

§ 1206.263

Form ONRR-4430 for each month during the allowance reporting period, the lessee shall pay additional royalties due plus interest computed under §1218.202 of this chapter from the date when the lessee took the deduction to the date the lessee repays the difference to ONRR. If the actual transportation allowance is greater than amount the lessee has taken on Form ONRR-4430 for each month during the allowance reporting period, the lessee shall be entitled to a credit without interest.

(2) The lessee must submit a corrected Form ONRR-4430 to reflect actual costs, together with any payments, in accordance with instructions provided by ONRR.

(f) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

[54 FR 1523, Jan. 13, 1989, as amended at 57 FR 41864, Sept. 14, 1992; 57 FR 52720, Nov. 5, 1992; 61 FR 5481, Feb. 12, 1996; 64 FR 43288, Aug. 10, 1999; 66 FR 45769, Aug. 30, 2001; 73 FR 15891, Mar. 26, 2008]

§ 1206.263 [Reserved]

§ 1206.264 In-situ and surface gasification and liquefaction operations.

If an ad valorem Federal coal lease is developed by in-situ or surface gasification or liquefaction technology, the lessee shall propose the value of coal for royalty purposes to ONRR. The ONRR will review the lessee's proposal and issue a value determination. The lessee may use its proposed value until ONRR issues a value determination.

[54 FR 1523, Jan. 13, 1989, as amended at 65 FR 43289, Aug. 10, 1999]

§ 1206.265 Value enhancement of marketable coal.

If, prior to use, sale, or other disposition, the lessee enhances the value of coal after the coal has been placed in marketable condition in accordance with §1206.257(h) of this subpart, the lessee shall notify ONRR that such processing is occurring or will occur. The value of that production shall be determined as follows:

30 CFR Ch. VII (7-1-14 Edition)

(a) A value established for the feedstock coal in marketable condition by application of the provisions of §1206.257(c)(2)(i-iv) of this subpart; or,

(b) In the event that a value cannot be established in accordance with subsection (a), then the value of production will be determined in accordance with §1206.257(c)(2)(v) of this subpart and the value shall be the lessee's gross proceeds accruing from the disposition of the enhanced product, reduced by ONRR-approved processing costs and procedures including a rate of return on investment equal to two times the Standard and Poor's BBB bond rate applicable under §1206.259(b)(2)(v) of this subpart.

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

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.