

**Surface Mining Reclamation and Enforcement, Interior**

**§ 1206.55**

4,000 bbl .....	22.0° .....	33.00/bbl .....	Purchased in the field.
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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 .....	(1.0° difference over 23.5° = \$0.20 deducted).
9,000 bbl .....	23.0° .....	33.35 .....	(0.5° difference under 23.5° = \$0.10 added).
4,000 bbl .....	22.0° .....	33.30 .....	(1.5° difference under 23.5° = \$0.30 added).

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, for the reasonable, actual costs:

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

(2) That the seller incurs to transport oil that you or your affiliate purchase(s), which is included in the 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, the ONRR Director may establish an alternative valuation method.

(e) You must also comply with § 1206.54.

[72 FR 71241, Dec. 17, 2007]

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

(a) For any Indian leases that provide that the Secretary may consider the highest price paid or offered for a

major portion of production (major portion) in determining value for royalty purposes, if data are available to compute a major portion, ONRR will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value of production, for royalty purposes, will be the higher of those two values.

(b) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of oil production from the same field. The major portion will be calculated using like-quality oil sold under arm's-length contracts from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such oil production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent by volume plus one barrel of oil (starting from the bottom) is sold.

[72 FR 71241, Dec. 17, 2007]

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

You must place oil in marketable condition and market the oil for the mutual benefit of yourself and the Indian lessor at no cost to the lessor, unless the lease agreement provides otherwise. If, in the process of marketing

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the oil or placing it in marketable condition, your gross proceeds are reduced because services are performed on your behalf that would be your responsibility, and if you valued the oil using your or your affiliate's gross proceeds (or gross proceeds received in the sale of oil received in exchange) under § 1206.52, you must increase value to the extent that your gross proceeds are reduced.

[72 FR 71241, Dec. 17, 2007]

### § 1206.56 Transportation allowances—general.

(a) Where the value of oil has been determined under § 1206.52 or § 1206.53 of this subpart at a point (e.g., sales point or point of value determination) off the lease, ONRR shall allow a deduction for the reasonable, actual costs incurred by the lessee to transport oil to a point off the lease; provided, however, that no transportation allowance will be granted for transporting oil taken as Royalty-In-Kind (RIK); or

(b)(1) Except as provided in paragraph (b)(2) of this section, the 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 of this subpart. Transportation costs cannot be transferred between sales type codes or to other products.

(2) Upon request of a lessee, ONRR may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. The lessee 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 Allowance 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) Transportation costs must be allocated among all products produced and transported as provided in § 1206.57. Transportation allowances for oil shall be expressed as dollars per barrel.

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(d) If, after a review or audit, ONRR determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee will pay any additional royalties, plus interest determined in accordance with § 1218.54 of this chapter, or will be entitled to a credit without interest.

[61 FR 5455, Feb. 12, 1996. Redesignated and amended at 72 FR 71241, Dec. 17, 2007; 73 FR 15890, Mar. 26, 2008; 78 FR 30204, May 22, 2013]

### § 1206.57 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1)(i) For transportation costs incurred by a lessee under an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting oil under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form ONRR-4110 (and Schedule 1), Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4110 is filed with ONRR, unless ONRR approves a longer period upon a showing of good cause by the lessee.

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

(iii) 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,