s length contract?

(a) \* \* \*

(2) Any gas that you are not required to value under §1206.142; or

\* \* \* \* \*

(b) The value of gas under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm’s-length contract less a transportation allowance determined under §1206.152. This value does not apply if you exercise the option in paragraph (c) of this section. Unless you elect to value your gas under paragraph (c) of this section, you must use this paragraph (b) to value gas when:

\* \* \* \* \*

(2) You sell or transfer unprocessed gas to your affiliate or another person under a non-arm’s-length contract and that affiliate or person, or an affiliate of either of them, then sells the gas under an arm’s-length contract;

(3) You, your affiliate, or another person sell(s) unprocessed gas produced from a lease under multiple arm’s length contracts, and that gas is valued under this paragraph. The value of the gas is the volume-weighted average of the values, established under this paragraph, for each contract for the sale of gas produced from that lease; or

\* \* \* \* \*

(c) Alternatively, you may elect to value your unprocessed gas under this paragraph (c), which allows you to use an index-based valuation method to calculate royalty value. You may not change your election more often than once every two years.

(1)(i) If you can only transport gas to one index pricing point published in an ONRR-approved publication, available at *www.onrr.gov*, your value, for royalty purposes, is the published average bidweek price to which your gas may flow for that respective production month.

(ii) If you can transport gas to more than one index pricing point published in an ONRR-approved publication available at *www.onrr.gov*, your value, for royalty purposes, is the highest of the published average bidweek prices to which your gas may flow for that respective production month, whether or not there are constraints for that production month.

\* \* \* \* \*

(iv) You may adjust the number calculated under paragraphs (c)(1)(i) and (ii) of this section by reducing the value by 10 percent, but not less than 10 cents per MMBtu nor more than 40 cents per MMBtu for sales from the OCS Gulf of Mexico and by 15 percent, but not less than 10 cents per MMBtu nor more than 50 cents per MMBtu, for sales from all other areas.

\* \* \* \* \*

(vi) ONRR may exclude an individual index pricing point found in an ONRR-approved publication if ONRR determines that the index pricing point does not accurately reflect the values of production. ONRR will publish criteria for index pricing points available at *www.onrr.gov*.

\* \* \* \* \*

(e) \* \* \*

(2) There is not an index pricing point for the gas, then:

\* \* \* \* \*

(f) Under no circumstances may your gas be valued for royalty purposes at less than zero.

(g) If you elect to value your gas under paragraph (c) of this section, ONRR reserves the right to collect actual transaction data in the future to assess the validity of the index-based valuation option.

**§ 1206.142 How do I calculate royalty value for processed gas that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?**

(a) This section applies to the valuation of processed gas, including but not limited to:

(1) Gas that you or your affiliate do not sell, or otherwise dispose of, under an arm's-length contract prior to processing.

(2) Gas where your or your affiliate's arm's-length contract for the sale of gas prior to processing provides for payment to be determined on the basis of the value of any products resulting from processing, including residue gas or natural gas liquids.

(3) Gas that you or your affiliate process under an arm's-length keepwhole contract.

(4) Gas where your or your affiliate's arm's-length contract includes a reservation of the right to process the gas, and you or your affiliate exercise(s) that right.

(b) The value of gas subject to this section, for royalty purposes, is the combined value of the residue gas and all gas plant products that you determine under this section plus the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing that you determine under subpart C of this part less applicable transportation and processing allowances that you determine under this subpart, unless you exercise the option provided in paragraph (d) of this section.

(c) The value of residue gas or any gas plant product under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract. This value does not apply if you exercise the option provided in paragraph (d) of this section, or if ONRR decides to value your residue gas or any gas plant product under §1206.144. You must use this paragraph (c) to value residue gas or any gas plant product when:

(1) You sell under an arm's-length contract;

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of either of them, then sells the residue gas or any gas plant product under an arm's-length contract, unless you exercise the option provided in paragraph (d) of this section;

(3) You, your affiliate, or another person sell(s), under multiple arm's-length contracts, residue gas or any gas plant products recovered from gas produced from a lease that you value under this paragraph. In that case, unless you exercise the option provided in paragraph (d) of this section, because you sold non-arm's-length to your affiliate or another person, the value of the residue gas or any gas plant product is the volume-weighted average of the gross proceeds established under this paragraph for each arm's-length contract for the sale of residue gas or any gas plant products recovered from gas produced from that lease; or

(4) You or your affiliate sell(s) under a pipeline cash-out program. In that case, for over-delivered volumes within the tolerance under a pipeline cash-out program, the value is the price that the pipeline must pay to you or your affiliate under the transportation contract. You must use the same value for volumes that exceed the over-delivery tolerances, even if those volumes are subject to a lower price under the transportation contract.

(d) If you do not sell under an arm's-length contract, you may elect to value your residue gas and NGLs under this paragraph (d). You may not change your election more often than once every two years.

(1)(i) If you can only transport residue gas to one index pricing point published in an ONRR-approved publication available at [www.onrr.gov](http://www.onrr.gov), your value, for royalty purposes, is the highest reported monthly bidweek price for that index pricing point for the production month.

(ii) If you can transport residue gas to more than one index pricing point published in an ONRR-approved publication available at [www.onrr.gov](http://www.onrr.gov), your

value, for royalty purposes, is the highest reported monthly bidweek price for the index pricing points to which your gas could be transported for the production month, whether or not there are constraints, for the production month.

(iii) If there are sequential index pricing points on a pipeline, you must use the first index pricing point at or after your residue gas enters the pipeline.

(iv) You must reduce the number calculated under paragraphs (d)(1)(i) and (ii) of this section by 5 percent for sales from the OCS Gulf of Mexico and by 10 percent for sales from all other areas, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu.

(v) After you select an ONRR-approved publication available at *www.onrr.gov*, you may not select a different publication more often than once every two years.

(vi) ONRR may exclude an individual index pricing point found in an ONRR-approved publication if ONRR determines that the index pricing point does not accurately reflect the values of production. ONRR will publish a list of excluded index pricing points on *www.onrr.gov*.

(2)(i) If you sell NGLs in an area with one or more ONRR-approved commercial price bulletins available at *www.onrr.gov*, you must choose one bulletin, and your value, for royalty purposes, is the monthly average price for that bulletin for the production month.

(ii) You must reduce the number calculated under paragraph (d)(2)(i) of this section by the amounts that ONRR posts at *www.onrr.gov* for the geographic location of your lease. The methodology that ONRR will use to calculate the amounts is set forth in the preamble to this regulation. This methodology is binding on you and ONRR. ONRR will update the amounts periodically using this methodology.

(iii) After you select an ONRR-approved commercial price bulletin available at *www.onrr.gov*, you may not select a different commercial price bulletin more often than once every two years.

(3) You may not take any other deductions from the value calculated under this paragraph (d).

(4) ONRR will post changes to any of the rates in this paragraph (d) on its website.

(e) If some of your gas or gas plant products are used, lost, unaccounted for, or retained as a fee under the terms of a sales or service agreement, that gas will be valued for royalty purposes using the same royalty valuation method for valuing the rest of the gas or gas plant products that you do sell.

(f) If you have no written contract for the sale of gas or no sale of gas subject to this section and:

(1) There is an index pricing point or commercial price bulletin for the gas, then you must value your gas under paragraph (d) of this section.

(2) There is not an index pricing point or commercial price bulletin for the gas, then ONRR will determine the value under § 1206.144.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.148(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues our decision.

(iii) After ONRR issues our determination, you must make the adjustments under § 1206.143(a)(2).

EFFECTIVE DATE NOTE: At 86 FR 4655, Jan. 15, 2021, § 1206.142 was amended by:

a. Revising paragraphs (c) introductory text, (c)(2), (c)(3), (d)(1)(i), (d)(1)(ii), (d)(1)(iv), and (d)(1)(vi);

b. Removing the word “methodology” from paragraph (d)(2)(ii) and adding in its place the word “method”;

c. Removing the word “may” from paragraph (d)(2)(iii) and adding in its place the word “must”;

d. Revising paragraph (f)(2) introductory text;

e. Removing the word “may” from paragraph (f)(2)(ii) and adding in its place the word “must”; and

f. Adding paragraphs (g) and (h).

These amendments were effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the added and revised text is set forth as follows:

§ 1206.142 How do I calculate royalty value for processed gas that I or my affiliate sell(s) under an arm's-length or non-arm's length contract?

\* \* \* \* \*

(c) The value of residue gas or any gas plant product under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract. This value does not apply if you exercise the option provided in paragraph (d) of this section. Unless you exercise the option provided in paragraph (d) of this section, you must use this paragraph (c) to value residue gas or any gas plant product when:

\* \* \* \* \*

(2) You sell or transfer to your affiliate or another person under a non-arm's length contract, and that affiliate or person, or another affiliate of either of them, then sells the residue gas or any gas plant product under an arm's-length contract;

(3) You, your affiliate, or another person sell(s), under multiple arm's-length contracts, residue gas or any gas plant products recovered from gas produced from a lease that you value under this paragraph. In that case, because you sold non-arm's-length to your affiliate or another person, the value of the residue gas or any gas plant product is the volume-weighted average of the gross proceeds established under this paragraph for each arm's-length contract for the sale of residue gas or any gas plant products recovered from gas produced from that lease; or

\* \* \* \* \*

(d) Alternatively, you may elect to value your residue gas and NGLs under this paragraph (d). You may not change your election more often than once every two years.

(1)(i) If you can only transport residue gas to one index pricing point published in an ONRR-approved publication available at www.onrr.gov, your value, for royalty purposes, is the published average bidweek price to which your gas may flow for that respective production month.

(ii) If you can transport residue gas to more than one index pricing point published in an ONRR-approved publication available at www.onrr.gov, your value, for royalty purposes, is the highest of the published average bidweek prices to which your gas may flow for that respective production month, whether or not there are constraints for that production month.

\* \* \* \* \*

(iv) You may adjust the number calculated under paragraphs (d)(1)(i) and (ii) of this section by reducing the value by 10 percent, but not less than 10 cents per MMBtu nor more than 40 cents per MMBtu for sales from the OCS Gulf of Mexico and by 15 percent, but not less than 10 cents per MMBtu nor more than 50 cents per MMBtu for sales from all other areas.

\* \* \* \* \*

(vi) ONRR may exclude an individual index pricing point found in an ONRR-approved publication if ONRR determines that the index pricing point does not accurately reflect the values of production. ONRR will publish criteria for index pricing points on www.onrr.gov.

\* \* \* \* \*

(f) \* \* \* (2) There is not an index pricing point or commercial price bulletin for the gas, then:

\* \* \* \* \*

(g) Under no circumstances may your gas be valued for royalty purposes at less than zero.

(h) If you elect to value your gas under paragraph (d) of this section, ONRR reserves the right to collect actual transaction data in the future to assess the validity of the index-based valuation option.

§ 1206.143 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties that you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value or decide your value under § 1206.144.

(2) If ONRR directs you to use a different royalty value, you must either pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter, or report a credit for, or request a refund of, any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the gas, residue gas,

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or gas plant products. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under §1206.144.

(c) ONRR may decide your value under §1206.144 if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You have breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by selling your gas, residue gas, or gas plant products at a value that is unreasonably low. ONRR may consider a sales price unreasonably low if it is 10 percent less than the lowest reasonable measures of market price, including, but not limited to, index prices and prices reported to ONRR for like-quality gas, residue gas, or gas plant products; or

(3) ONRR cannot determine if you properly valued your gas, residue gas, or gas plant products under §1206.141 or §1206.142 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include(s) all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the gas, residue gas, or gas plant products.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate make timely application for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses, and you or your affiliate take reasonable, documented measures to force purchaser compliance, you will not owe additional royalties unless or

until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or in a timely manner, for a quantity of gas, residue gas, or gas plant products.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide your value under §1206.144.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

EFFECTIVE DATE NOTE: At 86 FR 4655, Jan. 15, 2021, §1206.143 was amended by revising paragraphs (a)(1), (b), (c) introductory text, (c)(2), (g)(1), and (g)(2), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 1206.143 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties that you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value.

\* \* \* \* \*

(b) ONRR may examine whether your or your affiliate's contract reflects the total consideration transferred for Federal gas, either directly or indirectly, from the buyer to you or your affiliate. If ONRR determines that additional consideration beyond that reflected in the contract was transferred, or that any portion of the consideration was not included in gross proceeds reported, ONRR may establish a reasonable royalty value based on other relevant matters.

(c) ONRR may direct you to use a different measure of royalty value if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

\* \* \* \* \*



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(2) You have breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor; or

\* \* \* \* \*

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may direct you to use a different measure of royalty value.

\* \* \* \* \*

**§ 1206.144 How will ONRR determine the value of my gas for royalty purposes?**

If ONRR decides to value your gas, residue gas, or gas plant products for royalty purposes under §1206.143, or any other provision in this subpart, then ONRR will determine the value, for royalty purposes, by considering any information that we deem relevant, which may include, but is not limited to:

- (a) The value of like-quality gas in the same field or nearby fields or areas.
- (b) The value of like-quality residue gas or gas plant products from the same plant or area.
- (c) Public sources of price or market information that ONRR deems to be reliable.
- (d) Information available or reported to ONRR, including, but not limited to, on form ONRR-2014 and form ONRR-4054.
- (e) Costs of transportation or processing if ONRR determines that they are applicable.
- (f) Any information that ONRR deems relevant regarding the particular lease operation or the salability of the gas.

EFFECTIVE DATE NOTE: At 86 FR 4656, Jan. 15, 2021, §1206.144 was removed, effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021.

**§ 1206.145 What records must I keep in order to support my calculations of royalty under this subpart?**

If you value your gas under this subpart, you must retain all data relevant to the determination of the royalty

that you paid. You can find record-keeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR. You must comply with any such requirement within the time that ONRR specifies.

**§ 1206.146 What are my responsibilities to place production into marketable condition and to market production?**

(a) You must place gas, residue gas, and gas plant products in marketable condition and market the gas, residue gas, and gas plant products for the mutual benefit of the lessee and the lessor at no cost to the Federal government.

(b) If you use gross proceeds under an arm's-length contract to determine royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform in order to place the gas, residue gas, and gas plant products in marketable condition or to market the gas.

**§ 1206.147 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?**

Notwithstanding any provision in these regulations to the contrary, ONRR does not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR re-determining royalty due, under this subpart, final or binding as against the Federal government or its beneficiaries unless ONRR chooses to, in writing, formally close the audit period.

**§ 1206.148 How do I request a valuation determination?**

(a) You may request a valuation determination from ONRR regarding any gas produced. Your request must:

- (1) Be in writing;
- (2) Identify specifically all leases involved, all interest owners of those leases, the designee(s), and the operator(s) for those leases;

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(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 valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination;

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations; or

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination that the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments to royalty payments that follow from the determination, and, if you owe additional royalties, you must pay the additional royalties due, plus late payment interest calculated under §§1218.54 and 1218.102 of this chapter.

(3) A determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701-706.

(d) Guidance that ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or to request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under part 1290 of this title.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under part 1290 of this title.

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or to make a determination.

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

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.149.

EFFECTIVE DATE NOTE: At 86 FR 4656, Jan. 15, 2021, §1206.148 was amended by revising paragraphs (a) introductory text and (a)(5), and removing the words "Assistant Secretary" from paragraphs (c)(2), (c)(3), (d)(1), (e), and (f) and adding in their place the words "Assistant Secretary for Policy, Management and Budget", effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.148 How do I request a valuation determination?**

(a) You may request a valuation determination from ONRR regarding any gas produced. Your request must comply with all of the following:

\* \* \* \* \*

(5) Provide your analysis of the issue(s);

\* \* \* \* \*

**§ 1206.149 Does ONRR protect information that I provide?**

(a) Certain information that you or your affiliate submit(s) to ONRR regarding royalties on gas, including deductions and allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or

your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

**§ 1206.150 How do I determine royalty quantity and quality?**

(a)(1) You must calculate royalties based on the quantity and quality of unprocessed gas as measured at the point of royalty settlement that BLM or BSEE approves for onshore leases and OCS leases, respectively.

(2) If you base the value of gas determined under this subpart on a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement that BLM or BSEE approves, you must adjust that value for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant, even though residue gas and/or gas plant products may be in temporary storage.

(2) If you value residue gas and/or gas plant products determined under this subpart on a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease determined under paragraph (c) of this section, you must adjust that value for the differences in quantity and/or quality.

(c) You must determine the quantity of the residue gas and gas plant products attributable to a lease based on the following procedure:

(1) When you derive the net output of the processing plant from gas obtained from only one lease, you must base the quantity of the residue gas and gas plant products for royalty computation on the net output of the plant.

(2) When you derive the net output of a processing plant from gas obtained from more than one lease producing gas of uniform content, you must base the quantity of the residue gas and gas plant products allocable to each lease on the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease

by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of non-uniform content:

(i) You must determine the quantity of the residue gas allocable to each lease by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing that arithmetical product by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained.

(ii) You must determine the net output of gas plant products allocable to each lease by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, dividing that arithmetical product by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) You may request prior ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, you must apply that method to all gas production from Federal leases that is processed in the same plant. You must do so beginning with the production month following the month when ONRR received your request to use another method.

(d)(1) You may not make any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that you sustain before the royalty settlement meter or measurement point is not subject to royalty if BLM or BSEE, whichever is appropriate, determines that such loss was unavoidable.

(2) Except as provided in paragraph (d)(1) of this section and § 1202.151(c), you must pay royalties due on 100 percent of the volume determined under paragraphs (a) through (c) of this section. You may not reduce that determined volume for actual losses after

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you have determined the quantity basis, or for theoretical losses that you claim to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products, as provided in this subpart, less applicable allowances. You may not take any deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after you have determined the quantity basis or for theoretical losses that you claim to have taken place.

**§ 1206.151 [Reserved]**

**§ 1206.152 What general transportation allowance requirements apply to me?**

(a) ONRR will allow a deduction for the reasonable, actual costs to transport residue gas, gas plant products, or unprocessed gas from the lease to the point off of the lease under §1206.153 or §1206.154, as applicable. You may not deduct transportation costs that you incur when moving a particular volume of production to reduce royalties that you owe on production for which you did not incur those costs. This paragraph applies when:

(1) You value unprocessed gas under §1206.141(b) or residue gas and gas plant products under §1206.142(b) based on a sale at a point off of the lease, unit, or communitized area where the residue gas, gas plant products, or unprocessed gas is produced; and

(2)(i) The movement to the sales point is not gathering.

(ii) For gas produced on the OCS, the movement of gas from the wellhead to the first platform is not transportation.

(b) You must calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. If your or your affiliate's transportation contract includes more than one product in a gaseous phase, you must allocate costs consistently and equitably to each of the products transported. Your allocation must use the same proportion as the ratio of the volume of each product (excluding waste products with no value) to the volume of all products in

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the gaseous phase (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to ONRR a prospective cost allocation method based on the values of the products transported. ONRR will approve the method if it is consistent with the purposes of the regulations in this subpart.

(3) You may use your proposed procedure to calculate a transportation allowance beginning with the production month following the month when ONRR received your proposed procedure until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your form ONRR-2014 for the months when you used the rejected method and pay any additional royalty due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(c)(1) Where you or your affiliate transport(s) both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR.

(2) You may use your proposed procedure to calculate a transportation allowance until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your form ONRR-2014 for the months when you used the rejected method and pay any additional royalty due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(3) You must submit your initial proposal, including all available data, within three months after you first claim the allocated deductions on form ONRR-2014.

(d) If you value unprocessed gas under §1206.141(c) or residue gas and gas plant products under §1206.142 (d), you may not take a transportation allowance.

(e)(1) Your transportation allowance may not exceed 50 percent of the value of the residue gas, gas plant products, or unprocessed gas as determined under §1206.141 or §1206.142 of this subpart.

(2) If ONRR approved your request to take a transportation allowance in excess of the 50-percent limitation under former §1206.156(c)(3), that approval is terminated as of January 1, 2017.

(f) You must express transportation allowances for residue gas, gas plant products, or unprocessed gas as a dollar-value equivalent. If your or your affiliate's payments for transportation under a contract are not on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate are/is paid to a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under §1206.144 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by transporting your gas, residue gas, or gas plant products at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs, including, but not limited to, transportation allowances reported to ONRR and tariffs for gas, residue gas, or gas plant products transported through the same system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under §1206.153 or §1206.154 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(h) You do not need ONRR's approval before reporting a transportation allowance.

EFFECTIVE DATE NOTE: At 86 FR 4656, Jan. 15, 2021, §1206.152 was amended by revising paragraphs (a), (g) introductory text, and (g)(2), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.152 What general transportation allowance requirements apply to me?**

(a)(1) ONRR will allow a deduction for the reasonable, actual costs to transport residue gas, gas plant products, or unprocessed gas

from the lease to the point off of the lease under §1206.152, 1206.153, or 1206.154, as applicable. You may not deduct transportation costs that you incur when moving a particular volume of production to reduce royalties that you owe on production for which you did not incur those costs. This paragraph applies when you value unprocessed gas under §1206.141(b) or residue gas and gas plant products under §1206.142(b) based on a sale at a point off of the lease, unit, or communitized area from which the residue gas, gas plant products, or unprocessed gas is produced.

(2) You may not include any gathering costs in your transportation allowance under §1206.152, 1206.153, or 1206.154, as applicable, except those reasonable, actual gathering costs you incur for residue gas, gas plant products, or unprocessed gas produced from a lease or unit on the OCS, any part of which lies in waters deeper than 200 meters, that meet all of the following criteria:

(i) The gathering costs are for residue gas, gas plant products, or unprocessed gas for which you are entitled to take a transportation allowance under paragraph (a)(1) of this section;

(ii) The gathering costs are for movement of residue gas, gas plant products, or unprocessed gas beyond a central accumulation point. For purposes of paragraph (a)(2) of this section, a central accumulation point may be a single well, a subsea manifold, the last well in a group of wells connected in a series, or a platform extending above the surface of the water;

(iii) The gathering costs are for movement of residue gas, gas plant products, or unprocessed gas to a facility that is not located on a lease or unit adjacent to the lease or unit on which the production originates. For purposes of paragraph (a)(2) of this section, an adjacent lease or unit is any lease or unit with at least one point of contact with the producing lease or unit. Typically, for a single OCS lease, there are 8 adjacent leases; and

(iv) The gathering costs are only those allocable to the royalty-bearing residue gas, gas plant products, or unprocessed gas. Gathering costs properly allocable to non-royalty bearing substances, or any royalty-bearing substance other than residue gas, gas plant products, or unprocessed gas, may not be included in a transportation allowance under this section.

\* \* \* \* \*

(g) ONRR may direct you to modify your transportation allowance if:

\* \* \* \* \*

(2) ONRR determines that the consideration that you or your affiliate paid under

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an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor; or

\* \* \* \* \*

§ 1206.153 How do I determine a transportation allowance if I have an arm's-length transportation contract?

