Title 30: Mineral Resources

PART 202—ROYALTIES

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Subpart H—Geothermal Resources

Source: 56 FR 57275, Nov. 8, 1991, unless otherwise noted.

§ 202.350 Scope and definitions.

(a) This subpart is applicable to all geothermal resources produced from Federal geothermal leases issued pursuant to the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.).*

(b) The definitions in 30 CFR 206.351 are applicable to this subpart.

§ 202.351 Royalties on geothermal resources.

(a)(1) Royalties on geothermal resources, including byproducts, or on electricity produced using geothermal resources, will be at the royalty rate(s) specified in the lease, unless the Secretary of the Interior temporarily waives, suspends, or reduces that rate(s). Royalties are determined under 30 CFR part 206, subpart H.

(2) Fees in lieu of royalties on geothermal resources are prescribed in 30 CFR part 206, subpart H.

(3) Except for the amount credited against royalties for in-kind deliveries of electricity to a State or county under §218.306, you must pay royalties and direct use fees in money.

(b)(1) Except as specified in paragraph (b)(2) of this section, royalties or fees are due on—

(i) All geothermal resources produced from a lease and that are sold or used by the lessee or are reasonably susceptible to sale or use by the lessee, or

(ii) All proceeds derived from the sale of electricity produced using geothermal resources produced from a lease.

(2) For purposes of this subparagraph, the terms “Class I lease,” “Class II lease,” and “Class III lease” have the same meanings prescribed in 30 CFR 206.351.

(i) For Class I leases, MMS will allow free of royalty—

(A) Geothermal resources that are unavoidably lost or reinjected before use on or off the lease, as determined by the Bureau of Land Management (BLM), or that are reasonably necessary to generate plant parasitic electricity or electricity for Federal lease operations; and

(B) A reasonable amount of commercially demineralized water necessary for power plant operations or otherwise used on or for the benefit of the lease.

(ii) For Class II and Class III leases where the lessee uses geothermal resources for commercial production or generation of electricity, or where geothermal resources are sold at arm's length for the commercial production or generation of electricity, MMS will allow free of royalty or direct use fees geothermal resources that are:

(A) Unavoidably lost or reinjected before use on or off the lease, as determined by BLM;

(B) Reasonably necessary for the lessee to generate plant parasitic electricity or electricity for Federal lease operations, as approved by BLM; or

(C) Otherwise used for Federal lease operations related to commercial production or generation of electricity, as approved by BLM.

(iii) For Class II and Class III leases where the lessee uses the geothermal resources for a direct use or in a direct use facility, as defined in 30 CFR 206.351, resources that are used to generate electricity for Federal lease operations or that are otherwise used for Federal lease operations are subject to direct use fees, except for geothermal resources that are unavoidably lost or reinjected before use on or off the lease, as determined by BLM.

(3) Royalties on byproducts are due at the time the recovered byproduct is used, sold, or otherwise finally disposed of. Byproducts produced and added to stockpiles or inventory do not require payment of royalty until the byproducts are sold, utilized, or otherwise finally disposed of. The MMS may ask BLM to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventories become excessive.

(c) If BLM determines that geothermal resources (including byproducts) were avoidably lost or wasted from the lease, or that geothermal resources (including byproducts) were drained from the lease for which compensatory royalty (or compensatory fees in lieu of compensatory royalty) are due, the value of those geothermal resources, or the royalty or fees owed, will be determined under 30 CFR part 206, subpart H.

(d) If a lessee receives insurance or other compensation for unavoidably lost geothermal resources (including byproducts), royalties at the rates specified in the lease (or fees in lieu of royalties) are due on the amount of, or as a result of, that compensation. This paragraph will not apply to compensation through self-insurance.

[72 FR 24458, May 2, 2007]

§ 202.352 Minimum royalty.

In no event shall the lessee's annual royalty payments for any producing lease be less than the minimum royalty established by the lease.

§ 202.353 Measurement standards for reporting and paying royalties and direct use fees.

(a) For geothermal resources used to generate electricity, you must report the quantity on which royalty is due on Form MMS–2014 (Report of Sales and Royalty Remittance) as follows:

(1) For geothermal resources for which royalty is calculated under §206.352(a), you must report quantities in:

(i) Thousands of pounds to the nearest whole thousand pounds if the contract for the geothermal resources specifies delivery in terms of weight; or

(ii) Millions of Btu to the nearest whole million Btu if the sales contract for the geothermal resources specifies delivery in terms of heat or thermal energy.

