

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 (EPA) (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 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 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

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(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

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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)