(a)(1) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred, as more fully explained in paragraph (b) of this section, except as provided in § 1206.152(g) and subject to the limitation in § 1206.152(e).

(2) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(b) Subject to the requirements of paragraph (c) of this section, you may include, but are not limited to, the following costs to determine your transportation allowance under paragraph (a) of this section; you may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section:

(1) Firm demand charges paid to pipelines. You may deduct firm demand charges or capacity reservation fees that you or your affiliate paid to a pipeline, including charges or fees for unused firm capacity that you or your affiliate have not sold before you report your allowance. If you or your affiliate receive(s) a payment from any party for release or sale of firm capacity after reporting a transportation allowance that included the cost of that unused firm capacity, or if you or your affiliate receive(s) a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on form ONRR-2014 by the amount of that payment. You must modify form ONRR-2014 by the amount received or credited for the affected reporting period and pay any resulting royalty due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(2) Gas Supply Realignment (GSR) costs. The GSR costs result from a pipeline reforming or terminating supply contracts with producers in order to implement the restructuring requirements of FERC Orders in 18 CFR part 284.

(3) Commodity charges. The commodity charge allows the pipeline to recover the costs of providing service.

(4) Wheeling costs. Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines.

(5) Gas Research Institute (GRI) fees. The GRI conducts research, development, and commercialization programs on natural gas-related topics for the benefit of the U.S. gas industry and gas customers. GRI fees are allowable, provided that such fees are mandatory in FERC-approved tariffs.

(6) Annual Charge Adjustment (ACA) fees. FERC charges these fees to pipelines to pay for its operating expenses.

(7) Payments (either volumetric or in value) for actual or theoretical losses. Theoretical losses are not deductible in transportation arrangements unless the transportation allowance is based on arm's-length transportation rates charged under a FERC or State regulatory-approved tariff. If you or your affiliate receive(s) volumes or credit for line gain, you must reduce your transportation allowance accordingly and pay any resulting royalties plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter;

(8) Temporary storage services. This includes short-duration storage services that market centers or hubs (commonly referred to as "parking" or "banking") offer or other temporary storage services that pipeline transporters provide, whether actual or provided as a matter of accounting. Temporary storage is limited to 30 days or fewer.

(9) Supplemental costs for compression, dehydration, and treatment of gas. ONRR allows these costs only if such services are required for transportation and exceed the services necessary to place

production into marketable condition required under § 1206.146 of this part.

(10) *Costs of surety.* You may deduct the costs of securing a letter of credit, or other surety, that the pipeline requires you or your affiliate, as a shipper, to maintain under a transportation contract.

(11) *Hurricane surcharges.* You may deduct hurricane surcharges that you or your affiliate actually pay(s).

(c) You may not include the following costs to determine your transportation allowance under paragraph (a) of this section:

(1) *Fees or costs incurred for storage.* This includes storing production in a storage facility, whether on or off of the lease, for more than 30 days.

(2) *Aggregator/marketer fees.* This includes fees that you or your affiliate pay(s) to another person (including your affiliates) to market your gas, including purchasing and reselling the gas or finding or maintaining a market for the gas production.

(3) *Penalties that you or your affiliate incur(s) as a shipper.* These penalties include, but are not limited to:

(i) *Over-delivery cash-out penalties.* This includes the difference between the price that the pipeline pays to you or your affiliate for over-delivered volumes outside of the tolerances and the price that you or your affiliate receive(s) for over-delivered volumes within the tolerances.

(ii) *Scheduling penalties.* This includes penalties that you or your affiliate incur(s) for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iii) *Imbalance penalties.* This includes penalties that you or your affiliate incur(s) (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iv) *Operational penalties.* This includes fees that you or your affiliate incur(s) for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline.

(4) *Intra-hub transfer fees.* These are fees that you or your affiliate pay(s) to hub operators for administrative serv-

ices (such as title transfer tracking) necessary to account for the sale of gas within a hub.

(5) *Fees paid to brokers.* This includes fees that you or your affiliate pay(s) to parties who arrange marketing or transportation, if such fees are separately identified from aggregator/marketer fees.

(6) *Fees paid to scheduling service providers.* This includes fees that you or your affiliate pay(s) to parties who provide scheduling services, if such fees are separately identified from aggregator/marketer fees.

(7) *Internal costs.* This includes salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for the sale or movement of production.

(8) *Other non-allowable costs.* Any cost you or your affiliate incur(s) for services that you are required to provide at no cost to the lessor, including, but not limited to, costs to place your gas, residue gas, or gas plant products into marketable condition disallowed under § 1206.146 and costs of boosting residue gas disallowed under § 1202.151(b).

(d) If you have no written contract for the transportation of gas, then ONRR will determine your transportation allowance under § 1206.144. You may not use this paragraph (d) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.148(a).

(2) You may use that method to determine your allowance until ONRR issues its determination.

EFFECTIVE DATE NOTE: At 86 FR 4656, Jan. 15, 2021, § 1206.153 was amended by revising paragraph (d), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.153 How do I determine a transportation allowance if I have an arm's-length transportation contract?**

\* \* \* \* \*

(d) If you have no written contract for the arm's-length transportation of gas, and neither you nor your affiliate perform your own

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transportation, you must propose to ONRR a method to determine the transportation allowance using the procedures in §1206.148(a).

(1) You must use that method to determine your allowance until ONRR issues its determination.

(2) [Reserved]

### **§ 1206.154 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?**

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (e), (f), and (g) of this section.

(2) Overhead under paragraph (h) of this section.

(3) Depreciation and a return on undepreciated capital investment under paragraph (i)(1) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (i)(2) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value under paragraph (i)(1)(iii) of this section, after you have depreciated the transportation system to its reasonable salvage value.

(c)(1) To the extent not included in costs identified in paragraphs (e) through (g) of this section, if you or your affiliate incur(s) the actual transportation costs listed under §1206.153(b)(2), (5), and (6) of this subpart under your or your affiliate's non-arm's-length contract, you may in-

clude those costs in your calculations under this section. You may not include any of the other costs identified under §1206.153(b).

(2) You may not include in your calculations under this section any of the non-allowable costs listed under §1206.153(c).

(d) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(e) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(f) Allowable operating expenses include the following:

- (1) Operations supervision and engineering
- (2) Operations labor
- (3) Fuel
- (4) Utilities
- (5) Materials
- (6) Ad valorem property taxes
- (7) Rent
- (8) Supplies
- (9) Any other directly allocable and attributable operating expense that you can document

(g) Allowable maintenance expenses include the following:

- (i) Maintenance of the transportation system
- (ii) Maintenance of equipment
- (iii) Maintenance labor
- (iv) Other directly allocable and attributable maintenance expenses that you can document

(h) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(i)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the transportation system services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without



ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(i) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for the purposes of the allowance calculation.

(ii) You may depreciate a transportation system only once with or without a change in ownership.

(iii)(A) To calculate the return on undepreciated capital investment, you may use an amount equal to the undepreciated capital investment in the transportation system multiplied by the rate of return that you determine under paragraph (i)(3) of this section.

(B) After you have depreciated a transportation system to the reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (i)(3) of this section.

(2) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (i)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must re-determine the rate at the beginning of each subsequent calendar year.

**§1206.155 What are my reporting requirements under an arm's-length transportation contract?**

(a) You must use a separate entry on form ONRR-2014 to notify ONRR of an allowance based on transportation costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

**§1206.156 What are my reporting requirements under a non-arm's-length transportation contract?**

(a) You must use a separate entry on form ONRR-2014 to notify ONRR of an allowance based on non-arm's-length transportation costs that you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.158 applies when you amend your report based on your actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

**§1206.157 What interest and penalties apply if I improperly report a transportation allowance?**

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under §§1218.54 and 1218.102 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit, with interest.

(b) If you deduct a transportation allowance on form ONRR-2014 that exceeds 50 percent of the value of the gas, residue gas, or gas plant products transported, you must pay late payment interest on the excess allowance amount taken from the date when that

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amount is taken until the date when you pay the additional royalties due.

(c) If you improperly net a transportation allowance against the sales value of the residue gas, gas plant products, or unprocessed gas instead of reporting the allowance as a separate entry on form ONRR-2014, ONRR may assess a civil penalty under 30 CFR part 1241.

EFFECTIVE DATE NOTE: At 86 FR 4656, Jan. 15, 2021, §1206.157 was amended by revising paragraph (b), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.157 What interest and penalties apply if I improperly report a transportation allowance?**

\* \* \* \* \*

(b) If you deduct a transportation allowance on form ONRR-2014 that exceeds 50 percent of the value of the gas, residue gas, or gas plant products transported without obtaining ONRR's prior approval under §1206.152(e)(2), you must pay additional royalties due, plus late payment interest calculated under §§1218.54 and 1218.102 of this chapter, on the excess allowance amount taken from the date when that amount is taken to the date when you file an exception request that ONRR approves. If you do not file an exception request, or if ONRR does not approve your request, you must pay late payment interest on the excess allowance amount taken from the date that amount is taken until the date you pay the additional royalties owed.

\* \* \* \* \*

**§ 1206.158 What reporting adjustments must I make for transportation allowances?**

(a) If your actual transportation allowance is less than the amount that you claimed on form ONRR-2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §§1218.54 and 1218.102 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on form ONRR-2014 for any month during the period re-

ported on the allowance form, you are entitled to a credit, plus interest.

**§ 1206.159 What general processing allowances requirements apply to me?**

(a)(1) When you value any gas plant product under §1206.142(c) of this subpart, you may deduct from the value the reasonable, actual costs of processing.

(2) You do not need ONRR's approval before reporting a processing allowance.

(b) You must allocate processing costs among the gas plant products. You must determine a separate processing allowance for each gas plant product and processing plant relationship. ONRR considers NGLs to be one product.

(c)(1) You may not apply the processing allowance against the value of the residue gas.

(2) The processing allowance deduction on the basis of an individual product may not exceed 66⅔ percent of the value of each gas plant product determined under §1206.142(c). Before you calculate the 66⅔-percent limit, you must first reduce the value for any transportation allowances related to post-processing transportation authorized under §1206.152.

(3) If ONRR approved your request to take a processing allowance in excess of the limitation in paragraph (c)(2) of this section under former §1206.158(c)(3), that approval is terminated as of January 1, 2017.

(4) If ONRR approved your request to take an extraordinary cost processing allowance under former §1206.158(d), ONRR terminates that approval as of January 1, 2017.

(d)(1) ONRR will not allow a processing cost deduction for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant.

(2) Where gas is processed for the removal of acid gases, commonly referred to as "sweetening," ONRR will not allow processing cost deductions for such costs unless the acid gases removed are further processed into a gas plant product.

(A) In such event, you are eligible for a processing allowance determined under this subpart.

(B) ONRR will not grant any processing allowance for processing lease production that is not royalty bearing.

(e) ONRR may determine your processing allowance under §1206.144 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length processing contract does not reflect the reasonable cost of the processing because you breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by processing your gas, residue gas, or gas plant products at a cost that is unreasonably high. We may consider a processing allowance unreasonably high if it is 10 percent higher than the highest reasonable measures of processing costs, including, but not limited to, processing allowances reported to ONRR; or

(3) ONRR cannot determine if you properly calculated a processing allowance under §1206.160 or §1206.161 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

EFFECTIVE DATE NOTE: At 86 FR 4656, Jan. 15, 2021, §1206.159 was amended by revising paragraph (c)(1), adding paragraph (c)(5), redesignating paragraphs (d)(2)(A) and (B) as (d)(2)(i) and (ii), and revising paragraphs (e) introductory text and (e)(2), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the added and revised text is set forth as follows:

**§ 1206.159 What general processing allowances requirements apply to me?**

\* \* \* \* \*

(c)(1) You may not apply the processing allowance against the value of the residue gas, except as provided in paragraph (c)(5) of this section.

\* \* \* \* \*

(5) If you incur extraordinary costs for processing gas, you may apply to ONRR for

an allowance for those costs which must be in addition to any other processing allowance to which the lessee is entitled pursuant to this section. You must demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional. You are not required to receive ONRR approval to continue an extraordinary processing allowance. However, you must report the deduction to ONRR in a form and manner prescribed by ONRR in order to retain the ability to deduct the allowance.

\* \* \* \* \*

(e) ONRR may direct you to modify your processing allowance if:

\* \* \* \* \*

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length processing contract does not reflect the reasonable cost of the processing because you breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor; or

\* \* \* \* \*

**§ 1206.160 How do I determine a processing allowance if I have an arm's-length processing contract?**

(a)(1) If you or your affiliate incur processing costs under an arm's-length processing contract, you may claim a processing allowance for the reasonable, actual costs incurred, as more fully explained in paragraph (b) of this section, except as provided in paragraphs (a)(3)(i) and (a)(3)(ii) of this section and subject to the limitation in §1206.159(c)(2).

(2) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(b)(1) If your or your affiliate's arm's-length processing contract includes more than one gas plant product, and you can determine the processing costs for each product based on the contract, then you must determine the processing costs for each gas plant product under the contract.

(2) If your or your affiliate's arm's-length processing contract includes more than one gas plant product, and you cannot determine the processing costs attributable to each product from

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the contract, you must propose an allocation procedure to ONRR.

(i) You may use your proposed allocation procedure until ONRR issues its determination.

(ii) You must submit all relevant data to support your proposal.

(iii) ONRR will determine the processing allowance based upon your proposal and any additional information that ONRR deems necessary.

(iv) You must submit the allocation proposal within three months of claiming the allocated deduction on form ONRR-2014.

(3) You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(4) If your or your affiliate's payments for processing under an arm's-length contract are not based on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid to a dollar-value equivalent.

(c) If you have no written contract for the arm's-length processing of gas, then ONRR will determine your processing allowance under §1206.144. You may not use this paragraph (c) if you or your affiliate perform(s) your own processing.

(1) You must propose to ONRR a method to determine the allowance using the procedures in §1206.148(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

EFFECTIVE DATE NOTE: At 86 FR 4657, Jan. 15, 2021, §1206.160 was amended by revising paragraphs (a)(1) and (c), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.160 How do I determine a processing allowance if I have an arm's length processing contract?**

(a)(1) If you or your affiliate incur processing costs under an arm's-length processing contract, you may claim a processing allowance for the reasonable, actual costs incurred, as more fully explained in paragraph (b) of this section, except as provided in §1206.159(e) and subject to the limitation in §1206.159(c)(2).

\* \* \* \* \*

(c) If you have no written contract for the arm's-length processing of gas, and neither you nor your affiliate perform your own processing, you must propose to ONRR a method to determine the processing allowance using the procedures in §1206.148(a).

(1) You must use that method to determine your allowance until ONRR issues a determination.

(2) [Reserved]

**§ 1206.161 How do I determine a processing allowance if I have a non-arm's-length processing contract?**

(a) This section applies if you or your affiliate do(es) not have an arm's-length processing contract, including situations where you or your affiliate provide your own processing services. You must calculate your processing allowance based on your or your affiliate's reasonable, actual costs for processing during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation and a return on undepreciated capital investment in accordance with paragraph (h)(1) of this section, or you may elect to use a cost equal to the initial depreciable capital investment in the processing plant under paragraph (h)(2) of this section. After you have elected to use either method for a processing plant, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value under paragraph (h)(1)(iii) of this section, after you have depreciated the processing plant to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of

delivery and installation of capital equipment), which are an integral part of the processing plant.

(e) Allowable operating expenses include the following:

- (1) Operations supervision and engineering
- (2) Operations labor
- (3) Fuel
- (4) Utilities
- (5) Materials
- (6) Ad valorem property taxes
- (7) Rent
- (8) Supplies
- (9) Any other directly allocable and attributable operating expense that you can document

(f) Allowable maintenance expenses may include the following:

- (1) Maintenance of the processing plant
- (2) Maintenance of equipment
- (3) Maintenance labor
- (4) Other directly allocable and attributable maintenance expenses that you can document

(g) Overhead, directly attributable and allocable to the operation and maintenance of the processing plant, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the processing plant services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(i) A change in ownership of a processing plant will not alter the depreciation schedule that the original processor/lessee established for purposes of the allowance calculation.

(ii) You may depreciate a processing plant only once with or without a change in ownership.

(iii)(A) To calculate a return on undepreciated capital investment, you

may use an amount equal to the undepreciated capital investment in the processing plant multiplied by the rate of return that you determine under paragraph (h)(3) of this section.

(B) After you have depreciated a processing plant to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (h)(3) of this section.

(2) You may use as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined under paragraph (h)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must re-determine the rate at the beginning of each subsequent calendar year.

(i)(1) You must determine the processing allowance for each gas plant product based on your or your affiliate's reasonable and actual cost of processing the gas. You must base your allocation of costs to each gas plant product upon generally accepted accounting principles.

(2) You may not take an allowance for processing lease production that is not royalty-bearing.

(j) You may apply for an exception from the requirement to calculate actual costs under paragraphs (a) and (b) of this section.

(1) ONRR will grant the exception if:

(i) You have or your affiliate has arm's-length contracts for processing other gas production at the same processing plant; and

(ii) At least 50 percent of the gas processed annually at the plant is processed under arm's-length processing contracts.

(2) If ONRR grants the exception, you must use as your processing allowance the volume-weighted average prices charged to other persons under arm's-length contracts for processing at the same plant.

**§ 1206.162 What are my reporting requirements under an arm's-length processing contract?**

(a) You must use a separate entry on form ONRR-2014 to notify ONRR of an allowance based on arm's-length processing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length processing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

**§ 1206.163 What are my reporting requirements under a non-arm's-length processing contract?**

(a) You must use a separate entry on form ONRR-2014 to notify ONRR of an allowance based on non-arm's-length processing costs that you or your affiliate incur(s).

(b)(1) For new non-arm's-length processing facilities or arrangements, you must base your initial deduction on estimates of allowable gas processing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the processing plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar processing plants.

(3) Section 1206.165 applies when you amend your report based on your actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d) If you are authorized under § 1206.161(j) to use an exception to the requirement to calculate your actual processing costs, you must follow the reporting requirements of § 1206.162.

**§ 1206.164 What interest and penalties apply if I improperly report a processing allowance?**

(a)(1) If ONRR determines that you took an unauthorized processing allowance, then you must pay any additional royalties due, plus late payment

interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(2) If you understated your processing allowance, you may be entitled to a credit, with interest.

(b) If you deduct a processing allowance on form ONRR-2014 that exceeds 66⅔ percent of the value of a gas plant product, you must pay late payment interest on the excess allowance amount taken from the date when that amount is taken until the date when you pay the additional royalties due.

(c) If you improperly net a processing allowance against the sales value of a gas plant product instead of reporting the allowance as a separate entry on form ONRR-2014, ONRR may assess a civil penalty under 30 CFR part 1241.

EFFECTIVE DATE NOTE: At 86 FR 4657, Jan. 15, 2021, § 1206.164 was amended by revising paragraph (b), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.164 What interest and penalties apply if I improperly report a processing allowance?**

\* \* \* \* \*

(b) If you deduct a processing allowance on form ONRR-2014 that exceeds 66⅔ percent of the value of a gas plant product without obtaining ONRR's prior approval under § 1206.159(c)(3), you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter, on the excess allowance amount taken from the date when that amount is taken to the date when you file an exception request that ONRR approves. If you do not file an exception request, or if ONRR does not approve your request, you must pay late payment interest on the excess allowance amount taken from the date that amount is taken until the date you pay the additional royalties owed.

\* \* \* \* \*

**§ 1206.165 What reporting adjustments must I make for processing allowances?**

(a) If your actual processing allowance is less than the amount that you claimed on form ONRR-2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest

calculated under §§ 1218.54 and 1218.102 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual processing allowance is greater than the amount that you claimed on form ONRR-2014 for any month during the period reported on the allowance form, you are entitled to a credit, plus interest.

### Subpart E—Indian Gas

SOURCE: 64 FR 43515, Aug. 10, 1999, unless otherwise noted.

#### § 1206.170 What does this subpart contain?

This subpart contains royalty valuation provisions applicable to Indian lessees.

(a) This subpart applies to all gas production from Indian (tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation). The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms. This subpart does not apply to Federal leases.

(b) If the specific provisions of any Federal statute, treaty, negotiated agreement, settlement agreement resulting from any administrative or judicial proceeding, or Indian oil and gas lease are inconsistent with any regulation in this subpart, then the Federal statute, treaty, negotiated agreement, settlement agreement, or lease will govern to the extent of that inconsistency.

(c) You may calculate the value of production for royalty purposes under methods other than those the regulations in this title require, but only if you, the tribal lessor, and ONRR jointly agree to the valuation methodology. For leases on Indian allotted lands, you and ONRR must agree to the valuation methodology.

(d) All royalty payments you make to ONRR are subject to monitoring, review, audit, and adjustment.

(e) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged

in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

#### § 1206.171 What definitions apply to this subpart?

The following definitions apply to this subpart and to subpart J of part 1202 of this title:

*Accounting for comparison* means the same as dual accounting.

*Active spot market* means a market where one or more ONRR-acceptable publications publish bidweek prices (or if bidweek prices are not available, first of the month prices) for at least one index-pricing point in the index zone.

*Allowance* means a deduction in determining value for royalty purposes. Processing allowance means an allowance for the reasonable, actual costs of processing gas determined under this subpart. Transportation allowance means an allowance for the reasonable, actual cost of transportation determined under this subpart.

*Approved Federal Agreement (AFA)* means a unit or communitization agreement approved under departmental regulations.

*Area* means a geographic region at least as large as the defined limits of an oil or gas field, in which oil or gas lease products have similar quality, economic, or legal characteristics. An area may be all lands within the boundaries of an Indian reservation.

*Arm's-length contract* means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. The following percentages (based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership) determine if persons are affiliated:

(1) Ownership in excess of 50 percent constitutes control.

(2) Ownership of 10 through 50 percent creates a presumption of control.

(3) Ownership of less than 10 percent creates a presumption of noncontrol

which ONRR may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates. Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. ONRR may require the lessee to certify the percentage of ownership or control of the entity. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

*Audit* means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other persons who pay royalties, rents, or bonuses on Indian leases.

*BIA* means the Bureau of Indian Affairs of the Department of the Interior.

*BLM* means the Bureau of Land Management of the Department of the Interior.

*Compression* means raising the pressure of gas.

*Condensate* means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

*Contract* means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

*Dedicated* means a contractual commitment to deliver gas production (or a specified portion of production) from a lease or well when that production is specified in a sales contract and that production must be sold pursuant to that contract to the extent that production occurs from that lease or well.

*Drip condensate* means any condensate recovered downstream of the facility measurement point without resorting to processing. Drip condensate includes condensate recovered as a result of its becoming a liquid during the transportation of the gas removed from the lease or recovered at the inlet of a

gas processing plant by mechanical means, often referred to as scrubber condensate.

*Dual Accounting* (or *accounting for comparison*) refers to the requirement to pay royalty based on a value which is the higher of the value of gas prior to processing less any applicable allowances as compared to the combined value of drip condensate, residue gas, and gas plant products after processing, less applicable allowances.