(2) For geothermal resources for which royalty is calculated under §206.352(b), you must report the quantities in kilowatt-hours to the nearest whole kilowatt-hour.

(b) For geothermal resources used in direct use processes, you must report the quantity on which a royalty or direct use fee is due on Form MMS–2014 in:

(1) Millions of Btu to the nearest whole million Btu if valuation is in terms of heat or thermal energy used or displaced;

(2) Millions of gallons to the nearest million gallons of geothermal fluid produced if valuation or fee calculation is in terms of volume;

(3) Millions of pounds to the nearest million pounds of geothermal fluid produced if valuation or fee calculation is in terms of mass; or

(4) Any other measurement unit MMS approves for valuation and reporting purposes.

(c) For byproducts, you must report the quantity on which royalty is due on Form MMS–2014 consistent with MMS-established reporting standards.

(d) For commercially demineralized water, you must report the quantity on which royalty is due on Form MMS–2014 in hundreds of gallons to the nearest hundred gallons.

(e) You need not report the quality of geothermal resources, including byproducts, to MMS. However, you must maintain quality measurements for audit purposes. Quality measurements include, but are not limited to:

(1) Temperatures and chemical analyses for fluid geothermal resources; and

(2) Chemical analyses, weight percent, or other purity measurements for byproducts.

[72 FR 24458, May 2, 2007]

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TITLE 30--MINERAL RESOURCES

DEPARTMENT OF THE INTERIOR

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supporting documentation submitted to MMS. If MMS does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the MMS Director under 30 CFR part 290.

(d) Processing costs based on the regulations in Secs. 206.179 and 206.180.

Subpart F--Federal Coal

Source: 54 FR 1523, Jan. 13, 1989, unless otherwise noted.

Sec. 206.250 Purpose and scope.

(a) This subpart is applicable to all coal produced from Federal coal leases. The purpose of this subpart is to establish the value of coal produced for royalty purposes, of all coal from Federal leases consistent with the mineral leasing laws, other applicable laws and lease terms.

(b) If the specific provisions of any statute or settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or any coal lease subject to the requirements of this subpart, are inconsistent with any regulation in this subpart then the statute, lease provision, or settlement shall govern to the extent of that inconsistency.

(c) All royalty payments made to the Minerals Management Service (MMS) are subject to later audit and adjustment.

[54 FR 1523, Jan. 13, 1989, as amended at 61 FR 5479, Feb. 12, 1996; 67 FR 19111, Apr. 18, 2002]

Sec. 206.251 Definitions.

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

Allowance means a deduction used in determining value for royalty purposes. Coal washing allowance means an allowance for the reasonable, actual costs incurred by the lessee for coal washing. Transportation allowance means an allowance for the reasonable, actual costs incurred by the lessee for moving coal to a point of sale or point

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of delivery remote from both the lease and mine or wash plant.

Area means a geographic region in which coal has 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 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. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 10 through 50 percent creates a presumption of control; and

(c) Ownership of less than 10 percent creates a presumption of noncontrol which MMS 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. The MMS may require the lessee to certify ownership control. 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 in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal leases.

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

Coal means coal of all ranks from lignite through anthracite.

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).

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.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to a coal lessee for the production and disposition of the coal produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oils, and other preparation of the coal to the extent that the lessee is obligated to perform them at no cost to the Federal Government. Gross proceeds, as applied to coal, also includes but is not limited to reimbursements for royalties, taxes or fees, and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal royalty interest may be 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.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States for a Federal coal resource under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of coal--or the land covered by that authorization, whichever is required by the context.

Lessee means any person to whom the United States 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 as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

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

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Marketable condition means coal that is sufficiently free from impurities and otherwise in a condition that it will be accepted by a purchaser under a sales contract typical for that area.

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.

Net-back method means a method for calculating market value of coal at the lease or mine. Under this method, costs of transportation, washing, handling, etc., are deducted from the ultimate proceeds received for the coal at the first point at which reasonable values for the coal may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of coal, to ascertain value at the mine.

Net output means the quantity of washed coal that a washing plant produces.