*Entitlement* (or *entitled share*) means the gas production from a lease, or allocable to lease acreage under the terms of an AFA, multiplied by the operating rights owner's percentage of interest ownership in the lease or the acreage.

*Facility measurement point* (or *point of royalty settlement*) means the point where the BLM-approved measurement device is located for determining the volume of gas removed from the lease. The facility measurement point may be on the lease or off-lease with BLM approval.

*Field* means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located.

*Gas* means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

*Gas plant products* means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas. However, it does not include residue gas.

*Gathering* means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area; or a central accumulation or treatment point



off the lease, unit, or communitized area as approved by BLM operations personnel.

*Gross proceeds* (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, and gas plant products produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, or field gathering to the extent that the lessee is obligated to perform them at no cost to the Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to reimbursements for severance taxes and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Indian royalty interest is exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

*Index* means the calculated composite price (\$/MMBtu) of spot-market sales published by a publication that meets ONRR-established criteria for acceptability at the index-pricing point.

*Index-pricing point (IPP)* means any point on a pipeline for which there is an index.

*Index zone* means a field or an area with an active spot market and published indices applicable to that field or area that are acceptable to ONRR under § 1206.172(d)(2).

*Indian allottee* means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

*Indian tribe* means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

*Lease* means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by

the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context. For purposes of this subpart, this definition excludes Federal leases.

*Lease products* means any leased minerals attributable to, originating from, or allocated to a lease.

*Lessee* means any person to whom the United States, a tribe, and/or individual Indian landowner issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease (including operating rights owners) as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

*Like-quality lease products* means lease products which have similar chemical, physical, and legal characteristics.

*Marketable condition* means a condition in which lease products are sufficiently free from impurities and otherwise so conditioned that a purchaser will accept them under a sales contract typical for the field or area.

*Minimum royalty* means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

*Natural gas liquids (NGL's)* means those gas plant products consisting of ethane, propane, butane, or heavier liquid hydrocarbons.

*Net-back method (or work-back method)* means a method for calculating market value of gas at the lease under which costs of transportation, processing, and manufacturing are deducted from the proceeds received for, or the value of, the gas, residue gas, or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by a sale under an arm's-length contract or comparison to other sales of such products.

*Net output* means the quantity of residue gas and each gas plant product that a processing plant produces.

## § 1206.172

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*Net profit share* means the specified share of the net profit from production of oil and gas as provided in the agreement.

*ONRR* means the Office of Natural Resources Revenue, Department of the Interior. ONRR includes, where appropriate, tribal auditors acting under agreements under the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* or other applicable agreements.

*Operating rights owner* (or *working interest owner*) means any person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease except to the extent that the operating rights or a portion thereof have been transferred from record title (see BLM regulations at 43 CFR 3100.0-5(d)).

*Person* means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

*Point of royalty measurement* means the same as facility measurement point.

*Processing* means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, desulphurization (or "sweetening"), and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

*Residue gas* means that hydrocarbon gas consisting principally of methane resulting from processing gas.

*Sales type code* means the contract type or general disposition (e.g., arm's-length or non-arm's-length) of production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm's-length or non-arm's-length nature of a transportation or processing allowance.

*Spot sales agreement* means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a

fixed period, usually of short duration. It also does not normally require a cancellation notice to terminate, and does not contain an obligation, or imply an intent, to continue in subsequent periods.

*Takes* means when the operating rights owner sells or removes production from, or allocated to, the lease, or when such sale or removal occurs for the benefit of an operating rights owner.

*Work-back method* means the same as net-back method.

[64 FR 43515, Aug. 10, 1999, as amended at 73 FR 15891, Mar. 26, 2008]

### § 1206.172 How do I value gas produced from leases in an index zone?

(a) *What leases this section applies to.* This section explains how lessees must value, for royalty purposes, gas produced from Indian leases located in an index zone. For other leases, value must be determined under § 1206.174.

(1) You must use the valuation provision of this section if your lease is in an index zone and meets one of the following two requirements:

- (i) Has a major portion provision;
- (ii) Does not have a major portion provision, but provides for the Secretary to determine the value of production.

(2) This section does not apply to carbon dioxide, nitrogen, or other nonhydrocarbon components of the gas stream. However, if they are recovered and sold separately from the gas stream, you must determine the value of these products under § 1206.174.

(b) *Valuing residue gas and gas before processing.* (1) Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (b) explains how you must value the following four types of gas:

- (i) Gas production before processing;
- (ii) Gas production that you certify on Form ONRR-4410, Certification for Not Performing Accounting for Comparison (Dual Accounting), is not processed before it flows into a pipeline with an index but which may be processed later;
- (iii) Residue gas after processing; and
- (iv) Gas that is never processed.

(2) The value of gas production that is not sold under an arm's-length dedicated contract is the index-based value determined under paragraph (d) of this section unless the gas was subject to a previous contract which was part of a gas contract settlement. If the previous contract was subject to a gas contract settlement and if the royalty-bearing contract settlement proceeds per MMBtu added to the 80 percent of the safety net prices calculated at §1206.172(e)(4)(i) exceeds the index-based value that applies to the gas under this section (including any adjustments required under §1206.176), then the value of the gas is the higher of the value determined under this section (including any adjustments required under §1206.176) or §1206.174.

(3) The value of gas production that is sold under an arm's-length dedicated contract is the higher of the index-based value under paragraph (d) of this section or the value of that production determined under §1206.174(b).

(c) *Valuing gas that is processed before it flows into a pipeline with an index.* Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (c) explains how you must value gas that is processed before it flows into a pipeline with an index. You must value this gas production based on the higher of the following two values:

(1) The value of the gas before processing determined under paragraph (b) of this section.

(2) The value of the gas after processing, which is either the alternative dual accounting value under §1206.173 or the sum of the following three values:

(i) The value of the residue gas determined under paragraph (b)(2) or (3) of this section, as applicable;

(ii) The value of the gas plant products determined under §1206.174, less any applicable processing and/or transportation allowances determined under this subpart; and

(iii) The value of any drip condensate associated with the processed gas determined under subpart B of this part.

(d) *Determining the index-based value for gas production.* (1) To determine the index-based value per MMBtu for production from a lease in an index zone, you must use the following procedures:

(i) For each ONRR-approved publication, calculate the average of the highest reported prices for all index-pricing points in the index zone, except for any prices excluded under paragraph (d)(6) of this section;

(ii) Sum the averages calculated in paragraph (d)(1)(i) of this section and divide by the number of publications; and

(iii) Reduce the number calculated under paragraph (d)(1)(ii) of this section by 10 percent, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu. The result is the index-based value per MMBtu for production from all leases in that index zone.

(2) ONRR will publish in the FEDERAL REGISTER the index zones that are eligible for the index-based valuation method under this paragraph. ONRR will monitor the market activity in the index zones and, if necessary, hold a technical conference to add or modify a particular index zone. Any change to the index zones will be published in the FEDERAL REGISTER. ONRR will consider the following five factors and conditions in determining eligible index zones:

(i) Areas for which ONRR-approved publications establish index prices that accurately reflect the value of production in the field or area where the production occurs;

(ii) Common markets served;

(iii) Common pipeline systems;

(iv) Simplification; and

(v) Easy identification in ONRR's systems, such as counties or Indian reservations.

(3) If market conditions change so that an index-based method for determining value is no longer appropriate for an index zone, ONRR will hold a technical conference to consider disqualification of an index zone. ONRR will publish notice in the FEDERAL REGISTER if an index zone is disqualified. If an index zone is disqualified, then production from leases in that index zone cannot be valued under this paragraph.

(4) ONRR periodically will publish in the FEDERAL REGISTER a list of acceptable publications based on certain criteria, including, but not limited to the following five criteria:

(i) Publications buyers and sellers frequently use;

(ii) Publications frequently referenced in purchase or sales contracts;

(iii) Publications that use adequate survey techniques, including the gathering of information from a substantial number of sales;

(iv) Publications that publish the range of reported prices they use to calculate their index; and

(v) Publications independent from DOI, lessors, and lessees.

(5) Any publication may petition ONRR to be added to the list of acceptable publications.

(6) ONRR may exclude an individual index price for an index zone in an ONRR-approved publication if ONRR determines that the index price does not accurately reflect the value of production in that index zone. ONRR will publish a list of excluded indices in the FEDERAL REGISTER.

(7) ONRR will reference which tables in the publications you must use for determining the associated index prices.

(8) The index-based values determined under this paragraph are not subject to deductions for transportation or processing allowances determined under §§ 1206.177, 1206.178, 1206.179, and 1206.180.

(e) *Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.* (1) Notwithstanding any other provision of this section, the value for royalty purposes of gas production from an Indian lease that is sold beyond the first index pricing point through which it flows cannot be less than the value determined under this paragraph (e).

(2) By June 30 following any calendar year, you must calculate for each month of that calendar year your safety net price per MMBtu using the procedures in paragraph (e)(3) of this section. You must calculate a safety net price for each month and for each index zone where you have an Indian lease for which you report and pay royalties.

(3) Your safety net price (S) for an index zone is the volume-weighted average contract price per delivered MMBtu under your or your affiliate's arm's-length contracts for the disposition of residue gas or unprocessed gas

produced from your Indian leases in that index zone as computed under this paragraph (e)(3).

(i) Include in your calculation only sales under those contracts that establish a delivery point beyond the first index pricing point through which the gas flows, and that include any gas produced from or allocable to one or more of your Indian leases in that index zone, even if the contract also includes gas produced from Federal, State, or fee properties. Include in your volume-weighted average calculation those volumes that are allocable to your Indian leases in that index zone.

(ii) Do not reduce the contract price for any transportation costs incurred to deliver the gas to the purchaser.

(iii) For purposes of this paragraph (e), the contract price will not include the following amounts:

(A) Any amounts you receive in compromise or settlement of a predecessor contract for that gas;

(B) Deductions for you or any other person to put gas production into marketable condition or to market the gas; and

(C) Any amounts related to marketable securities associated with the sales contract.

(4) Next, you must determine for each month the safety net differential (SND). You must perform this calculation separately for each index zone.

(i) For each index zone, the safety net differential is equal to:  $SND = [(0.80 \times S) - (1.25 \times I)]$  where (I) is the index-based value determined under 30 CFR 206.172(d).

(ii) If the safety net differential is positive you owe additional royalties.

(5)(i) To calculate the additional royalties you owe, make the following calculation for each of your Indian leases in that index zone that produced gas that was sold beyond the first index-pricing point through which the gas flowed and that was used in the calculation in paragraph (e)(3) of this section:

Lease royalties owed =  $SND \times V \times R$ , where R = the lease royalty rate and V = the volume allocable to the lease which produced gas that was sold beyond the first index pricing point.

(ii) If gas produced from any of your Indian leases is commingled or pooled

with gas produced from non-Indian properties, and if any of the combined gas is sold at a delivery point beyond the first index pricing point through which the gas flows, then the volume allocable to each Indian lease for which gas was sold beyond the first index pricing point in the calculation under paragraph (e)(5)(i) of this section is the volume produced from the lease multiplied by the proportion that the total volume of gas sold beyond the first index pricing point bears to the total volume of gas commingled or pooled from all properties.

(iii) Add the numbers calculated for each lease under paragraph (e)(5)(i) of this section. The total is the additional royalty you owe.

(6) You have the following responsibilities to comply with the minimum value for royalty purposes:

(i) You must report the safety net price for each index zone to ONRR on Form ONRR-4411, Safety Net Report, no later than June 30 following each calendar year;

(ii) You must pay and report on Form ONRR-2014 additional royalties due no later than June 30 following each calendar year; and

(iii) ONRR may order you to amend your safety net price within one year from the date your Form ONRR-4411 is due or is filed, whichever is later. If ONRR does not order any amendments within that one-year period, your safety net price calculation is final.

(f) *Excluding some or all tribal leases from valuation under this section.* (1) An Indian tribe may ask ONRR to exclude some or all of its leases from valuation under this section. ONRR will consult with BIA regarding the request.

(i) If ONRR approves the request for your lease, you must value your production under §1206.174 beginning with production on the first day of the second month following the date ONRR publishes notice of its decision in the FEDERAL REGISTER.

(ii) If an Indian tribe requests exclusion from an index zone for less than all of its leases, ONRR will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation.

(2) An Indian tribe may ask ONRR to terminate exclusion of its leases from valuation under this section. ONRR will consult with BIA regarding the request.

(i) If ONRR approves the request, you must value your production under §1206.172 beginning with production on the first day of the second month following the date ONRR publishes notice of its decision in the FEDERAL REGISTER.

(ii) Termination of an exclusion under paragraph (f)(2)(i) of this section cannot take effect earlier than 1 year after the first day of the production month that the exclusion was effective.

(3) The Indian tribe's request to ONRR under either paragraph (f)(1) or (2) of this section must be in the form of a tribal resolution.

(g) *Excluding Indian allotted leases from valuation under this section.* (1)(i) ONRR may exclude any Indian allotted leases from valuation under this section. ONRR will consult with BIA regarding the exclusion.

(ii) If ONRR excludes your lease, you must value your production under §1206.174 beginning with production on the first day of the second month following the date ONRR publishes notice of its decision in the FEDERAL REGISTER.

(iii) If ONRR excludes any Indian allotted leases under this paragraph (g)(1), it will exclude all Indian allotted leases in the same field.

(2)(i) ONRR may terminate the exclusion of any Indian allotted leases from valuation under this section. ONRR will consult with BIA regarding the termination.

(ii) If ONRR terminates the exclusion, you must value your production under §1206.172 beginning with production on the first day of the second month following the date ONRR publishes notice of its decision in the FEDERAL REGISTER.

**§ 1206.173 How do I calculate the alternative methodology for dual accounting?**

(a) *Electing a dual accounting method.* (1) If you are required to perform the accounting for comparison (dual accounting) under §1206.176, you have two choices. You may elect to perform the

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dual accounting calculation according to either § 1206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting).

(2) You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each ONRR-designated area. Your election for a designated area must apply to all of your Indian leases in that area.

(i) ONRR will publish in the FEDERAL REGISTER a list of the lease prefixes that will be associated with each designated area for purposes of this section. The ONRR-designated areas are as follows:

- (A) Alabama-Coushatta;
- (B) Blackfeet Reservation;
- (C) Crow Reservation;
- (D) Fort Belknap Reservation;
- (E) Fort Berthold Reservation;
- (F) Fort Peck Reservation;
- (G) Jicarilla Apache Reservation;
- (H) ONRR-designated groups of counties in the State of Oklahoma;
- (I) Navajo Reservation;
- (J) Northern Cheyenne Reservation;
- (K) Rocky Boys Reservation;
- (L) Southern Ute Reservation;
- (M) Turtle Mountain Reservation;
- (N) Ute Mountain Ute Reservation;
- (O) Uintah and Ouray Reservation;
- (P) Wind River Reservation; and
- (Q) Any other area that ONRR designates. ONRR will publish a new area designation in the FEDERAL REGISTER.

(ii) You may elect to begin using the alternative methodology for dual accounting at the beginning of any month. The first election to use the alternative methodology will be effective from the time of election through the end of the following calendar year. Thereafter, each election to use the alternative methodology must remain in effect for 2 calendar years. You may return to the actual dual accounting method only at the beginning of the next election period or with the written approval of ONRR and the tribal lessor for tribal leases, and ONRR for Indian allottee leases in the designated area.

(iii) When you elect to use the alternative methodology for a designated area, you must also use the alternative methodology for any new wells com-

menced and any new leases acquired in the designated area during the term of the election.

(b) *Calculating value using the alternative methodology for dual accounting.*

(1) The alternative methodology adjusts the value of gas before processing determined under either § 1206.172 or § 1206.174 to provide the value of the gas after processing. You must use the value of the gas after processing for royalty payment purposes. The amount of the increase depends on your relationship with the owner(s) of the plant where the gas is processed. If you have no direct or indirect ownership interest in the processing plant, then the increase is lower, as provided in the table in paragraph (b)(2)(ii) of this section. If you have a direct or indirect ownership interest in the plant where the gas is processed, the increase is higher, as provided in paragraph (b)(2)(ii) of this section.

(2) To calculate the value of the gas after processing using the alternative methodology for dual accounting, you must apply the increase to the value before processing, determined in either § 1206.172 or § 1206.174, as follows:

(i) Value of gas after processing = (value determined under either § 1206.172 or § 1206.174, as applicable) × (1 + increment for dual accounting); and

(ii) In this equation, the increment for dual accounting is the number you take from the applicable Btu range, determined under paragraph (b)(3) of this section, in the following table:

| BTU range          | Increment if Lessee has no ownership interest in plant | Increment if lessee has an ownership interest in plant |
|--------------------|--|--|
| 1001 to 1050 ..... | .0275  | .0375  |
| 1051 to 1100 ..... | .0400  | .0625  |
| 1101 to 1150 ..... | .0425  | .0750  |
| 1151 to 1200 ..... | .0700  | .1225  |
| 1201 to 1250 ..... | .0975  | .1700  |
| 1251 to 1300 ..... | .1175  | .2050  |
| 1301 to 1350 ..... | .1400  | .2400  |
| 1351 to 1400 ..... | .1450  | .2500  |
| 1401 to 1450 ..... | .1500  | .2600  |
| 1451 to 1500 ..... | .1550  | .2700  |
| 1501 to 1550 ..... | .1600  | .2800  |
| 1551 to 1600 ..... | .1650  | .2900  |
| 1601 to 1650 ..... | .1850  | .3225  |
| 1651 to 1700 ..... | .1950  | .3425  |
| 1701 + .....       | .2000  | .3550  |

(3) The applicable Btu for purposes of this section is the volume weighted-average Btu for the lease computed from

measurements at the facility measurement point(s) for gas production from the lease.

(4) If any of your gas from the lease is processed during a month, use the following two paragraphs to determine which amounts are subject to dual accounting and which dual accounting method you must use.

(i) Weighted-average Btu content determined under paragraph (b)(3) of this section is greater than 1,000 Btu's per cubic foot (Btu/cf). All gas production from the lease is subject to dual accounting and you must use the alternative method for all that gas production if you elected to use the alternative method under this section.

(ii) Weighted-average Btu content determined under paragraph (b)(3) of this section is less than or equal to 1,000 Btu/cf. Only the volumes of lease production measured at facility measurement points whose quality exceeds 1,000 Btu/cf are subject to dual accounting, and you may use the alternative methodology for these volumes. For gas measured at facility measurement points for these leases where the quality is equal to or less than 1,000 Btu/cf, you are not required to do dual accounting.

**§ 1206.174 How do I value gas production when an index-based method cannot be used?**

(a) *Situations in which an index-based method cannot be used.* (1) Gas production must be valued under this section in the following situations.

(i) Your lease is not in an index zone (or ONRR has excluded your lease from an index zone).

(ii) If your lease is in an index zone and you sell your gas under an arm's-length dedicated contract, then the value of your gas is the higher of the value received under the dedicated contract determined under § 1206.174(b) or the value under § 1206.172.

(iii) Also use this section to value any other gas production that cannot be valued under § 1206.172, as well as gas plant products, and to value components of the gas stream that have no Btu value (for example, carbon dioxide, nitrogen, etc.).

(2) The value for royalty purposes of gas production subject to this subpart

is the value of gas determined under this section less applicable allowances determined under this subpart.

(3) You must determine the value of gas production that is processed and is subject to accounting for comparison using the procedure in § 1206.176.

(4) This paragraph applies if your lease has a major portion provision. It also applies if your lease does not have a major portion provision but the lease provides for the Secretary to determine value.

(i) The value of production you must initially report and pay is the value determined in accordance with the other paragraphs of this section.

(ii) ONRR will determine the major portion value and notify you in the FEDERAL REGISTER of that value. The value of production for royalty purposes for your lease is the higher of either the value determined under this section which you initially used to report and pay royalties, or the major portion value calculated under this paragraph (a)(4). If the major portion value is higher, you must submit an amended Form ONRR-2014 to ONRR by the due date specified in the written notice from ONRR of the major portion value. Late-payment interest under § 1218.54 of this chapter on any underpayment will not begin to accrue until the date the amended Form ONRR-2014 is due to ONRR.

(iii) Except as provided in paragraph (a)(4)(iv) of this section, ONRR will calculate the major portion value for each designated area (which are the same designated areas as under § 1206.173) using values reported for unprocessed gas and residue gas on Form ONRR-2014 for gas produced from leases on that Indian reservation or other designated area. ONRR will array the reported prices from highest to lowest price. The major portion value is that price at which 25 percent (by volume) of the gas (starting from the highest) is sold. ONRR cannot unilaterally change the major portion value after you are notified in writing of what that value is for your leases.

(iv) ONRR may calculate the major portion value using different data than the data described in paragraph (a)(4)(iii) of this section or data to augment the data described in paragraph

(a)(4)(iii) of this section. This may include price data reported to the State tax authority or price data from leases ONRR has reviewed in the designated area. ONRR may use this alternate or the augmented data source beginning with production on the first day of the month following the date ONRR publishes notice in the FEDERAL REGISTER that it is calculating the major portion using a method in this paragraph (a)(4)(iv) of this section.

(b) *Arm's-length contracts.* (1) The value of gas, residue gas, or any gas plant product you sell under an arm's-length contract is the gross proceeds accruing to you or your affiliate, except as provided in paragraphs (b)(1)(ii)-(iv) of this section.

(i) You have the burden of demonstrating that your contract is arm's-length.

(ii) In conducting reviews and audits for gas valued based upon gross proceeds under this paragraph, ONRR will examine whether or not your contract reflects the total consideration actually transferred either directly or indirectly from the buyer to you or your affiliate for the gas, residue gas, or gas plant product. If the contract does not reflect the total consideration, then ONRR may require that the gas, residue gas, or gas plant product sold under that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to you or your affiliate, including the additional consideration.

(iii) If ONRR determines for gas valued under this paragraph that the gross proceeds accruing to you or your affiliate under an arm's-length contract do not reflect the value of the gas, residue gas, or gas plant products because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then ONRR will require that the gas, residue gas, or gas plant product be valued under paragraphs (c)(2) or (3) of this section. In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your value.

(iv) This paragraph applies to situations where a pipeline purchases gas from a lessee according to a cash-out program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price specified in the transportation contract. However, if ONRR determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessees must value all over-delivered volumes under paragraph (c)(2) or (3) of this section.

(2) ONRR may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant product.

(c) *Non-arm's-length contracts.* If your gas, residue gas, or any gas plant product is not sold under an arm's-length contract, then you must value the production using the first applicable method of the following three methods:

(1) The gross proceeds accruing to you under your non-arm's-length contract sale (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). For residue gas or gas plant products, the comparable arm's-length contracts must be for gas from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors will be considered: price, time of execution, duration, market or markets served, terms, quality of gas, residue gas, or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the gas, residue gas, or gas plant products.



(2) A value determined by consideration of other information relevant in valuing like-quality gas, residue gas, or gas plant products, including gross proceeds under arm's-length contracts for like-quality gas in the same field or nearby fields or areas, or for residue gas or gas plant products from the same gas plant or other nearby processing plants. Other factors to consider include prices received in spot sales of gas, residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the salability of such gas, residue gas, or gas plant products.

(3) A net-back method or any other reasonable method to determine value.

(d) *Supporting data.* If you determine the value of production under paragraph (c) of this section, you must retain all data relevant to the determination of royalty value.

(1) Such data will be subject to review and audit, and ONRR will direct you to use a different value if we determine upon review or audit that the value you reported is inconsistent with the requirements of these regulations.

(2) You must make all such data available upon request to the authorized ONRR or Indian representatives, to the Office of the Inspector General of the Department, or other authorized persons. This includes your arm's-length sales and volume data for like-quality gas, residue gas, and gas plant products that are sold, purchased, or otherwise obtained from the same processing plant or from nearby processing plants, or from the same or nearby field or area.

(e) *Improper values.* If ONRR determines that you have not properly determined value, you must pay the difference, if any, between royalty payments made based upon the value you used and the royalty payments that are due based upon the value ONRR established. You also must pay interest computed on that difference under § 1218.54 of this chapter. If you are entitled to a credit, ONRR will provide instructions on how to take that credit.

(f) *Value guidance.* You may ask ONRR for guidance in determining value. You may propose a valuation method to ONRR. Submit all available

data related to your proposal and any additional information ONRR deems necessary. ONRR will promptly review your proposal and provide you with a non-binding determination of the guidance you request.

(g) *Minimum value of production.* (1) For gas, residue gas, and gas plant products valued under this section, under no circumstances may the value of production for royalty purposes be less than the gross proceeds accruing to the lessee (including its affiliates) for gas, residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances determined under this subpart.

(2) For gas plant products valued under this section and not valued under § 1206.173, the alternative methodology for dual accounting, the minimum value of production for each gas plant product is as follows:

(i) Leases in certain States and areas have specific minimum values.

(A) For production from leases in Colorado in the San Juan Basin, New Mexico, and Texas, the monthly average minimum price reported in commercial price bulletins for the gas plant product at Mont Belvieu, Texas, minus 8.0 cents per gallon.

(B) For production in Arizona, in Colorado outside the San Juan Basin, Minnesota, Montana, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming, the monthly average minimum price reported in commercial price bulletins for the gas plant product at Conway, Kansas, minus 7.0 cents per gallon;

(ii) You may use any commercial price bulletin, but you must use the same bulletin for all of the calendar year. If the commercial price bulletin you are using stops publication, you may use a different commercial price bulletin for the remaining part of the calendar year; and (iii) If you use a commercial price bulletin that is published monthly, the monthly average minimum price is the bulletin's minimum price. If you use a commercial price bulletin that is published weekly, the monthly average minimum price is the arithmetic average of the bulletin's weekly minimum prices. If you use a

commercial price bulletin that is published daily, the monthly average minimum price is the arithmetic average of the bulletin's minimum prices for each Wednesday in the month.

(h) *Marketable condition/Marketing.* You are required to place gas, residue gas, and gas plant products in marketable condition and market the gas for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor. When your gross proceeds establish the value under this section, that value must be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services to place the gas, residue gas, or gas plant products in marketable condition or to market the gas, the cost of which ordinarily is your responsibility.

(i) *Highest obtainable price or benefit.* For gas, residue gas, and gas plant products valued under this section, value must be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if you fail to take proper or timely action to receive prices or benefits to which you are entitled, you must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments must be in writing and signed by all parties to an arm's-length contract. If you make timely application for a price increase or benefit allowed under your contract but the purchaser refuses, and you take reasonable measures, which are documented, to force purchaser compliance, you will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph is not intended to permit you to avoid your royalty payment obligation in situations where your purchaser fails to pay, in whole or in part, or timely, for a quantity of gas, residue gas, or gas plant product.

(j) *Non-binding ONRR reviews.* Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in an ONRR redetermination of value under this section will be considered final or bind-

ing against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) *Confidential information.* Certain information submitted to ONRR to support valuation proposals, including transportation allowances and processing allowances, may be exempted from disclosure under the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this subpart must be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

[64 FR 43515, Aug. 10, 1999, as amended at 65 FR 62614, Oct. 19, 2000]

**§ 1206.175 How do I determine quantities and qualities of production for computing royalties?**

(a) For unprocessed gas, you must pay royalties on the quantity and quality at the facility measurement point BLM either allowed or approved.

(b) For residue gas and gas plant products, you must pay royalties on your share of the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(c) If you have no ownership interest in the processing plant and you do not operate the plant, you may use the contract volume allocation to determine your share of plant products.

(d) If you have an ownership interest in the plant or if you operate it, use the following procedure to determine the quantity of the residue gas and gas plant products attributable to you for royalty payment purposes:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which you must pay royalty is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas

plant products allocable to each lease must be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of non-uniform content, the volumes of residue gas and gas plant products allocable to each lease are based on theoretical volumes of residue gas and gas plant products measured in the lease gas stream. You must calculate the portion of net plant output of residue gas and gas plant products attributable to each lease as follows:

(i) First, compute the theoretical volumes of residue gas and of gas plant products attributable to the lease by multiplying the lease volume of the gas stream by the tested residue gas content (mole percentage) or gas plant product (GPM) content of the gas stream;

(ii) Second, calculate the theoretical volumes of residue gas and of gas plant products delivered from all leases by summing the theoretical volumes of residue gas and of gas plant products delivered from each lease; and

(iii) Third, calculate the theoretical quantities of net plant output of residue gas and of gas plant products attributable to each lease by multiplying the net plant output of residue gas, or gas plant products, by the ratio in which the theoretical volumes of residue gas, or gas plant products, is the numerator and the theoretical volume of residue gas, or gas plant products, delivered from all leases is the denominator.

(4) You may request ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If ONRR approves a different method, it will be applicable to all gas production from your Indian leases that is processed in the same plant.

(e) You may not take any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas incurred prior to the facility measurement point will not be subject to roy-

alty if BLM determines that the loss was unavoidable.

**§ 1206.176 How do I perform accounting for comparison?**

(a) This section applies if the gas produced from your Indian lease is processed and that Indian lease requires accounting for comparison (also referred to as actual dual accounting). Except as provided in paragraphs (b) and (c) of this section, the actual dual accounting value, for royalty purposes, is the greater of the following two values:

(1) The combined value of the following products:

(i) The residue gas and gas plant products resulting from processing the gas determined under either § 1206.172 or § 1206.174, less any applicable allowances; and

(ii) Any drip condensate associated with the processed gas recovered downstream of the point of royalty settlement without resorting to processing determined under § 1206.52, less applicable allowances.

(2) The value of the gas prior to processing determined under either § 1206.172 or § 1206.174, including any applicable allowances.

(b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 1206.173 instead of the provisions in paragraph (a) of this section.

(c) Accounting for comparison is not required for gas if no gas from the lease is processed until after the gas flows into a pipeline with an index located in an index zone or into a mainline pipeline not in an index zone. If you do not perform dual accounting, you must certify to ONRR that gas flows into such a pipeline before it is processed.

(d) Except as provided in paragraph (e) of this section, if you value any gas production from a lease for a month using the dual accounting provisions of this section or the alternative dual accounting methodology of § 1206.173, then the value of that gas is the minimum value for any other gas production from that lease for that month flowing through the same facility measurement point.

(e) If the weighted-average Btu quality for your lease is less than 1,000

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Btu's per cubic foot, see §1206.173(b)(4)(ii) to determine if you must perform a dual accounting calculation.

### TRANSPORTATION ALLOWANCES

#### **§ 1206.177 What general requirements regarding transportation allowances apply to me?**

(a) When you value gas under §1206.174 at a point off the lease, unit, or communitized area (for example, sales point or point of value determination), you may deduct from value a transportation allowance to reflect the value, for royalty purposes, at the lease, unit, or communitized area. The allowance is based on the reasonable actual costs you incurred to transport unprocessed gas, residue gas, or gas plant products from a lease to a point off the lease, unit, or communitized area. This would include, if appropriate, transportation from the lease to a gas processing plant off the lease, unit, or communitized area and from the plant to a point away from the plant. You may not deduct any allowance for gathering costs.

(b) You must allocate transportation costs among all products you produce and transport as provided in §1206.178.

(c)(1) Except as provided in paragraphs (c)(2) and (3) of this section, your transportation allowance deduction for each sales type code may not exceed 50 percent of the value of the unprocessed gas, residue gas, or gas plant product. For purposes of this section, natural gas liquids are considered one product.

(2) If you ask ONRR, ONRR may approve a transportation allowance deduction in excess of the limitations in paragraph (c)(1) of this section. To receive this approval, you must demonstrate that the transportation costs incurred in excess of the limitations in paragraph (c)(1) of this section were reasonable, actual, and necessary. Under no circumstances may an allowance reduce the value for royalty purposes under any sales type code to zero.

(3) Your application for exception (using Form ONRR-4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination.

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(d) If ONRR conducts a review or audit and determines that you have improperly determined a transportation allowance authorized by this subpart, then you will be required to pay any additional royalties, plus interest determined in accordance with §1218.54 of this chapter. Alternatively, you may be entitled to a credit, but you will not receive any interest on your overpayment.

[64 FR 43515, Aug. 10, 1999, as amended at 73 FR 15891, Mar. 26, 2008]

#### **§ 1206.178 How do I determine a transportation allowance?**

(a) *Determining a transportation allowance under an arm's-length contract.* (1) This paragraph explains how to determine your allowance if you have an arm's-length transportation contract.

(i) If you have an arm's-length contract for transportation of your production, the transportation allowance is the reasonable, actual costs you incur for transporting the unprocessed gas, residue gas and/or gas plant products under that contract. Paragraphs (a)(1)(ii) and (iii) of this section provide a limited exception. You have the burden of demonstrating that your contract is arm's-length. Your allowances also are subject to paragraph (e) of this section. You are required to submit to ONRR a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your report which claims the allowance on the Form ONRR-2014.

(ii) When either ONRR or a tribe conducts reviews and audits, they will examine whether or not the contract reflects more than the consideration actually transferred either directly or indirectly from you to the transporter of the transportation. If the contract reflects more than the total consideration, then ONRR may require that the transportation allowance be determined under paragraph (b) of this section.

(iii) If ONRR determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties, or because you otherwise have breached

your duty to the lessor to market the production for the mutual benefit of you and the lessor, then ONRR will require that the transportation allowance be determined under paragraph (b) of this section. In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your transportation costs.

(2) This paragraph explains how to allocate the costs to each product if your arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract.

(i) If your arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs must be allocated in a consistent and equitable manner to each of the products transported. To make this allocation, use the same proportion as the ratio that the volume of each product (excluding waste products which have no value) bears to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, you cannot take an allowance for the costs of transporting lease production that is not royalty bearing without ONRR approval, or without lessor approval on tribal leases.

(ii) As an alternative to paragraph (a)(2)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported. ONRR will approve the method if we determine that it meets one of the two following requirements:

(A) The methodology in paragraph (a)(2)(i) of this section cannot be applied; and

(B) Your proposal is more reasonable than the methodology in paragraph (a)(2)(i) of this section.

(3) This paragraph explains how to allocate costs to each product if your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract.

(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to ONRR. You may use the transportation allowance determined in accordance with your proposed allocation procedure until ONRR decides whether to accept your cost allocation.

(ii) You are required to submit all relevant data to support your allocation proposal. ONRR will then determine the gas transportation allowance based upon your proposal and any additional information ONRR deems necessary.

(4) If your payments for transportation under an arm's-length contract are not based on a dollar per unit price, you must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price includes a reduction for a transportation factor, ONRR will not consider the transportation factor to be a transportation allowance. You may use the transportation factor to determine your gross proceeds for the sale of the product. However, the transportation factor may not exceed 50 percent of the base price of the product without ONRR approval.

(b) *Determining a transportation allowance under a non-arm's-length or no contract.* (1) This paragraph explains how to determine your allowance if you have a non-arm's-length transportation contract or no contract.

(i) When you have a non-arm's-length transportation contract or no contract, including those situations where you perform transportation services for yourself, the transportation allowance is based upon your reasonable, allowable, actual costs for transportation as provided in this paragraph.

(ii) All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to ONRR on Form ONRR-4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies.

However, ONRR may approve a longer time period. ONRR will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, ONRR may require you to modify your actual transportation allowance deduction.

(2) This paragraph explains what actual transportation costs are allowable under a non-arm's-length contract or no contract situation. The transportation allowance for non-arm's-length or no-contract situations is based upon your actual costs for transportation during the reporting period. Allowable costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment (in accordance with paragraph (b)(2)(iv)(A) of this section), or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(i) Allowable operating expenses include operations supervision and engineering, operations labor, fuel, utilities, materials, ad valorem property taxes, rent, supplies, and any other directly allocable and attributable operating expense that you can document.

(ii) Allowable maintenance expenses include maintenance of the transportation system, maintenance of equipment, maintenance labor, and other directly allocable and attributable maintenance expenses that you can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. After you have elected to use either method for a transportation system, you may not

later elect to change to the other alternative without ONRR approval.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the transportation system services, or a unit of production method. Once you make an election, you may not change methods without ONRR approval. A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for purposes of the allowance calculation. With or without a change in ownership, a transportation system may be depreciated only once. Equipment may not be depreciated below a reasonable salvage value. To compute a return on undepreciated capital investment, you will multiply the undepreciated capital investment in the transportation system by the rate of return determined under paragraph (b)(2)(v) of this section.

(B) To compute a return on depreciable capital investment, you will multiply the initial capital investment in the transportation system by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return is the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and is effective during the reporting period. The rate must be re-determined at the beginning of each subsequent transportation allowance reporting period that is determined under paragraph (b)(4) of this section.

(3) This paragraph explains how to allocate transportation costs to each product and transportation system.

(i) The deduction for transportation costs must be determined based on your cost of transporting each product through each individual transportation system. If you transport more than one product in a gaseous phase, the allocation of costs to each of the products

transported must be made in a consistent and equitable manner. The allocation should be in the same proportion that the volume of each product (excluding waste products that have no value) bears to the volume of all products in the gaseous phase (excluding waste products that have no value). Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without ONRR approval.

(ii) As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported. ONRR will approve the method upon determining that it meets one of the two following requirements:

(A) The methodology in paragraph (b)(3)(i) of this section cannot be applied; and

(B) Your proposal is more reasonable than the method in paragraph (b)(3)(i) of this section.

(4) Your transportation allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and ONRR agree to an alternative.

(5) If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR. You may use the transportation allowance determined in accordance with your proposed allocation procedure until ONRR issues its determination on the acceptability of the cost allocation. You are required to submit all relevant data to support your proposal. ONRR will then determine the transportation allowance based upon your proposal and any additional information ONRR deems necessary.

(c) *Using the alternative transportation calculation when you have a non-arm's-length or no contract.* (1) As an alternative to computing your transportation allowance under paragraph (b) of this section, you may use as the transportation allowance 10 percent of your gross proceeds but not to exceed 30 cents per MMBtu.

(2) Your election to use the alternative transportation allowance calculation in paragraph (c)(1) of this section must be made at the beginning of

a month and must remain in effect for an entire calendar year. Your first election will remain in effect until the end of the succeeding calendar year, except for elections effective January 1 that will be effective only for that calendar year.

(d) *Reporting your transportation allowance.* (1) If ONRR requests, you must submit all data used to determine your transportation allowance. The data must be provided within a reasonable period of time that ONRR will determine.

(2) You must report transportation allowances as a separate entry on Form ONRR-2014. ONRR may approve a different reporting procedure on allottee leases, and with lessor approval on tribal leases.

(e) *Adjusting incorrect allowances.* If for any month the transportation allowance you are entitled to is less than the amount you took on Form ONRR-2014, you are required to report and pay additional royalties due, plus interest computed under §1218.54 of this chapter from the first day of the first month you deducted the improper transportation allowance until the date you pay the royalties due. If the transportation allowance you are entitled to is greater than the amount you took on Form ONRR-2014 for any royalties during the reporting period, you are entitled to a credit. No interest will be paid on the overpayment.

(f) *Determining allowable costs for transportation allowances.* Lessees may include, but are not limited to, the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Firm demand charges paid to pipelines.* You must limit the allowable costs for the firm demand charges to the applicable rate per MMBtu multiplied by the actual volumes transported. You may not include any losses incurred for previously purchased but unused firm capacity. You also may not include any gains associated with releasing firm capacity. If you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the

firm demand charge claimed on the Form ONRR-2014. You must modify the Form ONRR-2014 by the amount received or credited for the affected reporting period.

(2) *Gas supply realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers to implement the restructuring requirements of FERC orders in 18 CFR part 284.

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service.

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines.

(5) *Gas Research Institute (GRI) fees.* The GRI conducts research, development, and commercialization programs on natural gas related topics for the benefit of the U.S. gas industry and gas customers. GRI fees are allowable provided such fees are mandatory in FERC-approved tariffs.

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses.

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* This paragraph does not apply to non-arm's-length transportation arrangements.

(8) *Temporary storage services.* This includes short duration storage services offered by market centers or hubs (commonly referred to as "parking" or "banking"), or other temporary storage services provided by pipeline transporters, whether actual or provided as a matter of accounting. Temporary storage is limited to 30 days or less.

(9) *Supplemental costs for compression, dehydration, and treatment of gas.* ONRR allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under § 1206.174(h).

(g) *Determining nonallowable costs for transportation allowances.* Lessees may not include the following costs in determining the arm's-length transpor-

tation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Fees or costs incurred for storage.* This includes storing production in a storage facility, whether on or off the lease, for more than 30 days.

(2) *Aggregator/marketer fees.* This includes fees you pay to another person (including your affiliates) to market your gas, including purchasing and reselling the gas, or finding or maintaining a market for the gas production.

(3) *Penalties you incur as shipper.* These penalties include, but are not limited to the following:

(i) *Over-delivery cash-out penalties.* This includes the difference between the price the pipeline pays you for over-delivered volumes outside the tolerances and the price you receive for over-delivered volumes within tolerances.

(ii) *Scheduling penalties.* This includes penalties you incur for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iii) *Imbalance penalties.* This includes penalties you incur (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iv) *Operational penalties.* This includes fees you incur for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline.

(4) *Intra-hub transfer fees.* These are fees you pay to hub operators for administrative services (e.g., title transfer tracking) necessary to account for the sale of gas within a hub.

(5) *Other nonallowable costs.* Any cost you incur for services you are required to provide at no cost to the lessor.

(h) *Other transportation cost determinations.* You must follow the provisions of this section to determine transportation costs when establishing value using either a net-back valuation procedure or any other procedure that allows deduction of actual transportation costs.

[64 FR 43515, Aug. 10, 1999, as amended at 73 FR 15891, Mar. 26, 2008]



## PROCESSING ALLOWANCES

**§ 1206.179 What general requirements regarding processing allowances apply to me?**

(a) When you value any gas plant product under §1206.174, you may deduct from value the reasonable actual costs of processing.

(b) You must allocate processing costs among the gas plant products. You must determine a separate processing allowance for each gas plant product and processing plant relationship. Natural gas liquids are considered as one product.

(c) The processing allowance deduction based on an individual product may not exceed 66⅔ percent of the value of each gas plant product determined under §1206.174. Before you calculate the 66⅔ percent limit, you must first reduce the value for any transportation allowances related to post-processing transportation authorized under §1206.177.

(d) Processing cost deductions will not be allowed for placing lease products in marketable condition. These costs include among others, dehydration, separation, compression upstream of the facility measurement point, or storage, even if those functions are performed off the lease or at a processing plant. Costs for the removal of acid gases, commonly referred to as sweetening, are not allowed unless the acid gases removed are further processed into a gas plant product. In such event, you will be eligible for a processing allowance determined under this subpart. However, ONRR will not grant any processing allowance for processing lease production that is not royalty bearing.

(e) You will be allowed a reasonable amount of residue gas royalty free for operation of the processing plant, but no allowance will be made for expenses incidental to marketing, except as provided in 30 CFR part 1206. In those situations where a processing plant processes gas from more than one lease, only that proportionate share of your residue gas necessary for the operation of the processing plant will be allowed royalty free.

(f) You do not owe royalty on residue gas, or any gas plant product resulting

from processing gas, that is reinjected into a reservoir within the same lease, unit, or approved Federal agreement, until such time as those products are finally produced from the reservoir for sale or other disposition. This paragraph applies only when the reinjection is included in a BLM-approved plan of development or operations.

(g) If ONRR determines that you have determined an improper processing allowance authorized by this subpart, then you will be required to pay any additional royalties plus late payment interest determined under §1218.54 of this chapter. Alternatively, you may be entitled to a credit, but you will not receive any interest on your overpayment.

**§ 1206.180 How do I determine an actual processing allowance?**

(a) *Determining a processing allowance if you have an arm's-length processing contract.* (1) This paragraph explains how you determine an allowance under an arm's-length processing contract.

(i) The processing allowance is the reasonable actual costs you incur to process the gas under that contract. Paragraphs (a)(1)(ii) and (iii) of this section provide a limited exception. You have the burden of demonstrating that your contract is arm's-length. You are required to submit to ONRR a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your first report that deducts the allowance on the Form ONRR-2014.

(ii) When ONRR conducts reviews and audits, we will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from you to the processor for the processing. If the contract reflects more than the total consideration, then ONRR may require that the processing allowance be determined under paragraph (b) of this section.

(iii) If ONRR determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to

the lessor to market the production for the mutual benefit of you and the lessor, then ONRR will require that the processing allowance be determined under paragraph (b) of this section. In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your processing costs.

(2) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product must be determined in accordance with the contract. You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(3) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to ONRR. You may use your proposed allocation procedure until ONRR issues its determination. You are required to submit all relevant data to support your proposal. ONRR will then determine the processing allowance based upon your proposal and any additional information ONRR deems necessary. You may not take a processing allowance for the costs of processing lease production that is not royalty-bearing.

(4) If your payments for processing under an arm's-length contract are not based on a dollar per unit price, you must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (1) This paragraph applies if you have a non-arm's-length processing contract or no contract, including those situations where you perform processing for yourself.

(i) If you have a non-arm's-length contract or no contract, the processing allowance is based upon your reasonable actual costs of processing as provided in paragraph (b)(2) of this section.

(ii) All processing allowances deducted under a non-arm's-length or no-contract situation are subject to moni-

toring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to ONRR on Form ONRR-4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies. ONRR may approve a longer time period. ONRR will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, ONRR may require you to modify your processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations is based upon your actual costs for processing during the reporting period. Allowable costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment (in accordance with paragraph (b)(2)(iv)(A) of this section), or a cost equal to the initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the processing plant.

(i) Allowable operating expenses include operations supervision and engineering, operations labor, fuel, utilities, materials, ad valorem property taxes, rent, supplies, and any other directly allocable and attributable operating expense that the lessee can document.

(ii) Allowable maintenance expenses include maintenance of the processing plant, maintenance of equipment, maintenance labor, and other directly allocable and attributable maintenance expenses that you can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment. After you elect to use either method for a processing

plant, you may not later elect to change to the other alternative without ONRR approval.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the processing plant services, or a unit-of-production method. Once you make an election, you may not change methods without ONRR approval. A change in ownership of a processing plant will not alter the depreciation schedule that the original processor/lessee established for purposes of the allowance calculation. However, for processing plants you or your affiliate purchase that do not have a previously claimed ONRR depreciation schedule, you may treat the processing plant as a newly installed facility for depreciation purposes. A processing plant may be depreciated only once, regardless of whether there is a change in ownership. Equipment may not be depreciated below a reasonable salvage value. To compute a return on undepreciated capital investment, you must multiply the undepreciable capital investment in the processing plant by the rate of return determined under paragraph (b)(2)(v) of this section.

(B) To compute a return on depreciable capital investment, you must multiply the initial capital investment in the processing plant by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to plants first placed in service after March 1, 1988.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return is the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3) Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and ONRR agree to an alternative.

(4) The processing allowance for each gas plant product must be determined

based on your reasonable and actual cost of processing the gas. You must base your allocation of costs to each gas plant product upon generally accepted accounting principles. You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(c) *Reporting your processing allowance.* (1) If ONRR requests, you must submit all data used to determine your processing allowance. The data must be provided within a reasonable period of time, as ONRR determines.

(2) You must report gas processing allowances as a separate entry on the Form ONRR-2014. ONRR may approve a different reporting procedure for allottee leases, and with lessor approval on tribal leases.

(d) *Adjusting incorrect processing allowances.* If for any month the gas processing allowance you are entitled to is less than the amount you took on Form ONRR-2014, you are required to pay additional royalties, plus interest computed under § 1218.54 of this chapter from the first day of the first month you deducted a processing allowance until the date you pay the royalties due. If the processing allowance you are entitled to is greater than the amount you took on Form ONRR-2014, you are entitled to a credit. However, no interest will be paid on the overpayment.

(e) *Other processing cost determinations.* You must follow the provisions of this section to determine processing costs when establishing value using either a net-back valuation procedure or any other procedure that requires deduction of actual processing costs.

[64 FR 43515, Aug. 10, 1999, as amended at 73 FR 15891, Mar. 26, 2008]

**§ 1206.181 How do I establish processing costs for dual accounting purposes when I do not process the gas?**

Where accounting for comparison (dual accounting) is required for gas production from a lease but neither you nor someone acting on your behalf processes the gas, and you have elected to perform actual dual accounting under § 1206.176, you must use the first applicable of the following methods to establish processing costs for dual accounting purposes:

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(a) The average of the costs established in your current arm's-length processing agreements for gas from the lease, provided that some gas has previously been processed under these agreements.

(b) The average of the costs established in your current arm's-length processing agreements for gas from the lease, provided that the agreements are in effect for plants to which the lease is physically connected and under which gas from other leases in the field or area is being or has been processed.

(c) A proposed comparable processing fee submitted to either the tribe and ONRR (for tribal leases) or ONRR (for allotted leases) with your supporting documentation submitted to ONRR. If ONRR does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the ONRR Director under 30 CFR part 1290.

(d) Processing costs based on the regulations in §§ 1206.179 and 1206.180.

### Subpart F—Federal Coal

SOURCE: 85 FR 62040, Oct. 1, 2020, unless otherwise noted.

#### § 1206.250 What is the purpose and scope of this subpart?

(a) This subpart applies to all coal produced from Federal coal leases. It explains how you, as the lessee, must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) The terms “you” and “your” in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR's Director establishing a method to determine the value of production from any lease that ONRR expects, at least, would approximate the value established under this subpart; or express provision of a coal lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

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(d) ONRR may audit and order you to adjust all royalty payments.

#### § 1206.251 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of coal at the royalty measurement point that ONRR and BLM jointly determine.

(b) You must measure coal in short tons using the methods that BLM prescribes for Federal coal leases under 43 CFR part 3000. You must report coal quantity on appropriate forms required in 30 CFR part 1210—Forms and Reports.

(c)(1) You are not required to pay royalties on coal that you produce and add to stockpiles or inventory until you use, sell, or otherwise finally dispose of such coal.

(2) ONRR may request that BLM require you to increase your lease bond if BLM determines that stockpiles or inventory are excessive such that they increase the risk of resource degradation.

(d) You must pay royalty at the rate specified in your lease at the time when you use, sell, or otherwise finally dispose of the coal.

(e) You must allocate washed coal by attributing the washed coal to the leases from which it was extracted.

(1) If the wash plant washes coal from only one lease, the quantity of washed coal allocable to the lease is the total output of washed coal from the plant.

(2) If the wash plant washes coal from more than one lease, you must determine the tonnage of washed coal attributable to each lease by:

(i) First, calculating the input ratio of washed coal allocable to each lease by dividing the tonnage of coal input to the wash plant from each lease by the total tonnage of coal input to the wash plant from all leases.

(ii) Second, multiplying the input ratio derived under paragraph (e)(2)(i) of this section by the tonnage of total output of washed coal from the plant.

#### § 1206.252 How do I calculate royalty value for coal that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) The value of coal under this section for royalty purposes is the gross

proceeds accruing to you or your affiliate under the first arm's-length contract, less an applicable transportation allowance determined under §§ 1206.260 through 1206.262 and washing allowance under §§ 1206.267 through 1206.269. You must use this paragraph (a) to value coal when:

(1) You sell under an arm's-length contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of either of them, then sells the coal under an arm's-length contract.

(b) If you have no contract for the sale of coal subject to this section because you or your affiliate used the coal in a power plant that you or your affiliate own(s) for the generation and sale of electricity, one of the following applies:

(1) You or your affiliate sell(s) the electricity, then the value of the coal subject to this section, for royalty purposes, is the gross proceeds accruing to you for the power plant's arm's-length sales of the electricity less applicable transportation and washing deductions determined under §§ 1206.260 through 1206.262 and §§ 1206.267 through 1206.269 of this subpart and, if applicable, transmission and generation deductions determined under §§ 1206.353 and 1206.354 of subpart H.

(2) You or your affiliate do(es) not sell the electricity at arm's-length (for example you or your affiliate deliver(s) the electricity directly to the grid), then ONRR will determine the value of the coal under § 1206.254.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.258(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues a determination.

(iii) After ONRR issues a determination, you must make the adjustments under § 1206.253(a)(2).

(c) If you are a coal cooperative, or a member of a coal cooperative, one of the following applies:

(1) You sell or transfer coal to another member of the coal cooperative, and that member of the coal cooperative then sells the coal under an arm's-length contract, then you must value

the coal under paragraph (a) of this section.

(2) You sell or transfer coal to another member of the coal cooperative, and you, the coal cooperative, or another member of the coal cooperative use the coal in a power plant for the generation and sale of electricity, then you must value the coal under paragraph (b) of this section.

(d) If you are entitled to take a washing allowance and transportation allowance for royalty purposes under this section, under no circumstances may the washing allowance plus the transportation allowance reduce the royalty value of the coal to zero.

(e) The values in this section do not apply if ONRR decides to value your coal under § 1206.254.

EFFECTIVE DATE NOTE: At 86 FR 4657, Jan. 15, 2021, § 1206.252 was amended by revising paragraphs (a) introductory text and (b), and removing paragraph (c), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.252 How do I calculate royalty value for coal?**

(a) The value of coal under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract, or another person, less an applicable transportation allowance determined under §§ 1206.260 through 1206.262 and washing allowance under §§ 1206.267 through 1206.269. You must use this paragraph (a) to value coal when:

\* \* \* \* \*

(b) If you have no contract for the sale of coal subject to this section because you or your affiliate used the coal in a power plant that you or your affiliate own(s) for the generation and sale of electricity:

(1) You must propose to ONRR a method to determine the value using the procedures in § 1206.258(a).

(2) You must use that method to determine value, for royalty purposes, until ONRR issues a determination.

(3) After ONRR issues a determination, you must make the adjustments under § 1206.253(a)(2).

\* \* \* \* \*

**§ 1206.253 How will ONRR determine if my royalty payments are correct?**

(a)(1) ONRR may monitor, review, and audit the royalties that you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value, or decide your value, under § 1206.254.

(2) If ONRR directs you to use a different royalty value, you must either pay any underpaid royalties due, plus late payment interest calculated under § 1218.202 of this chapter, or report a credit for—or request a refund of—any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate’s contract reflects the total consideration that is actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the coal. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.254.

(c) ONRR may decide to value your coal under § 1206.254 if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You breached your duty to market the coal for the mutual benefit of yourself and the lessor by selling your coal at a value that is unreasonably low. ONRR may consider a sales price unreasonably low if it is 10 percent less than the lowest other reasonable measures of market price, including, but not limited to, prices reported to ONRR for like-quality coal; or

(3) ONRR cannot determine if you properly valued your coal under § 1206.252 for any reason, including, but not limited to, your or your affiliate’s failure to provide documents to ONRR under 30 CFR part 1212, subpart E.

(d) You have the burden of demonstrating that your or your affiliate’s contract is arm’s-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate’s contract include(s) all of the

consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the coal.

(f)(1) Absent any contract revisions or amendments, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate apply in a timely manner for a price increase or benefit allowed under your or your affiliate’s contract, but the purchaser refuses, and you or your affiliate take reasonable, documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay in whole or in part, or in a timely manner, for a quantity of coal.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide to value your coal under § 1206.254.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

EFFECTIVE DATE NOTE: At 86 FR 4657, Jan. 15, 2021, § 1206.253 was amended by revising paragraphs (a)(1), (b), (c) introductory text, (c)(2), (g)(1) and (2), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.253 How will ONRR determine if my royalty payments are correct?**

(a)(1) ONRR may monitor, review, and audit the royalties that you report, and, if ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR may establish a reasonable royalty value based on other relevant matters.

\* \* \* \* \*

(b) ONRR may examine whether your or your affiliate's contract reflects the total consideration transferred for Federal coal, either directly or indirectly, from the buyer to you or your affiliate. If ONRR determines that additional consideration beyond that reflected in the contract was transferred, or that any portion of the consideration was not included in gross proceeds reported, ONRR may establish a reasonable royalty value based on other relevant matters.

(c) ONRR may establish a reasonable royalty value based on other relevant matters if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

\* \* \* \* \*

(2) You breached your duty to market the coal for the mutual benefit of yourself and the lessor; or

\* \* \* \* \*

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may establish a reasonable royalty value based on other relevant matters.

\* \* \* \* \*

**§ 1206.254 How will ONRR determine the value of my coal for royalty purposes?**

If ONRR decides to value your coal for royalty purposes under §1206.253, or any other provision in this subpart, then ONRR will determine value by considering any information that we deem relevant, which may include, but is not limited to:

(a) The value of like-quality coal from the same mine, nearby mines, the same region, other regions, or washed in the same or nearby wash plant.

(b) Public sources of price or market information that ONRR deems reliable, including, but not limited to, the price of electricity.

(c) Information available to ONRR and information reported to us, including, but not limited to, on form ONRR-4430.

(d) Costs of transportation or washing, if ONRR determines that they are applicable.

(e) Any other information that ONRR deems relevant regarding the par-

ticular lease operation or the salability of the coal.

EFFECTIVE DATE NOTE: At 86 FR 4657, Jan. 15, 2021, §1206.254 was removed, effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021.

**§ 1206.255 What records must I keep in order to support my calculations of royalty under this subpart?**

If you value your coal under this subpart, you must retain all data relevant to the determination of the royalty that you paid. You can find record-keeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR. You must comply with any such requirement within the time that ONRR specifies.

**§ 1206.256 What are my responsibilities to place production into marketable condition and to market production?**

(a) You must place coal in marketable condition and market the coal for the mutual benefit of the lessee and the lessor at no cost to the Federal Government.

(b) If you use gross proceeds under an arm's-length contract in order to determine royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform in order to place the coal in marketable condition or to market the coal.

**§ 1206.257 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?**

Notwithstanding any provision in these regulations to the contrary, ONRR will not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR re-determining royalty due, under this subpart, final or binding as against the Federal government or its beneficiaries unless ONRR chooses to,

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in writing, formally close the audit period.

**§ 1206.258 How do I request a valuation determination?**

(a) You may request a valuation determination from ONRR regarding any coal produced. Your request must:

- (1) Be in writing;
- (2) Identify specifically all leases involved, all interest owners of 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);
- (6) Suggest a proposed valuation method.

(b) In response to your request, ONRR may:

- (1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination;
- (2) Decide that ONRR will issue guidance; or
- (3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

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

(c)(1) A determination that the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(3) A determination that the Assistant Secretary signs is the final action

of the Department and is subject to judicial review under 5 U.S.C. 701-706.

(d) Guidance that ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or to request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

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

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or to make a determination.

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

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.259.

EFFECTIVE DATE NOTE: At 86 FR 4657, Jan. 15, 2021, § 1206.258 was amended by revising paragraphs (a) introductory text and (a)(5), removing the words "Assistant Secretary" from paragraphs (c)(2), (c)(3), (e), and (f) and adding in their place the words "Assistant Secretary for Policy, Management and Budget", revising paragraph (g), and adding paragraph (h), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the added and revised text is set forth as follows:

**§ 1206.258 How do I request a valuation determination?**

(a) You may request a valuation determination from ONRR regarding any coal produced. Your request must comply with all of the following:

\* \* \* \* \*



(5) Provide your analysis of the issue(s);

\* \* \* \* \*

(g) ONRR or the Assistant Secretary for Policy, Management and Budget generally will not retroactively modify or rescinds a valuation 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 § 1206.259.

**§ 1206.259 Does ONRR protect information that I provide?**

(a) Certain information that you or your affiliate submit(s) to ONRR regarding royalties on coal, including deductions and allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

**§ 1206.260 What general transportation allowance requirements apply to me?**

(a)(1) ONRR will allow a deduction for the reasonable, actual costs to transport coal from the lease to the point off of the lease or mine as determined under § 1206.261 or § 1206.262, as applicable.

(2) You do not need ONRR's approval before reporting a transportation allowance for costs incurred.

(b) You may take a transportation allowance when:

(1) You value coal under § 1206.252 of this part;

(2) You transport the coal from a Federal lease to a sales point, which is remote from both the lease and mine; or

(3) You transport the coal from a Federal lease to a wash plant when that plant is remote from both the

lease and mine and, if applicable, from the wash plant to a remote sales point.

(c) You may not take an allowance for:

(1) Transporting lease production that is not royalty-bearing;

(2) In-mine movement of your coal; or

(3) Costs to move a particular tonnage of production for which you did not incur those costs.

(d) You may only claim a transportation allowance when you sell the coal and pay royalties.

(e) You must allocate transportation allowances to the coal attributed to the lease from which it was extracted.

(1) If you commingle coal produced from Federal and non-Federal leases, you may not disproportionately allocate transportation costs to Federal lease production. Your allocation must use the same proportion as the ratio of the tonnage from the Federal lease production to the tonnage from all production.

(2) If you commingle coal produced from more than one Federal lease, you must allocate transportation costs to each Federal lease, as appropriate. Your allocation must use the same proportion as the ratio of the tonnage of each Federal lease production to the tonnage of all production.

(3) For washed coal, you must allocate the total transportation allowance only to washed products.

(4) For unwashed coal, you may take a transportation allowance for the total coal transported.

(5)(i) You must report your transportation costs on form ONRR-4430 as clean coal short tons sold during the reporting period multiplied by the sum of the per-short-ton cost of transporting the raw tonnage to the wash plant and, if applicable, the per-short-ton cost of transporting the clean coal tons from the wash plant to a remote sales point.

(ii) You must determine the cost per short ton of clean coal transported by dividing the total applicable transportation cost by the number of clean coal tons resulting from washing the raw coal transported.

(f) You must express transportation allowances for coal as a dollar-value

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equivalent per short ton of coal transported. If you do not base your or your affiliate's payments for transportation under a transportation contract on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid to a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under §1206.254 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by transporting your coal at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs, including, but not limited to, transportation allowances reported to ONRR and the cost to transport coal through the same transportation system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under §1206.261 or §1206.262 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

EFFECTIVE DATE NOTE: At 86 FR 4658, Jan. 15, 2021, §1206.260 was amended by revising paragraphs (g) introductory text and (g)(2), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 1206.260 What general transportation allowance requirements apply to me?

\* \* \* \* \*

(g) ONRR may determine your transportation allowance if:

\* \* \* \* \*

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does

not reflect the reasonable cost of the transportation because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by transporting your coal at a cost that is unreasonably high; or

\* \* \* \* \*

§ 1206.261 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting the coal under that contract.

(b) You must be able to demonstrate that your or your affiliate's contract is at arm's-length.

(c) If you have no written contract for the arm's-length transportation of coal, then ONRR will determine your transportation allowance under §1206.254. You may not use this paragraph (c) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in §1206.258(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

EFFECTIVE DATE NOTE: At 86 FR 4658, Jan. 15, 2021, §1206.261 was amended by revising paragraph (c), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 1206.261 How do I determine a transportation allowance if I have an arm's-length transportation contract?

\* \* \* \* \*

(c) If you have no written contract for the arm's-length transportation of coal, and neither you nor your affiliate perform your own transportation, you must propose to ONRR a method to determine the transportation allowance using the procedures in §1206.258(a).

(1) You must use that method to determine your allowance until ONRR issues a determination.

(2) [Reserved]

**§ 1206.262 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?**

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (j) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value, under paragraph (i) of this section, after you have depreciated the transportation system to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the transportation system.

(e) Allowable operating expenses include the following:

(1) Operations supervision and engineering

(2) Operations labor

(3) Fuel

(4) Utilities

(5) Materials

(6) Ad valorem property taxes

(7) Rent

(8) Supplies

(9) Any other directly allocable and attributable operating expenses that you can document

(f) Allowable maintenance expenses include the following:

(1) Maintenance of the transportation system

(2) Maintenance of equipment

(3) Maintenance labor

(4) Other directly allocable and attributable maintenance expenses that you can document

(g) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either (i) a straight-line depreciation method based on the life of the transportation system or the life of the reserves that the transportation system services, or you may elect to use (ii) a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for the purposes of the allowance calculation.

(3) You may depreciate a transportation system only once with or without a change in ownership.

(i)(1) To calculate a return on undepreciated capital investment, you must multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (k) of this section.

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(2) After you have depreciated a transportation system to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return determined under paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (k) of this section. You may not include depreciation in your allowance

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

### **§ 1206.263 What are my reporting requirements under an arm's-length transportation contract?**

(a) You must use a separate entry on form ONRR-4430 to notify ONRR of an allowance based on transportation costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

### **§ 1206.264 What are my reporting requirements under a non-arm's-length transportation contract?**

(a) You must use a separate entry on form ONRR-4430 to notify ONRR of an allowance based on non-arm's-length transportation costs you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable

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transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.266 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

### **§ 1206.265 What interest and penalties apply if I improperly report a transportation allowance?**

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under §1218.202 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit without interest.

(b) If you improperly net a transportation allowance against the sales value of the coal instead of reporting the allowance as a separate entry on form ONRR-4430, ONRR may assess a civil penalty under 30 CFR part 1241.

### **§ 1206.266 What reporting adjustments must I make for transportation allowances?**

(a) If your actual transportation allowance is less than the amount that you claimed on form ONRR-4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §1218.202 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on form ONRR-4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

**§ 1206.267 What general washing allowance requirements apply to me?**

(a)(1) If you determine the value of your coal under §1206.252 of this subpart, you may take a washing allowance for the reasonable, actual costs to wash the coal. The allowance is a deduction when determining coal royalty value for the costs that you incur to wash coal.

(2) You do not need ONRR's approval before reporting a washing allowance.

(b) You may not:

(1) Take an allowance for the costs of washing lease production that is not royalty bearing.

(2) Disproportionately allocate washing costs to Federal leases. You must allocate washing costs to washed coal attributable to each Federal lease by multiplying the input ratio determined under §1206.251(e)(2)(i) by the total allowable costs.

(c)(1) You must express washing allowances for coal as a dollar-value equivalent per short ton of coal washed.

(2) If you do not base your or your affiliate's payments for washing under an arm's-length contract on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid to a dollar-value equivalent.

(d) ONRR may determine your washing allowance under §1206.254 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length washing contract does not reflect the reasonable cost of the washing because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by washing your coal at a cost that is unreasonably high. We may consider a washing allowance unreasonably high if it is 10 percent higher than the highest other reasonable measures of washing, including, but not limited to, washing allowances reported to ONRR and costs for coal washed in the same plant or other plants in the region; or

(3) ONRR cannot determine if you properly calculated a washing allowance under §§1206.267 through 1206.269 for any reason, including, but not limited to, your or your affiliate's failure

to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

(e) You may only claim a washing allowance when you sell the washed coal and report and pay royalties.

EFFECTIVE DATE NOTE: At 86 FR 4658, Jan. 15, 2021, §1206.267 was amended by revising paragraphs (d) introductory text and (d)(2), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.267 What general washing allowance requirements apply to me?**

\* \* \* \* \*

(d) ONRR may direct you to modify your washing allowance if:

\* \* \* \* \*

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length washing contract does not reflect the reasonable cost of the washing because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by washing your coal at a cost that is unreasonably high; or

\* \* \* \* \*

**§ 1206.268 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?**

(a) If you or your affiliate incur(s) washing costs under an arm's-length washing contract, you may claim a washing allowance for the reasonable, actual costs incurred.

(b) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(c) If you have no written contract for the arm's-length washing of coal, then ONRR will determine your washing allowance under §1206.254. You may not use this paragraph (c) if you or your affiliate perform(s) your own washing. If you or your affiliate perform(s) the washing, then

(1) You must propose to ONRR a method to determine the allowance using the procedures in §1206.258(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

EFFECTIVE DATE NOTE: At 86 FR 4658, Jan. 15, 2021, § 1206.268 was amended by revising paragraphs (b) and (c), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.268 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?**

\* \* \* \* \*

(b) You must be able to demonstrate that your or your affiliate's washing contract is arm's-length.

(c) If you have no written contract for the arm's-length washing of coal, and neither you nor your affiliate perform your own washing, you must propose to ONRR a method to determine the washing allowance using the procedures in § 1206.258(a).

(1) You must use that method to determine your allowance until ONRR issues a determination.

(2) [Reserved]

**§ 1206.269 How do I determine washing allowances if I do not have an arm's-length washing contract?**

(a) This section applies if you or your affiliate do(es) not have an arm's-length washing contract, including situations where you or your affiliate provides your own washing services. You must calculate your washing allowance based on your or your affiliate's reasonable, actual costs for washing during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the wash plant under paragraph (j) of this section. After you have elected to use either method for a wash plant, you may not

later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value, under paragraph (i) of this section, after you have depreciated the wash plant to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the wash plant.

(e) Allowable operating expenses include the following:

- (1) Operations supervision and engineering
- (2) Operations labor
- (3) Fuel
- (4) Utilities
- (5) Materials
- (6) Ad valorem property taxes
- (7) Rent
- (8) Supplies
- (9) Any other directly allocable and attributable operating expenses that you can document

(f) Allowable maintenance expenses include the following:

- (1) Maintenance of the wash plant
- (2) Maintenance of equipment
- (3) Maintenance labor
- (4) Other directly allocable and attributable maintenance expenses that you can document

(g) Overhead, directly attributable and allocable to the operation and maintenance of the wash plant, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the wash plant or the life of the reserves that the wash plant services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods

without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a wash plant will not alter the depreciation schedule that the original washer/lessee established for purposes of the allowance calculation.

(3) With or without a change in ownership, you may depreciate a wash plant only once.

(i)(1) To calculate a return on undepreciated capital investment, you must multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the washing allowance by the rate of return provided in paragraph (k) of this section.

(2) After you have depreciated a wash plant to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the salvage value multiplied by a rate of return determined under paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the wash plant multiplied by the rate of return as determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

**§ 1206.270 What are my reporting requirements under an arm's-length washing contract?**

(a) You must use a separate entry on form ONRR-4430 to notify ONRR of an allowance based on washing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length washing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

**§ 1206.271 What are my reporting requirements under a non-arm's-length washing contract?**

(a) You must use a separate entry on form ONRR-4430 to notify ONRR of an allowance based on non-arm's-length washing costs that you or your affiliate incur(s).

(b)(1) For new non-arm's-length washing facilities or arrangements, you must base your initial deduction on estimates of allowable washing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the wash plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar wash plants.

(3) Section 1206.273 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

**§ 1206.272 What interest and penalties apply if I improperly report a washing allowance?**

(a)(1) If ONRR determines that you took an unauthorized washing allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your washing allowance, you may be entitled to a credit without interest.

(b) If you improperly net a washing allowance against the sales value of the coal instead of reporting the allowance as a separate entry on form ONRR-4430, ONRR may assess a civil penalty under 30 CFR part 1241.

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### § 1206.273 What reporting adjustments must I make for washing allowances?

(a) If your actual washing allowance is less than the amount that you claimed on form ONRR-4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual washing allowance is greater than the amount that you claimed on form ONRR-4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

## Subpart G—Other Solid Minerals

### § 1206.301 Value basis for royalty computation.

(a) The gross value for royalty purposes shall be the sale or contract unit price times the number of units sold, *Provided, however*, That where the authorized officer determines:

(1) That a contract of sale or other business arrangement between the lessee and a purchaser of some or all of the commodities produced from the lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the commodities, or

(2) That no bona fide sales price is received for some or all of such commodities because the lessee is consuming them, the authorized officer shall determine their gross value, taking into account: (i) All prices received by the lessee in all bona fide transactions, (ii) Prices paid for commodities of like quality produced from the same general area, and (iii) Such other relevant factors as the authorized officer may deem appropriate; and *Provided further*, That in a situation where an estimated value is used, the authorized officer shall require the payment of such additional royalties, or allow such credits or refunds as may be necessary to adjust royalty payment to reflect the actual gross value.

(b) The lessee is required to certify that the values reported for royalty

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purposes are bona fide sales not involving considerations other than the sale of the mineral, and he may be required by the authorized officer to supply supporting information.

[43 FR 10341, Mar. 13, 1978. Redesignated at 48 FR 36588, Aug. 12, 1983, and amended at 48 FR 44795, Sept. 30, 1983. Further redesignated at 51 FR 15212, Apr. 22, 1986. Redesignated at 53 FR 39461, Oct. 7, 1988]

## Subpart H—Geothermal Resources

SOURCE: 72 FR 24459, May 2, 2007, unless otherwise noted.

### § 1206.350 What is the purpose of this subpart?

(a) This subpart applies to all geothermal resources produced from Federal geothermal leases issued pursuant to the Geothermal Steam Act of 1970 (GSA), as amended by the Energy Policy Act of 2005 (EPAct) (30 U.S.C. 1001 *et seq.*). The purpose of this subpart is to prescribe how to calculate royalties and direct use fees for geothermal production.

(b) The ONRR may audit and adjust all royalty and fee payments.

(c) In some cases, the regulations in this subpart may be inconsistent with a statute, settlement agreement, written agreement, or lease provision. If this happens, the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency. For purposes of this paragraph, the following definitions apply:

(1) “Settlement agreement” means a settlement agreement between the United States and a lessee resulting from administrative or judicial litigation.

(2) “Written agreement” means a written agreement between the lessee and the ONRR Director or Assistant Secretary, Policy, Management and Budget of the Department of the Interior that:

(i) Establishes a method to determine the royalty from any lease that ONRR expects at least would approximate the value or royalty established under this subpart; and



(ii) Includes a value or gross proceeds determination under §1206.364 of this subpart.

**§ 1206.351 What definitions apply to this subpart?**

For purposes of this subpart, the following terms have the meanings indicated.

*Affiliate* means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that ONRR may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities, or instruments of ownership, or other forms of ownership of another person, ONRR will consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, whether a person is the greatest single owner, or whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, pipeline, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, pipeline, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

*Allowance* means a deduction in determining value for royalty purposes.

*Arm's-length contract* means a contract or agreement between inde-

pendent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

*Audit* means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty or fee payment compliance activities of lessees or other interest holders who pay royalties, fees, rents, or bonuses on Federal geothermal leases.

*Byproducts* means minerals (exclusive of oil, hydrocarbon gas, and helium), found in solution or in association with geothermal steam, that no person would extract and produce by themselves because they are worth less than 75 percent of the value of the geothermal steam or because extraction and production would be too difficult.

*Byproduct recovery facility* means a facility where byproducts are placed in marketable condition.

*Byproduct transportation allowance* means an allowance for the reasonable, actual costs of moving byproducts to a point of sale or delivery off the lease, unit area, or communitized area, or away from a byproduct recovery facility. The byproduct transportation allowance does not include gathering costs. You must report a byproduct transportation allowance as a separate discrete field on the Form ONRR-2014.

*Class I lease* means:

(1) A lease that BLM issued before August 8, 2005, for which the lessee has not converted the royalty rate terms under 43 CFR 3212.25; or

(2) A lease that BLM issued in response to an application that was pending on August 8, 2005, for which the lessee has not made an election under 43 CFR 3200.8(b).

*Class II lease* means:

A lease that BLM issued after August 8, 2005, except for a lease issued in response to an application that was pending on August 8, 2005, for which the lessee does not make an election under 43 CFR 3200.8(b).

*Class III lease* means:

A lease that BLM issued before August 8, 2005, for which the lessee has

converted to the royalty rate or direct use fee terms under 43 CFR 3212.25.

*Commercial production or generation of electricity* means generation of electricity that is sold or is subject to sale, including the electricity or energy that is reasonably required to produce the resource used in production of electricity for sale or to convert geothermal energy into electrical energy for sale.

*Contract* means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

*Deduction* means a subtraction the lessee uses to determine the value of geothermal resources produced from a Class I lease that the lessee uses to generate electricity.

*Delivered electricity* means the amount of electricity in kilowatt-hours delivered to the purchaser.

*Direct use* means the utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs, other than the commercial production or generation of electricity.

*Direct use facility* means a facility that uses the heat or other energy of the geothermal resource for direct use purposes.

*Electrical facility* means a power plant or other facility that uses a geothermal resource to generate electricity.

*Field* means the land surface vertically projected over a subsurface geothermal reservoir encompassing at least the outermost boundaries of all geothermal accumulations known to be within that reservoir. Geothermal fields are usually given names and their official boundaries are often designated by regulatory agencies in the respective States in which the fields are located.

*Gathering* means the movement of lease production from the wellhead to the point of utilization.

*Generating deduction* means a deduction for the lessee's reasonable, actual costs of generating plant tailgate electricity.

*Geothermal resources* means:

(1) All products of geothermal processes, including indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any byproducts.

*Gross proceeds* (for royalty payment purposes) means the total monies and other consideration accruing to a geothermal lessee for the sale of electricity or geothermal resource. Gross proceeds includes, but is not limited to:

(1) Payments to the lessee for certain services such as effluent injection, field operation and maintenance, drilling or workover of wells, or field gathering to the extent that the lessee is obligated to perform such functions at no cost to the Federal Government;

(2) Reimbursements for production taxes and other taxes. Tax reimbursements are part of gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation; and

(3) Any monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts.

*Lease* means a geothermal lease issued under the authority of the GSA, unless the context indicates otherwise.

*Lessee (you)* means any person to whom the United States issues a geothermal lease, and any person who has been assigned an obligation to make royalty, fee, or other payments required by the lease. This includes any person who has an interest in a geothermal lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty, fee, or other payment responsibility. This also includes any affiliate of the lessee that uses the geothermal resource to generate electricity, in a direct use process, or to recover byproducts, or any affiliate that sells or transports lease production.

*Marketable condition* means lease products that are sufficiently free from impurities and otherwise in a condition

that they will be accepted by a purchaser under a sales contract typical for the disposition from the field or area of such lease products.

*Person* means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

*Plant parasitic electricity* means electricity used to operate a power plant that is used for commercial production or generation of electricity.

*Plant tailgate electricity* means the amount of electricity in kilowatt-hours generated by a power plant exclusive of plant parasitic electricity, but inclusive of any electricity generated by the power plant and returned to the lease for lease operations. Plant tailgate electricity should be measured at, or calculated for, the high voltage side of the transformer in the plant switchyard.

*Point of utilization* means the power plant or direct use facility in which the geothermal resource is utilized.

*Public purpose* means a program carried out by a State, tribal, or local government for the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare, other than the commercial generation of electricity. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only when necessary for and integral to (i.e., an essential part of) the public purpose.

*Public safety or welfare* means a program carried out or promoted by a public agency for public purposes involving, directly or indirectly, protection, safety, and law enforcement activities, and the criminal justice system of a given political area. Public safety or welfare may include, but is not limited to, programs carried out by:

- (1) Public police departments;
- (2) Sheriffs' offices;
- (3) The courts;
- (4) Penal and correctional institutions (including juvenile facilities);
- (5) State and local civil defense organizations; and
- (6) Fire departments and rescue squads (including volunteer fire departments and rescue squads supported in whole or in part with public funds).

*Reasonable alternative fuel* means a conventional fuel (such as coal, oil, gas, or wood) that would normally be used as a source of heat in direct use operations.

*Secretary* means the Secretary of the Interior or any person duly authorized to exercise the powers vested in that office.

*Transmission deduction* means a deduction for the lessee's reasonable actual costs incurred to wheel or transmit the electricity from the lessee's power plant to the purchaser's delivery point.

*Wheeling* means the transmission of electricity from a power plant to the point of delivery.

**§ 1206.352 How do I calculate the royalty due on geothermal resources used for commercial production or generation of electricity?**

(a) If you sold geothermal resources produced from a Class I, II, or III lease at arm's length that the purchaser uses to generate electricity, then the royalty on the geothermal resources is the gross proceeds accruing to you from the sale of the geothermal resource to the arm's-length purchaser multiplied by either:

- (1) The royalty rate in your lease; or
- (2) The royalty rate that BLM prescribes or calculates under 43 CFR 3211.17. See § 1206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales.

(b) If you use the geothermal resource in your own power plant for the generation and sale of electricity, the following provisions apply

(1) For Class I leases, you must determine the royalty on produced geothermal resources in accordance with the first applicable of the following paragraphs:

- (i) The gross proceeds accruing to you from the arm's-length sale of the electricity less applicable deductions determined under §§ 1206.353 and 1206.354 of this part, multiplied by the royalty rate in your lease. See § 1206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales. Under no circumstances may the deductions reduce the royalty value of the geothermal resource to zero; or

(ii) A royalty determined by any other reasonable method approved by ONRR under §1206.364 of this subpart.

(2) For Class II and Class III leases, the royalty on geothermal resources produced is your gross proceeds from the sale of electricity multiplied by the royalty rate BLM prescribed for your lease under 43 CFR 3211.17. See §1206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales. You may not reduce gross proceeds by any deductions.

**§ 1206.353 How do I determine transmission deductions?**

(a) If you determine the value of your geothermal resources under §1206.352(b)(1)(i) of this subpart, you may subtract a transmission deduction from the gross proceeds you received for the sale of electricity to determine the plant tailgate value of the electricity.

(1) The transmission deduction consists of either or both of two components:

(i) Transmission line costs as determined under paragraph (b) of this section; and

(ii) Wheeling costs if the electricity is transmitted across a third party's transmission line under an arm's-length wheeling agreement.

(2) You may deduct the actual costs you (including your affiliate(s)) incur for transmitting electricity under your arm's-length wheeling contract.

(b) To determine your transmission line cost, you must follow the requirements of paragraphs (b)(1) and (b)(2) of this section.

(1) Your transmission line costs are your actual costs associated with the construction and operation of a transmission line for the purpose of transmitting electricity attributable and allocable to your power plant utilizing Federal geothermal resources.

(i) You must determine the monthly transmission line cost component of the transmission deduction by multiplying the annual transmission line cost rate (in dollars per kilowatt-hour) by the amount of electricity delivered for the reporting month.

(ii) You must redetermine the transmission line cost rate annually either at the beginning of the same month of

the year in which the power plant was placed into service or at a time concurrent with the beginning of your annual corporate accounting period. The period you select must coincide with the same period you chose for the generating deduction under §1206.354(b)(1). After you choose a deduction period, you may not later elect to use a different deduction period without ONRR approval.

(2) Your actual transmission line costs during the reporting period include:

(i) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(ii) Overhead under paragraph (f) of this section; and either

(iii) Depreciation under paragraphs (g) and (h) of this section and a return on undepreciated capital investment under paragraphs (g) and (i) of this section or

(iv) A return on the capital investment in the transmission line under paragraphs (g) and (j) of this section.

(c)(1) Allowable capital costs under paragraph (b) of this section are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transmission line.

(2)(i) You may include a return on capital you invested in the purchase of real estate for transmission facilities if:

(A) Such purchase is necessary; and

(B) The surface is not part of the Federal lease.

(ii) The rate of return will be the same rate determined under paragraph (k) of this section.

(d) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating or maintenance expense that you can document.

(e) Allowable maintenance expenses include:

- (1) Maintenance of the transmission line;
- (2) Maintenance of equipment;
- (3) Maintenance labor; and
- (4) Other directly allocable and attributable maintenance expenses that you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the transmission line is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute costs associated with capital investment, a lessee may use either depreciation with a return on undepreciated capital investment, or a return on capital investment in the transmission line. After a lessee has elected to use either method, the lessee may not later elect to change to the other alternative without ONRR approval.

(h)(1) To compute depreciation, you must use a straight-line depreciation method based on the life of the geothermal project, usually the term of the electricity sales contract, or other depreciation period acceptable to ONRR. You may not depreciate equipment below a reasonable salvage value.

(2) A change in ownership of a transmission line does not alter the depreciation schedule established by the original lessee-owner for purposes of computing transmission line costs.

(3) With or without a change in ownership, you may depreciate a transmission line only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transmission deduction by the rate of return provided in paragraph (k) of this section.

(j) To compute a return on capital investment in the transmission line, multiply the allowable capital investment in the transmission line by the rate of return determined pursuant to paragraph (k) of this section. There is no allowance for depreciation.

(k) The rate of return must be 2.0 multiplied by the industrial rate asso-

ciated with Standard & Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard & Poor's Bond Guide for the first month for which the allowance is applicable. Redetermine the rate at the beginning of each subsequent calendar year.

(1) Calculate the deduction for transmission costs based on your cost of transmitting electricity through each individual transmission line.

(m)(1) For new transmission facilities or arrangements, base your initial deduction on estimates of allowable electricity transmission costs for the applicable period. Use the most recently available operations data for the transmission line or, if such data are not available, use estimates based on data for similar transmission lines.

(2) When actual cost information is available, you must amend your prior Form ONRR-2014 reports to reflect actual transmission costs deductions for each month for which you reported and paid based on estimated transmission costs. You must pay any additional royalties due (together with interest computed under §1218.302 of this chapter). You are entitled to a credit for or refund of any overpaid royalties.

(n) In conducting reviews and audits, ONRR may require you to submit arm's-length transmission contracts, production agreements, operating agreements, and related documents and all other data used to calculate the deduction. You must comply with any such requirements within the time ONRR specifies. Recordkeeping requirements are found at part 1212 of this chapter.

(o) At the completion of transmission line dismantlement and salvage operations, you may report a credit for or request a refund of royalties in an amount equal to the royalty rate times the amount by which actual transmission line dismantlement costs exceed actual income attributable to salvage of the transmission line.

**§ 1206.354 How do I determine generating deductions?**

(a) If you determine the value of your geothermal resources under §1206.352(b)(1)(i) of this subpart, you may deduct your reasonable actual

costs incurred to generate electricity from the plant tailgate value of the electricity (usually the transmission-reduced value of the delivered electricity). You may deduct the actual costs you incur for generating electricity under your arm's-length power plant contract.

(b)(1) You must base your generating costs deduction on your actual annual costs associated with the construction and operation of a geothermal power plant.

(i) You must determine your monthly generating deduction by multiplying the annual generating cost rate (in dollars per kilowatt-hour) by the amount of plant tailgate electricity measured (or computed) for the reporting month. The generating cost rate is determined from the annual amount of your plant tailgate electricity.

(ii) You must redetermine your generating cost rate annually either at the beginning of the same month of the year in which the power plant was placed into service or at a time concurrent with the beginning of your annual corporate accounting period. The period you select must coincide with the same period chosen for the transmission deduction under § 1206.353(b)(1). After you choose a deduction period, you may not later elect to use a different deduction period without ONRR approval.

(2) Your generating costs are your actual power plant costs during the reporting period, including:

(i) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(ii) Overhead under paragraph (f) of this section; and either

(iii) Depreciation under paragraphs (g) and (h) of this section and a return on undepreciated capital investment under paragraphs (g) and (i) of this section; or

(iv) A return on capital investment in the power plant under paragraphs (g) and (j) of this section.

(c)(1) Allowable capital costs under paragraph (b) of this section are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the power plant or

are required by the design specifications of the power conversion cycle.

(2)(i) You may include a return on capital you invested in the purchase of real estate for a power plant site if:

(A) The purchase is necessary; and,

(B) The surface is not part of the Federal lease.

(ii) The rate of return will be the same rate determined under paragraph (k) of this section.

(3) You may not deduct the costs of gathering systems and other production-related facilities.

(d) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Auxiliary fuel and/or utilities used to operate the power plant during down time;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expense.

(e) Allowable maintenance expenses include:

(1) Maintenance of the power plant;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses that you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the power plant is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute costs associated with capital investment, a lessee may use either depreciation with a return on undepreciated capital investment, or a return on capital investment in the power plant. After a lessee has elected to use either method, the lessee may not later elect to change to the other alternative without ONRR approval.

(h)(1) To compute depreciation, you must use a straight-line depreciation method based on the life of the geothermal project, usually the term of the electricity sales contract, or other depreciation period acceptable to

ONRR. You may not depreciate equipment below a reasonable salvage value.

(2) A change in ownership of the power plant does not alter the depreciation schedule established by the original lessee-owner for purposes of computing generating costs.

(3) With or without a change in ownership, you may depreciate a power plant only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the generating deduction allowance by the rate of return provided in paragraph (k) of this section.

(j) To compute a return on capital investment in the power plant, multiply the allowable capital investment in the power plant by the rate of return determined pursuant to paragraph (k) of this section. There is no allowance for depreciation.

(k) The rate of return must be 2.0 multiplied by the industrial rate associated with Standard & Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard & Poor's Bond Guide for the first month for which the allowance is applicable. You must redetermine the rate at the beginning of each subsequent calendar year.

(l) Calculate the deduction for generating costs based on your cost of generating electricity through each individual power plant.

(m)(1) For new power plants or arrangements, base your initial deduction on estimates of allowable electricity generation costs for the applicable period. Use the most recently available operations data for the power plant or, if such data are not available, use estimates based on data for similar power plants.

(2) When actual cost information is available, you must amend your prior Form ONRR-2014 reports to reflect actual generating cost deductions for each month for which you reported and paid based on estimated generating costs. You must pay any additional royalties due (together with interest computed under §1218.302 of this chapter). You are entitled to a credit for or refund of any overpaid royalties.

(n) In conducting reviews and audits, ONRR may require you to submit arm's-length power plant contracts, production agreements, operating agreements, related documents and all other data used to calculate the deduction. You must comply with any such requirements within the time ONRR specifies. Recordkeeping requirements are found at part 1212 of this chapter.

(o) At the completion of power plant dismantlement and salvage operations, you may report a credit for or request a refund of royalty in an amount equal to the royalty rate times the amount by which actual power plant dismantlement costs exceed actual income attributable to salvage of the power plant.

**§ 1206.355 How do I calculate royalty due on geothermal resources I sell at arm's length to a purchaser for direct use?**

If you sell geothermal resources produced from Class I, II, or III leases at arm's length to a purchaser for direct use, then the royalty on the geothermal resource is the gross proceeds accruing to you from the sale of the geothermal resource to the arm's-length purchaser multiplied by the royalty rate in your lease or that BLM prescribes under 43 CFR 3211.18. See §1206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales.

**§ 1206.356 How do I calculate royalty or fees due on geothermal resources I use for direct use purposes?**

If you use the geothermal resource for direct use:

(a) For Class I leases, you must determine the royalty due on geothermal resources in accordance with the first applicable of the following three paragraphs.

(1) The weighted average of the gross proceeds established in arm's-length contracts for the purchase of significant quantities of geothermal resources to operate the lessee's same direct-use facility multiplied by the royalty rate in your lease. In evaluating the acceptability of arm's-length contracts, the following factors will be considered: time of execution, duration, terms, volume, quality of resource, and such other factors as may

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be appropriate to reflect the value of the resource.

(2) The equivalent value of the least expensive, reasonable alternative energy source (fuel) multiplied by the royalty rate in your lease. The equivalent value of the least expensive, reasonable alternative energy source will

be based on the amount of thermal energy that would otherwise be used by the direct use facility in place of the geothermal resource. That amount of thermal energy (in Btu) displaced by the geothermal resource will be determined by the equation:

$$\text{thermal energy displaced} = \frac{(h_{\text{in}} - h_{\text{out}}) \times \text{density} \times 0.113681 \times \text{volume}}{\text{efficiency factor}}$$

Where  $h_{\text{in}}$  is the enthalpy in Btu/lb at the direct use facility inlet (based on measured inlet temperature),  $h_{\text{out}}$  is the enthalpy in Btu/lb at the facility outlet (based on measured outlet temperature), density is in lbs/cu ft based on inlet temperature, the factor 0.113681 (cu ft/gal) converts gallons to cubic feet, and volume is the quantity of geothermal fluid in gallons produced at the wellhead or measured at an approved point. The efficiency factor of the alternative energy source will be 0.7 for coal and 0.8 for oil, natural gas, and other fuels derived from oil and natural gas, or an efficiency factor proposed by the lessee and approved by ONRR. The methods of measuring resource parameters (temperature, volume, etc.) and the frequency of com-

puting and accumulating the amount of thermal energy displaced will be determined and approved by BLM under 43 CFR 3275.13-3275.17.

(3) A royalty determined by any other reasonable method approved by ONRR or the Assistant Secretary, Policy, Management and Budget of the Department of the Interior, under §1206.364 of this part.

(b) For geothermal resources produced from Class II and Class III leases, you must multiply the appropriate fee from the schedule in subparagraph (b)(1) of this section by the number of gallons or pounds you produce from the direct use lease each month.

(1) You must use the following fee schedule to calculate fees due under this section:

DIRECT USE FEE SCHEDULE  
[Hot water]

| If your average monthly inlet temperature (°F) is |                     | Your fees are . . .  |                     |
|---|---------------------|----------------------|---------------------|
| At least . . .                                    | But less than . . . | (\$/million gallons) | (\$/million pounds) |
| 130   | 140                 | 2.524                | 0.307               |
| 140   | 150                 | 7.549                | 0.921               |
| 150   | 160                 | 12.543               | 1.536               |
| 160   | 170                 | 17.503               | 2.150               |
| 170   | 180                 | 22.426               | 2.764               |
| 180   | 190                 | 27.310               | 3.379               |
| 190   | 200                 | 32.153               | 3.993               |
| 200   | 210                 | 36.955               | 4.607               |
| 210   | 220                 | 41.710               | 5.221               |
| 220   | 230                 | 46.417               | 5.836               |
| 230   | 240                 | 51.075               | 6.450               |
| 240   | 250                 | 55.682               | 7.064               |
| 250   | 260                 | 60.236               | 7.679               |
| 260   | 270                 | 64.736               | 8.293               |
| 270   | 280                 | 69.176               | 8.907               |
| 280   | 290                 | 73.558               | 9.521               |
| 290   | 300                 | 77.876               | 10.136              |
| 300   | 310                 | 82.133               | 10.750              |
| 310   | 320                 | 86.328               | 11.364              |
| 320   | 330                 | 90.445               | 11.979              |
| 330   | 340                 | 94.501               | 12.593              |



DIRECT USE FEE SCHEDULE—Continued  
[Hot water]

| If your average monthly inlet temperature (°F) is |                     | Your fees are . . .  |                     |
|---|---------------------|----------------------|---------------------|
| At least . . .                                    | But less than . . . | (\$/million gallons) | (\$/million pounds) |
| 340 .....   | 350                 | 98.481               | 13.207              |
| 350 .....   | 360                 | 102.387              | 13.821              |

(i) For direct use geothermal resources with an average monthly inlet temperature of 130 °F or less, you must pay only the lease rental.

(ii) The ONRR, in consultation with BLM, will develop and publish a revised

fee schedule in the FEDERAL REGISTER, as needed.

(iii) ONRR, in consultation with BLM, will calculate revised fees schedules using the following formulas:

$$\text{For reporting on a volume basis: } R_v = \rho \times (T_{in} - T_{out}) \times P_{prbc} \times F_{rr} \times \frac{1}{e}$$

$$\text{For reporting on a mass basis: } R_m = (T_{in} - T_{out}) \times P_{prbc} \times F_{rr} \times \frac{1}{e}$$

Where:

- R<sub>v</sub> = Royalty due as a function of produced volume in the fee schedule, expressed as dollars per million (10<sup>6</sup>) gallons;
- R<sub>m</sub> = Royalty due as a function of produced mass in the fee schedule, expressed as dollars per million (10<sup>6</sup>) pounds;
- ρ[rho] = Water density at inlet temperature expressed as lbs per gallon;
- T<sub>in</sub> = Measured inlet temperature in °F (as required by BLM under 43 CFR part 3275);
- T<sub>out</sub> = Established assumed outlet temperature of 130 °F;
- e = Boiler Efficiency Factor for coal of 70 percent;
- P<sub>prbc</sub> = The 3-year historical average of Powder River Basin spot coal prices, as published by the Energy Information Administration, or other recognized authoritative reference source of coal prices, in dollars (per MMBtu);
- F<sub>rr</sub> = The assumed Lease Royalty Rate of 10 percent.

(2) The fee that you report is subject to monitoring, review, and audit.

(3) The schedule of fees established under this paragraph will apply to any Class III lease with respect to any royalty payments previously made when the lease was a Class I lease that were due and owing, and were paid, on or after July 16, 2003. To use this provision, you must provide ONRR data showing the amount of geothermal pro-

duction in pounds or gallons of geothermal fluid to input into the fee schedule (see 43 CFR part 3276).

(i) If the royalties you previously paid are less than the fees due under this section, you must pay the difference plus interest on that difference computed under §1218.302 of this chapter.

(ii) If the royalties you previously paid are more than the fees due under this section, then you are entitled to a refund or credit from ONRR of 50 percent of the overpaid royalties. You are also entitled to a refund or credit of any interest that you paid on the overpaid royalties.

(c) For geothermal resources other than hot water, ONRR will determine fees on a case-by-case basis.

[48 FR 35641, Aug. 5, 1983; 76 FR 76615, Dec. 8, 2011]

EDITORIAL NOTE: At 76 FR 76615, Dec. 8, 2011, §1206.356 was amended in the thermal energy displaced equation in paragraph (a)(2) by removing “0.113681” and adding in its place “0.133681”. The rule document does not include a revised illustration to be used for publication.

## § 1206.357

### § 1206.357 How do I calculate royalty due on byproducts?

(a) If you sell byproducts, you must determine the royalty due on the byproducts that are royalty-bearing under:

(1) Applicable lease terms of Class I leases and of Class III leases that do not elect to be subject to all of the BLM regulations promulgated for leases issued after August 8, 2005, under 43 CFR 3200.7(a)(2), or

(2) Applicable statutory provisions at 30 U.S.C. 1004(a)(2) for Class II leases and for Class III leases that do elect to be subject to all of the BLM regulations promulgated for leases issued after August 8, 2005, under 43 CFR 3200.7(a)(2).

(b) You must determine the royalty due on the byproducts by multiplying the royalty rate in your lease or that BLM prescribes under 43 CFR 3211.19 by a value of the byproducts determined in accordance with the first applicable of the following subparagraphs:

(1) The gross proceeds accruing to you from the arm's-length sale of the byproducts, less any applicable byproduct transportation allowances determined under §§ 1206.358 and 1206.359. See § 1206.361 for additional provisions applicable to determining gross proceeds;

(2) Other relevant matters including, but not limited to, published or publicly available spot-market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain byproducts; or

(3) Any other reasonable valuation method approved by ONRR.

### § 1206.358 What are byproduct transportation allowances?

(a) When you determine the value of byproducts at a point off the geothermal lease, unit, or participating area, you are allowed a deduction in determining value, for royalty purposes, for your reasonable, actual costs incurred to:

(1) Transport the byproducts from a Federal lease, unit, or participating area to a sales point or point of delivery that is off the lease, unit, or participating area; or

(2) Transport the byproducts from a Federal lease, unit, or participating

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area, or from a geothermal use facility to a byproduct recovery facility when that byproduct recovery facility is off the lease, unit, or participating area and, if applicable, from the recovery facility to a sales point or point of delivery off the lease, unit, or participating area.

(b) Costs for transporting geothermal fluids from the lease to the geothermal use facility, whether on or off the lease, are not includible in the byproduct transportation allowance.

(c)(1) When you transport byproducts from a lease, unit, participating area, or geothermal use facility to a byproduct recovery facility, you are not required to allocate transportation costs between the quantity of marketable byproducts and the rejected waste material. The byproduct transportation allowance is authorized for the total production that is transported. You must express byproduct transportation allowances as a cost per unit of marketable byproducts transported.

(2) For byproducts that are extracted on the lease, unit, participating area, or at the geothermal use facility, the byproduct transportation allowance is authorized for the total byproduct that is transported to a point of sale off the lease, unit, or participating area. You must express byproduct transportation allowances as a cost per unit of byproduct transported.

(3) You may deduct transportation costs only when you sell, deliver, or otherwise utilize the transported byproduct and report and pay royalties on the byproduct.

(d) *Reporting requirements.* (1) You must use a discrete field on Form ONRR-2014 to notify ONRR of a transportation allowance.

(2) In conducting reviews and audits, ONRR may require you to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. You must comply with any such requirements within the time ONRR specifies. Recordkeeping requirements are found at part 1212 of this chapter.

(e) Byproduct transportation allowances are subject to monitoring, review, and audit. If, after a review or audit, ONRR determines that you have improperly determined a byproduct

transportation allowance, you must pay any additional royalties due (plus interest computed under §1218.302 of this chapter). You are entitled to a credit for or refund of any overpaid royalties.

(f) If you commingled byproducts produced from Federal and non-Federal leases for transportation, you may not disproportionately allocate transportation costs to Federal lease production.

**§ 1206.359 How do I determine byproduct transportation allowances?**

(a) For transportation costs you incur under an arm's-length contract, the transportation allowance will be the reasonable, actual costs you incurred for transporting the byproducts under that contract.

(1) In conducting reviews and audits, ONRR will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from you to the transporter for the transportation. If the contract reflects more than the total consideration you paid, ONRR may require you to determine the byproduct transportation allowance under paragraph (b) of this section.

(2) If ONRR determines that the consideration you paid under an arm's-length byproduct transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, ONRR will require you to determine the byproduct transportation allowance under paragraph (b) of this section. When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify you and give you an opportunity to provide written information justifying your transportation costs.

(3) Where your payments for transportation under an arm's-length contract are not established on a dollars-per-unit basis, you must convert whatever consideration you paid to a dollar value equivalent for the purposes of this section.

(b) If you transport the byproduct yourself or under a non-arm's-length transportation arrangement, the byproduct transportation allowance is your reasonable actual costs for transportation during the reporting period, including:

(1) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(2) Overhead under paragraph (f) of this section; and either

(3) Depreciation under paragraphs (g) and (h) of this section and a return on undepreciated capital investment under paragraphs (g) and (i) of this section; or

(4) A return on capital investment in the transportation system under paragraphs (g) and (j) of this section.

(c)(1) Allowable capital costs under paragraph (b) of this section are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(2)(i) You may include a return on capital you invested in the purchase of real estate to locate the byproduct transportation facilities if:

(A) The purchase is necessary; and

(B) The surface is not part of a Federal lease.

(ii) The rate of return will be the same rate determined in paragraph (k) of this section.

(3) You may not deduct the costs of gathering systems and other production-related facilities.

(d) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expense that you can document.

(e) Allowable maintenance expenses include:

(1) Maintenance of the transportation system;

(2) Maintenance of equipment;

**§ 1206.360**

(3) Maintenance labor; and  
(4) Other directly allocable and attributable maintenance expenses that you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute costs associated with capital investment, a lessee may use either paragraphs (h) and (i) or paragraph (j) of this section. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without ONRR approval.

(h)(1) To compute depreciation, you must use a straight-line depreciation method based on either the life of the equipment or the life of the geothermal project which the transportation system services. After you choose the basis for depreciation, you may not change that basis without ONRR approval. You may not depreciate equipment below a reasonable salvage value.

(2) A change in ownership of a transportation system does not alter the depreciation schedule established by the original lessee-owner for purposes of computing transportation costs.

(3) With or without a change in ownership, you may depreciate a transportation system only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (k) of this section.

(j) To compute a return on capital investment in the transportation system, the allowed cost will be the amount equal to the allowable capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (k) of this section. There is no allowance for depreciation.

(k) The rate of return must be the industrial rate associated with Standard & Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard & Poor's Bond

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Guide for the first month for which the allowance is applicable. You must re-determine the rate at the beginning of each subsequent calendar year.

(1)(1) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable byproduct transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems.

(2) When actual cost information is available, you must amend your prior Form ONRR-2014 reports to reflect actual byproduct transportation cost deductions for each month for which you reported and paid based on estimated byproduct transportation costs. You must pay any additional royalties due (together with interest computed under § 1218.302 of this chapter). You are entitled to a credit for or a refund of any overpaid royalties.

**§ 1206.360 What records must I keep to support my calculations of royalty or fees under this subpart?**

If you determine royalties or direct use fees for your geothermal resource under this subpart, you must retain all data relevant to the determination of the royalty value or the fee you paid. Recordkeeping requirements are found at part 1212 of this chapter.

(a) You must be able to show:

(1) How you calculated the royalty value or fee you reported, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR. You must comply with any such requirement within the time ONRR specifies.

**§ 1206.361 How will ONRR determine whether my royalty or direct use fee payments are correct?**

(a)(1) The royalties or direct use fees that you report are subject to monitoring, review, and audit. The ONRR may review and audit your data, and ONRR will direct you to use a different measure of royalty value, gross proceeds, or fee, whichever is applicable, if it determines that the reported value,

gross proceeds, or fee is inconsistent with the requirements of this subpart.

(2) If ONRR directs you to use a different royalty value, measure of gross proceeds, or fee, you must either pay any royalties or fees due (together with interest computed under §1218.302 of this chapter) or report a credit for or request a refund of any overpaid royalties or fees.

(b) When the provisions in this subpart refer to gross proceeds either for the sale of electricity or the sale of a geothermal resource, in conducting reviews and audits ONRR will examine whether your sales contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you for the geothermal resource or electricity. If ONRR determines that a contract does not reflect the total consideration, or the gross proceeds accruing to you under a contract do not reflect reasonable consideration because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, ONRR may require you to increase the gross proceeds to reflect any additional consideration. Alternatively, for Class I leases, ONRR may require you to use another valuation method in the regulations applicable to dispositions other than under an arm's-length contract. ONRR will notify you to give you an opportunity to provide written information justifying your gross proceeds.

(c) For arm's-length sales, you have the burden of demonstrating that your contract is arm's length.

(d) ONRR may require you to certify that the provisions in your sales contract include all of the consideration the buyer paid you, either directly or indirectly, for the electricity or geothermal resource.

(e) Notwithstanding any other provision of this subpart, under no circumstances will the value of production for royalty purposes under a Class I lease where the geothermal resources are sold before use be less than the gross proceeds accruing to you.

(f) Gross proceeds for the sale of electricity or for the sale of the geothermal resource will be based on the

highest price a prudent lessee can receive through legally enforceable claims under its contract.

(1) Absent contract revision or amendment, if you fail to take proper or timely action to receive prices or benefits to which you are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) Contract revisions or amendments you make must be in writing and signed by all parties to the contract.

(3) If you make timely application for a price increase or benefit allowed under your contract, but the purchaser refuses and you take reasonable measures, which are documented, to force purchaser compliance, you will owe no additional royalties unless or until you receive additional monies or consideration resulting from the price increase. This paragraph (f)(3) will not be construed to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of geothermal resources or electricity.

**§ 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

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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;
  - (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)(1) 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.

(2) After the Assistant Secretary issues a determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties,

pay the royalties owed together with late payment interest computed under § 1218.302 of this chapter.

(3) 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.

(d) 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.

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

(2) 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.

(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.

[72 FR 24459, May 2, 2007, as amended at 78 FR 30204, May 22, 2013]

**§ 1206.365 Does ONRR protect information I provide?**

Certain information you submit to ONRR regarding royalties or fees on geothermal resources or byproducts, including deductions and allowances, may be exempt from disclosure. To the extent applicable laws and regulations

permit, ONRR will keep confidential any data you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

**§ 1206.366 What is the nominal fee that a State, tribal, or local government lessee must pay for the use of geothermal resources?**

If a State, tribal, or local government lessee uses a geothermal resource without sale and for public purposes—other than commercial production or generation of electricity—the State, tribal, or local government lessee must pay a nominal fee. A nominal fee means a slight or *de minimis* fee. ONRR will determine the fee on a case-by-case basis.

**Subpart I—OCS Sulfur [Reserved]**

**Subpart J—Indian Coal**

SOURCE: 85 FR 62045, Oct. 1, 2020, unless otherwise noted.

**§ 1206.450 What is the purpose and scope of this subpart?**

(a) This subpart applies to all coal produced from Indian Tribal coal leases and coal leases on land held by individual Indian mineral owners. It explains how you, as the lessee, must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

(b) The terms “you” and “your” in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR’s Director establishing a method to determine the value of production from any lease that ONRR expects, at least, would approximate the value established under this subpart; or express provision of a coal lease subject to this subpart, then the

statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR may audit and order you to adjust all royalty payments.

(e) The regulations in this subpart, intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian coal leases, are discharged under the requirements of the governing mineral leasing laws, treaties, and lease terms.

**§ 1206.451 How do I determine royalty quantity and quality?**

(a) You must calculate royalties based on the quantity and quality of coal at the royalty measurement point that ONRR and BLM jointly determine.

(b) You must measure coal in short tons using the methods that BLM prescribes for Indian coal leases. You must report coal quantity on appropriate forms required in 30 CFR part 1210.

(c)(1) You are not required to pay royalties on coal that you produce and add to stockpiles or inventory until you use, sell, or otherwise finally dispose of such coal.

(2) ONRR may request that BLM require you to increase your lease bond if BLM determines that stockpiles or inventory are excessive such that they increase the risk of resource degradation.

(d) You must pay royalty at the rate specified in your lease at the time when you use, sell, or otherwise finally dispose of the coal.

(e) You must allocate washed coal by attributing the washed coal to the leases from which it was extracted.

(1) If the wash plant washes coal from only one lease, the quantity of washed coal allocable to the lease is the total output of washed coal from the plant.

(2) If the wash plant washes coal from more than one lease, you must determine the tonnage of washed coal attributable to each lease by:

(i) First, calculating the input ratio of washed coal allocable to each lease by dividing the tonnage of coal input to the wash plant from each lease by the total tonnage of coal input to the wash plant from all leases.

(ii) Second, multiplying the input ratio derived under paragraph (e)(2)(i)

**§ 1206.452**

of this section by the tonnage of total output of washed coal from the plant.

**§ 1206.452 How do I calculate royalty value for coal that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?**

(a) The value of coal under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract less an applicable transportation allowance determined under §§ 1206.460 through 1206.462 and washing allowance under §§ 1206.467 through 1206.469. You must use this paragraph (a) to value coal when:

(1) You sell under an arm's-length contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of either of them, then sells the coal under an arm's-length contract.

(b) If you have no contract for the sale of coal subject to this section because you or your affiliate used the coal in a power plant that you or your affiliate own(s) for the generation and sale of electricity, one of the following applies:

(1) You or your affiliate sell(s) the electricity, then the value of the coal subject to this section, for royalty purposes, is the gross proceeds accruing to you for the power plant's arm's-length sales of the electricity less applicable transportation and washing deductions determined under §§ 1206.460 through 1206.462 and §§ 1206.467 through 1206.469 of this subpart and, if applicable, transmission and generation deductions determined under §§ 1206.353 and 1206.352 of subpart H.

(2) You or your affiliate do(es) not sell the electricity at arm's-length (for example you or your affiliate deliver(s) the electricity directly to the grid), then ONRR will determine the value of the coal under § 1206.454.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.458(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues a determination.

(iii) After ONRR issues a determination, you must make the adjustments under § 1206.453(a)(2).

(c) If you are a coal cooperative, or a member of a coal cooperative, one of the following applies:

(1) You sell or transfer coal to another member of the coal cooperative, and that member of the coal cooperative then sells the coal under an arm's-length contract, then you must value the coal under paragraph (a) of this section.

(2) You sell or transfer coal to another member of the coal cooperative, and you, the coal cooperative, or another member of the coal cooperative use the coal in a power plant for the generation and sale of electricity, then you must value the coal under paragraph (b) of this section.

(d) If you are entitled to take a washing allowance and transportation allowance for royalty purposes under this section, under no circumstances may the washing allowance plus the transportation allowance reduce the royalty value of the coal to zero.

(e) The values in this section do not apply if ONRR decides to value your coal under § 1206.454.

EFFECTIVE DATE NOTE: At 86 FR 4658, Jan. 15, 2021, § 1206.452 was amended by revising the section heading, paragraphs (a) introductory text and (b), and removing paragraph (c), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.452 How do I calculate royalty value for coal?**

(a) The value of coal under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract, or another person, less an applicable transportation allowance determined under §§ 1206.460 through 1206.462 and washing allowance under §§ 1206.467 through 1206.469. You must use this paragraph (a) to value coal when:

\* \* \* \* \*

(b) If you have no contract for the sale of coal subject to this section because you or your affiliate used the coal in a power plant that you or your affiliate own(s) for the generation and sale of electricity:



(1) You must propose to ONRR a method to determine the value using the procedures in § 1206.458(a).

(2) You must use that method to determine value, for royalty purposes, until ONRR issues a determination.

(3) After ONRR issues a determination, you must make the adjustments under § 1206.453(a)(2).

\* \* \* \* \*

**§ 1206.453 How will ONRR determine if my royalty payments are correct?**

(a)(1) ONRR may monitor, review, and audit the royalties that you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value, or decide your value, under § 1206.454.

(2) If ONRR directs you to use a different royalty value, you must either pay any underpaid royalties plus late payment interest calculated under § 1218.202 of this chapter or report a credit for, or request a refund of, any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the coal. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.454.

(c) ONRR may decide to value your coal under § 1206.454, if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You breached your duty to market the coal for the mutual benefit of yourself and the lessor by selling your coal at a value that is unreasonably low. ONRR may consider a sales price unreasonably low, if it is 10 percent less than the lowest other reasonable measures of market price, including, but not limited to, prices reported to ONRR for like-quality coal; or

(3) ONRR cannot determine if you properly valued your coal under

§ 1206.452 for any reason, including, but not limited to, your or your affiliate's failure to provide documents to ONRR under 30 CFR part 1212, subpart E.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include(s) all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the coal.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate apply in a timely manner for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses, and you or your affiliate take reasonable, documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or in a timely manner, for a quantity of coal.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide to value your coal under § 1206.454.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

EFFECTIVE DATE NOTE: At 86 FR 4658, Jan. 15, 2021, § 1206.453 was amended by revising paragraphs (a)(1), (b), (c) introductory text, (c)(2), and (g)(1) and (2), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.454**

**§ 1206.453 How will ONRR determine if my royalty payments are correct?**

(a)(1) ONRR may monitor, review, and audit the royalties that you report, and, if ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR may establish a reasonable royalty value based on other relevant matters.

\* \* \* \* \*

(b) ONRR may examine whether your or your affiliate's contract reflects the total consideration transferred for Indian coal, either directly or indirectly, from the buyer to you or your affiliate. If ONRR determines that additional consideration beyond that reflected in the contract was transferred, or that any portion of the consideration was not included in gross proceeds reported, ONRR may establish a reasonable royalty value based on other relevant matters.

(c) ONRR may establish a reasonable royalty value based on other relevant matters if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

\* \* \* \* \*

(2) You breached your duty to market the coal for the mutual benefit of yourself and the lessor; or

\* \* \* \* \*

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may establish a reasonable royalty value based on other relevant matters.

\* \* \* \* \*

**§ 1206.454 How will ONRR determine the value of my coal for royalty purposes?**

If ONRR decides to value your coal for royalty purposes under § 1206.454, or any other provision in this subpart, then ONRR will determine value by considering any information that we deem relevant, which may include, but is not limited to:

(a) The value of like-quality coal from the same mine, nearby mines, same region, other regions, or washed in the same or nearby wash plant.

(b) Public sources of price or market information that ONRR deems reliable,

including, but not limited to, the price of electricity.

(c) Information available to ONRR and information reported to us, including but not limited to, on form ONRR-4430.

(d) Costs of transportation or washing, if ONRR determines they are applicable.

(e) Any other information that ONRR deems to be relevant regarding the particular lease operation or the salability of the coal.

EFFECTIVE DATE NOTE: At 86 FR 4658, Jan. 15, 2021, § 1206.454 was removed, effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021.

**§ 1206.455 What records must I keep in order to support my calculations of royalty under this subpart?**

If you value your coal under this subpart, you must retain all data relevant to the determination of the royalty that you paid. You can find record-keeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR, the representative of the Indian lessor, the Inspector General of the Department of the Interior, or other persons authorized to receive such information. Such data may include arm's-length sales and sales quantity data for like-quality coal that you or your affiliate sold, purchased, or otherwise obtained from the same mine, nearby mines, same region, or other regions. You must comply with any such requirement within the time that ONRR specifies.

**§ 1206.456 What are my responsibilities to place production into marketable condition and to market production?**

(a) You must place coal in marketable condition and market the coal for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor.

(b) If you use gross proceeds under an arm's-length contract to determine royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform in order to place the coal in marketable condition or to market the coal.

**§ 1206.457 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?**

Notwithstanding any provision in these regulations to the contrary, ONRR will not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR re-determining royalty due, under this subpart, final or binding as against the Federal government or its beneficiaries unless ONRR chooses to, in writing, formally close the audit period.

**§ 1206.458 How do I request a valuation determination?**

(a) You may request a valuation determination from ONRR regarding any coal produced. Your request must:

- (1) Be in writing;
- (2) Identify specifically all leases involved, all interest owners of 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 a proposed valuation method.

(b) In response to your request, ONRR may:

- (1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination;
- (2) Decide that ONRR will issue guidance; or
- (3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any deter-

mination or guidance include, but are not limited to:

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

(c)(1) A determination that the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(3) A determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701-706.

(d) Guidance that ONRR issues is not binding on ONRR, Tribes, individual Indian mineral owners, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or to request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

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

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or to make a determination.

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

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.459.

**§ 1206.458, Nf.**

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EFFECTIVE DATE NOTE: At 86 FR 4658, Jan. 15, 2021, §1206.458 was amended by revising paragraphs (a) introductory text and (a)(5), removing the words “Assistant Secretary” from paragraphs (c)(2), (c)(3), (d)(1), (e), and (f) and adding in their place the words “Assistant Secretary for Policy, Management and Budget”, revising paragraph (g), and adding paragraph (h), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the added and revised text is set forth as follows:

**§ 1206.458 How do I request a valuation determination?**

(a) You may request a valuation determination from ONRR regarding any coal produced. Your request must comply with all of the following:

\* \* \* \* \*

(5) Provide your analysis of the issue(s);

\* \* \* \* \*

(g) ONRR or the Assistant Secretary for Policy, Management and Budget generally will not retroactively modify or rescinds a valuation 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 §1206.459.

**§ 1206.459 Does ONRR protect information that I provide?**

(a) Certain information that you or your affiliate submit(s) to ONRR regarding royalties on coal, including deductions and allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

**§ 1206.460 What general transportation allowance requirements apply to me?**

(a)(1) ONRR will allow a deduction for the reasonable, actual costs to transport coal from the lease to the point off of the lease or mine as determined under §1206.461 or §1206.462, as applicable.

(2) Before you may take any transportation allowance, you must submit a completed page 1 of the Coal Transportation Allowance Report (Form ONRR-4293), under §§1206.463 and 1206.464 of this subpart. You may claim a transportation allowance retroactively for a period of not more than three months prior to the first day of the month when ONRR receives your form ONRR-4293.

(3) You may not use a transportation allowance that was in effect before January 1, 2017. You must use the provisions of this subpart to determine your transportation allowance.

(b) You may take a transportation allowance when:

(1) You value coal under §1206.452 of this part;

(2) You transport the coal from an Indian lease to a sales point that is remote from both the lease and mine; or

(3) You transport the coal from an Indian lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point.

(c) You may not take an allowance for:

(1) Transporting lease production that is not royalty-bearing;

(2) In-mine movement of your coal; or

(3) Costs to move a particular tonnage of production for which you did not incur those costs.

(d) You may only claim a transportation allowance when you sell the coal and pay royalties.

(e) You must allocate transportation allowances to the coal attributed to the lease from which it was extracted.

(1) If you commingle coal produced from Indian and non-Indian leases, you may not disproportionately allocate transportation costs to Indian lease production. Your allocation must use the same proportion as the ratio of the

tonnage from the Indian lease production to the tonnage from all production.

(2) If you commingle coal produced from more than one Indian lease, you must allocate transportation costs to each Indian lease, as appropriate. Your allocation must use the same proportion as the ratio of the tonnage of each Indian lease's production to the tonnage of all production.

(3) For washed coal, you must allocate the total transportation allowance only to washed products.

(4) For unwashed coal, you may take a transportation allowance for the total coal transported.

(5)(i) You must report your transportation costs on form ONRR-4430 as clean coal short tons sold during the reporting period multiplied by the sum of the per short-ton cost of transporting the raw tonnage to the wash plant and, if applicable, the per short-ton cost of transporting the clean coal tons from the wash plant to a remote sales point.

(ii) You must determine the cost per short ton of clean coal transported by dividing the total applicable transportation cost by the number of clean coal tons resulting from washing the raw coal transported.

(f) You must express transportation allowances for coal as a dollar-value equivalent per short ton of coal transported. If you do not base your or your affiliate's payments for transportation under a transportation contract on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid into a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under § 1206.454 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by transporting your coal at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if

it is 10 percent higher than the highest reasonable measures of transportation costs, including, but not limited to, transportation allowances reported to ONRR and the cost to transport coal through the same transportation system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.461 or § 1206.462 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

EFFECTIVE DATE NOTE: At 86 FR 4659, Jan. 15, 2021, § 1206.460 was amended by:

- a. Revising paragraph (a)(2);
- b. Removing paragraph (a)(3);
- c. Removing the words "a Federal" from paragraphs (b)(2) and (b)(3) and adding in their place the words "an Indian";
- d. Removing the word "Federal" in paragraphs (e)(1) and (e)(2) and adding in its place the word "Indian"; and
- e. Revising paragraphs (g) introductory text and (g)(2).

The amendments were effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.460 What general transportation allowance requirements apply to me?**

(a)(1) \* \* \*

(2) You do not need ONRR's approval before reporting a transportation allowance for costs incurred.

\* \* \* \* \*

(g) ONRR may determine your transportation allowance if:

\* \* \* \* \*

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by transporting your coal at a cost that is unreasonably high; or

\* \* \* \* \*

**§ 1206.461 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?**

(a) If you or your affiliate incur(s) transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting the coal under that contract.

(b) You must be able to demonstrate that your or your affiliate's contract is at arm's-length.

(c) If you have no written contract for the arm's-length transportation of coal, then ONRR will determine your transportation allowance under § 1206.454. You may not use this paragraph (c) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.458(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

EFFECTIVE DATE NOTE: At 86 FR 4659, Jan. 15, 2021, § 1206.461 was amended by revising paragraph (c), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.461 How do I determine a transportation allowance if I have an arm's-length transportation contract?**

\* \* \* \* \*

(c) If you have no written contract for the arm's-length transportation of coal, then you must propose to ONRR a method to determine the allowance using the procedures in § 1206.458(a). You may use that method to determine your allowance until ONRR issues a determination.

(1) You must use that method to determine your allowance until ONRR issues a determination.

(2) [Reserved]

**§ 1206.462 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?**

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, includ-

ing situations where you or your affiliate provide your own transportation services. Calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (j) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the transportation system.

(e) Allowable operating expenses include the following:

- (1) Operations supervision and engineering
- (2) Operations labor
- (3) Fuel
- (4) Utilities
- (5) Materials
- (6) Ad valorem property taxes
- (7) Rent
- (8) Supplies
- (9) Any other directly allocable and attributable operating expense that you can document

(f) Allowable maintenance expenses include the following:

(1) Maintenance of the transportation system

(2) Maintenance of equipment

(3) Maintenance labor

(4) Other directly allocable and attributable maintenance expenses that you can document

(g) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and Indian Tribal severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the transportation system or the life of the reserves that the transportation system services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for the purposes of the allowance calculation.

(3) You may depreciate a transportation system only once with or without a change in ownership.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

**§ 1206.463 What are my reporting requirements under an arm's-length transportation contract?**

(a) You must use a separate entry on form ONRR-4430 to notify ONRR of an allowance based on transportation costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d)(1) You must submit page 1 of the initial form ONRR-4293 prior to, or at the same time as, you report the transportation allowance determined under an arm's-length contract on form ONRR-4430.

(2) The initial form ONRR-4293 is effective beginning with the production month when you are first authorized to deduct a transportation allowance and continues until the end of the calendar year, or until the termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3) After the initial period when ONRR first authorized you to deduct a transportation allowance and for succeeding periods, you must submit the entire form ONRR-4293 by the earlier of the following:

(i) Within three months after the end of the calendar year

(ii) After the termination, modification, or amendment of the applicable contract or rate

(4) You may request to use an allowance for a longer period than that required under paragraph (d)(2) of this section.

(i) You may use that allowance beginning with the production month following the month when ONRR received

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your request to use the allowance for a longer period until ONRR decides whether to approve the longer period.

(ii) ONRR's decision whether or not to approve a longer period is not appealable under 30 CFR part 1290.

(iii) If ONRR does not approve the longer period, you must adjust your transportation allowance under § 1206.466.

### **§ 1206.464 What are my reporting requirements under a non-arm's-length transportation contract or no written arm's-length contract?**

(a) You must use a separate entry on form ONRR-4430 to notify ONRR of an allowance based on non-arm's-length transportation costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c)(1) You must submit an initial form ONRR-4293 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no written arm's-length contract situation that you report on form ONRR-4430. If ONRR receives a form ONRR-4293 by the end of the month when the form ONRR-4430 is due, ONRR will consider the form to be received in a timely manner. You may base the initial form on estimated costs.

(2) The initial form ONRR-4293 is effective beginning with the production month when you are first authorized to deduct a transportation allowance and continues until the end of the calendar year or termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3)(i) At the end of the calendar year for which you submitted a form ONRR-4293 based on estimates, you must submit another, completed form ONRR-4293 containing the actual costs for that calendar year.

(ii) If the transportation continues, you must include on form ONRR-4293 your estimated costs for the next calendar year.

(A) You must base the estimated transportation allowance on the actual costs for the previous reporting period

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plus or minus any adjustments based on your knowledge of decreases or increases that will affect the allowance.

(B) ONRR must receive form ONRR-4293 within three months after the end of the previous calendar year.

(d)(1) For new non-arm's-length transportation facilities or arrangements, on your initial ONRR-4293 form, you must include estimates of the allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(e) Upon ONRR's request, you must submit all data used to prepare your ONRR-4293 form. You must provide the data within a reasonable period of time, as ONRR determines.

(f) Section 1206.466 applies when you amend your form ONRR-4293 based on the actual costs.

### **§ 1206.465 What interest and penalties apply if I improperly report a transportation allowance?**

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit without interest.

(b) If you improperly net a transportation allowance against the sales value of the coal instead of reporting the allowance as a separate entry on form ONRR-4430, ONRR may assess a civil penalty under 30 CFR part 1241.

### **§ 1206.466 What reporting adjustments must I make for transportation allowances?**

(a) If your actual transportation allowance is less than the amount that you claimed on form ONRR-4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date when you



took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on form ONRR-4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

**§ 1206.467 What general washing allowance requirements apply to me?**

(a)(1) If you determine the value of your coal under §1206.452 of this subpart, you may take a washing allowance for the reasonable, actual costs to wash coal. The allowance is a deduction when determining coal royalty value for the costs that you incur to wash coal.

(2) Before you may take any deduction, you must submit a completed page 1 of the Coal Washing Allowance Report (Form ONRR-4292), under §§1206.470 and 1206.471 of this subpart. You may claim a washing allowance retroactively for a period of not more than three months prior to the first day of the month when you have filed form ONRR-4292 with ONRR.

(3) You may not use a washing allowance that was in effect before January 1, 2017. You must use the provisions of this subpart to determine your washing allowance.

(b) You may not:

(1) Take an allowance for the costs of washing lease production that is not royalty bearing.

(2) Disproportionately allocate washing costs to Indian leases. You must allocate washing costs to washed coal attributable to each Indian lease by multiplying the input ratio determined under §1206.451(e)(2)(i) by the total allowable costs.

(c)(1) You must express washing allowances for coal as a dollar-value equivalent per short ton of coal washed.

(2) If you do not base your or your affiliate's payments for washing under an arm's-length contract on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid into a dollar-value equivalent.

(d) ONRR may determine your washing allowance under §1206.454 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length washing contract does not reflect the reasonable cost of the washing because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by washing your coal at a cost that is unreasonably high. We may consider a washing allowance to be unreasonably high if it is 10 percent higher than the highest other reasonable measures of washing, including, but not limited to, washing allowances reported to ONRR and costs for coal washed in the same plant or other plants in the region; or

(3) ONRR cannot determine if you properly calculated a washing allowance under §§1206.467 through 1206.469 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

(e) You may only claim a washing allowance if you sell the washed coal and report and pay royalties.

EFFECTIVE DATE NOTE: At 86 FR 4659, Jan. 15, 2021, §1206.467 was amended by revising paragraph (a)(2), removing the word "Federal" from paragraph (b)(2) and adding in its place the word "Indian", and revising paragraphs (d) introductory text and (d)(2), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the revised text is set forth as follows:

**§ 1206.467 What general washing allowance requirements apply to me?**

(a)(1) \* \* \*

(2) You do not need ONRR's approval before reporting a washing allowance.

\* \* \* \* \*

(d) ONRR may direct you to modify your washing allowance if:

\* \* \* \* \*

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length washing contract does not reflect the reasonable cost of the washing because you breached your duty to market the coal for the mutual benefit of yourself and

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the lessor by washing your coal at a cost that is unreasonably high; or

\* \* \* \* \*

§ 1206.468 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) washing costs under an arm's-length washing contract, you may claim a washing allowance for the reasonable, actual costs incurred.

(b) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(c) If you have no contract for the washing of coal, then ONRR will determine your transportation allowance under §1206.454. You may not use this paragraph (c), if you or your affiliate perform(s) your own washing. If you or your affiliate perform(s) the washing, then:

(1) You must propose to ONRR a method to determine the allowance using the procedures in §1206.458(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

EFFECTIVE DATE NOTE: At 86 FR 4659, Jan. 15, 2021, §1206.468 was amended by revising paragraph (c), effective Feb. 16, 2021. The effective date was delayed until Apr. 16, 2021, at 86 FR 9289, Feb. 12, 2021, and further delayed until Nov. 1, 2021, at 86 FR 20032, Apr. 16, 2021. For the convenience of the user, the added and revised text is set forth as follows:

§ 1206.468 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?

\* \* \* \* \*

(c) If you have no written contract for the arm's-length washing of coal, and neither you nor your affiliate perform your own washing, you must propose to ONRR a method to determine the washing allowance using the procedures in §1206.458(a).

(1) You must use that method to determine your allowance until ONRR issues a determination.

(2) [Reserved]

\* \* \* \* \*

§ 1206.469 How do I determine washing allowances if I do not have an non-arm's-length washing contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length washing contract, including situations where you or your affiliate provides your own washing services. Calculate your washing allowance based on your or your affiliate's reasonable, actual costs for washing during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or a cost equal to a return on the initial depreciable capital investment in the wash plant under paragraph (j) of this section. After you have elected to use either method for a wash plant, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the wash plant.

(e) Allowable operating expenses include the following:

- (1) Operations supervision and engineering
(2) Operations labor
(3) Fuel
(4) Utilities
(5) Materials
(6) Ad valorem property taxes
(7) Rent
(8) Supplies

(9) Any other directly allocable and attributable operating expenses that you can document

(f) Allowable maintenance expenses include the following:

- (1) Maintenance of the wash plant
- (2) Maintenance of equipment
- (3) Maintenance labor
- (4) Other directly allocable and attributable maintenance expenses that you can document

(g) Overhead, directly attributable and allocable to the operation and maintenance of the wash plant is an allowable expense. State and Federal income taxes and Indian Tribal severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either (i) a straight-line depreciation method based on the life of the wash plant or the life of the reserves that the wash plant services, or you may elect to use (ii) a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a wash plant will not alter the depreciation schedule that the original washer/lessee established for the purposes of the allowance calculation.

(3) With or without a change in ownership, you may depreciate a wash plant only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the washing allowance by the rate of return provided in paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the wash plant multiplied by the rate of return as determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

**§ 1206.470 What are my reporting requirements under an arm's-length washing contract?**

(a) You must use a separate entry on form ONRR-4430 to notify ONRR of an allowance based on washing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length washing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d)(1) You must file an initial form ONRR-4292 prior to, or at the same time as, the washing allowance determined under an arm's-length contract or no written arm's-length contract situation that you report on form ONRR-4430. If ONRR receives a form ONRR-4292 by the end of the month when the form ONRR-4430 is due, ONRR will consider the form to be received in a timely manner.

(2) The initial form ONRR-4292 is effective beginning with the production month when you are first authorized to deduct a washing allowance and continues until the end of the calendar year, or until the termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3) After the initial period that ONRR first authorized you to deduct a washing allowance, and for succeeding periods, you must submit the entire form ONRR-4292 by the earlier of the following:

(i) Within three months after the end of the calendar year.

(ii) After the termination, modification, or amendment of the applicable contract or rate.

(4) You may request to use an allowance for a longer period than that required under paragraph (d)(2) of this section.

(i) You may use that allowance beginning with the production month following the month when ONRR received your request to use the allowance for a longer period until ONRR decides whether to approve the longer period.

(ii) ONRR's decision whether or not to approve a longer period is not appealable under 30 CFR part 1290.

(iii) If ONRR does not approve the longer period, you must adjust your transportation allowance under § 1206.466.

**§ 1206.471 What are my reporting requirements under a non-arm's-length washing contract or no written arm's-length contract?**

(a) You must use a separate entry on form ONRR-4430 to notify ONRR of an allowance based on non-arm's-length washing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c)(1) You must submit an initial form ONRR-4292 prior to, or at the same time as, the washing allowance determined under a non-arm's-length contract or no written arm's-length contract situation that you report on form ONRR-4430. If ONRR receives a form ONRR-4292 by the end of the month when the form ONRR-4430 is due, ONRR will consider the form to be received in a timely manner. You may base the initial reporting on estimated costs.

(2) The initial form ONRR-4292 is effective beginning with the production month when you are first authorized to deduct a washing allowance and continues until the end of the calendar year or termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3)(i) At the end of the calendar year for which you submitted a form ONRR-4292, you must submit another, completed form ONRR-4292 containing the actual costs for that calendar year.

(ii) If coal washing continues, you must include on form ONRR-4292 your estimated costs for the next calendar year.

(A) You must base the estimated coal washing allowance on the actual costs for the previous period plus or minus any adjustments based on your knowledge of decreases or increases that will affect the allowance.

(B) ONRR must receive form ONRR-4292 within three months after the end of the previous calendar year.

(d)(1) For new non-arm's-length washing facilities or arrangements on your initial form ONRR-4292, you must include estimates of allowable washing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the wash plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar wash plants.

(e) Upon ONRR's request, you must submit all data that you used to prepare your forms ONRR-4293. You must provide the data within a reasonable period of time, as ONRR determines.

(f) Section 1206.472 applies when you amend your form ONRR-4292 based on the actual costs.

**§ 1206.472 What interest and penalties apply if I improperly report a washing allowance?**

(a)(1) If ONRR determines that you took an unauthorized washing allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your washing allowance, you may be entitled to a credit without interest.

(b) If you improperly net a washing allowance against the sales value of the coal instead of reporting the allowance as a separate entry on form ONRR-4430, ONRR may assess a civil penalty under 30 CFR part 1241.

**§ 1206.473 What reporting adjustments must I make for washing allowances?**

(a) If your actual washing allowance is less than the amount that you claimed on form ONRR-4430 for each month during the allowance reporting

period, you must pay additional royalties due, plus late payment interest calculated under §1218.202 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual washing allowance is greater than the amount that you claimed on form ONRR-4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

**PART 1207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS**

**Subpart A—General Provisions**

- Sec.
- 1207.1 Required recordkeeping.
- 1207.2 Definitions.
- 1207.3 Contracts made pursuant to new form leases.
- 1207.4 Contracts made pursuant to old form leases.
- 1207.5 Contract and sales agreement retention.

**Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]**

**Subpart C—Federal and Indian Oil [Reserved]**

**Subpart D—Federal and Indian Gas [Reserved]**

**Subpart E—Solid Minerals, General [Reserved]**

**Subpart F—Coal [Reserved]**

**Subpart G—Other Solid Minerals [Reserved]**

**Subpart H—Geothermal Resources [Reserved]**

**Subpart I—OCS Sulfur [Reserved]**

AUTHORITY: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

SOURCE: 53 FR 1225, Jan. 15, 1988, unless otherwise noted. Redesignated at 75 FR 61080, Oct. 4, 2010.

**Subpart A—General Provisions**

**§ 1207.1 Required recordkeeping.**

(a) ONRR uses the information collected to determine a proper transportation allowance for the cost of transporting royalty oil from the lease to a delivery point remote from the lease. The information is required so that the lessee may obtain a benefit under the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* The Office of Management and Budget (OMB) approved the information collection requirements contained in this part under 44 U.S.C. 3501 *et seq.* ONRR identifies the approved OMB control number in 30 CFR 1210.10.

(b) Send comments regarding the burden estimates or any other aspect of this information collection, including suggestions for reducing burden, to the Office of Natural Resources Revenue, Attention: Rules & Regs Team, OMB Control Number 1012-0002, P.O. Box 25165, Denver, CO 80225-0165.

[78 FR 30204, May 22, 2013]

**§ 1207.2 Definitions.**

The definitions in part 1206 of this title are applicable to this part.

**§ 1207.3 Contracts made pursuant to new form leases.**

On November 29, 1950 (15 FR 8585), a new lease form was adopted (Form 4-1158, 15 FR 8585) containing provisions whereby the lessee agrees that nothing in any contract or other arrangement made for the sale or disposal of oil, gas, natural gasoline, and other products of the leased land, shall be construed as modifying any of the provisions of the lease, including, but not limited to, provisions relating to gas waste, taking royalty-in-kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the oil and gas valuation regulations. A contract or agreement pursuant to a lease containing such provisions may be made without obtaining prior approval of the United States as lessor, but must be retained as provided in §1207.5 of this subpart.