Netting is the deduction of an allowance from the sales value by reporting a one line net sales value, instead of correctly reporting the deduction as a separate line item on the Form MMS-4430.

Person means by individual, firm, corporation, association, partnership, consortium, or joint venture.

Selling arrangement means the individual contractual arrangements under which sales or dispositions of coal are made to a purchaser.

Spot market price means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding one year.

[54 FR 1523, Jan. 13, 1989, as amended at 55 FR 35433, Aug. 30, 1990; 61 FR 5479, Feb. 12, 1996; 64 FR 43288, Aug. 10, 1999; 66 FR 45769, Aug. 30, 2001]

Sec. 206.252 Information collection.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. The forms, filing date, and approved OMB clearance numbers are identified in 30 CFR 210.10 and 30 CFR 216.10.

Sec. 206.253 Coal subject to royalties--general provisions.

(a) All coal (except coal unavoidably lost as determined by BLM under 43 CFR part 3400) from a Federal lease subject to this part is subject to royalty. This includes coal used, sold, or otherwise disposed of by the lessee on or off the lease.

(b) If a lessee receives compensation for unavoidably lost coal through insurance coverage or other arrangements, royalties at the rate specified in the lease are to be paid on the amount of compensation received for the coal. No royalty is due on insurance compensation received by the lessee for other losses.

(c) If waste piles or slurry ponds are reworked to recover coal, the lessee shall pay royalty at the rate specified in the lease at the time the recovered coal is used, sold, or otherwise finally disposed of. The royalty rate shall be that rate applicable to the production method used to initially mine coal in the waste pile or slurry pond; i.e., underground mining method or surface mining method. Coal in waste pits or slurry ponds initially mined from Federal leases shall be allocated to such leases regardless of whether it is stored on Federal lands. The lessee shall maintain accurate records to determine to which individual Federal lease coal in the waste pit or slurry pond should be allocated. However, nothing in this section requires payment of a royalty on coal for which a royalty has already been paid.

[54 FR 1523, Jan. 13, 1989, as amended at 61 FR 5479, Feb. 12, 1996]

Sec. 206.254 Quality and quantity measurement standards for reporting and paying royalties.

For all leases subject to this subpart, the quantity of coal on which royalty is due shall be measured in short tons (of 2,000 pounds each) by methods prescribed by the BLM. Coal quantity information shall be reported on appropriate forms required under 30 CFR part 216 and on the Solid Minerals Production and Royalty Report, Form

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MMS-4430, as required under 30 CFR part 210.

[54 FR 1523, Jan. 13, 1989, as amended at 57 FR 52720, Nov. 5, 1992; 66 FR 45769, Aug. 30, 2001]

Sec. 206.255 Point of royalty determination.

(a) For all leases subject to this subpart, royalty shall be computed on the basis of the quantity and quality of Federal coal in marketable condition measured at the point of royalty measurement as determined jointly by BLM and MMS.

(b) Coal produced and added to stockpiles or inventory does not require payment of royalty until such coal is later used, sold, or otherwise finally disposed of. MMS may ask BLM to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventory become excessive so as to increase the risk of degradation of the resource.

(c) The lessee shall pay royalty at a rate specified in the lease at the time the coal is used, sold, or otherwise finally disposed of, unless otherwise provided for at Sec. 206.256(d) of this subpart.

[54 FR 1523, Jan. 13, 1989, as amended at 61 FR 5480, Feb. 12, 1996]

Sec. 206.256 Valuation standards for cents-per-ton leases.

(a) This section is applicable to coal leases on Federal lands which provide for the determination of royalty on a cents-per-ton (or other quantity) basis.

(b) The royalty for coal from leases subject to this section shall be based on the dollar rate per ton prescribed in the lease. That dollar rate shall be applicable to the actual quantity of coal used, sold, or otherwise finally disposed of, including coal which is avoidably lost as determine by BLM pursuant to 43 CFR part 3400.

(c) For leases subject to this section, there shall be no allowances for transportation, removal of impurities, coal washing, or any other processing or preparation of the coal.

(d) When a coal lease is readjusted pursuant to 43 CFR part 3400 and the royalty valuation method changes from a cents-per-ton basis to an ad valorem basis, coal which is produced prior to the effective date of readjustment and sold or used within 30 days of the effective date of readjustment shall be valued pursuant to this section. All coal that is not used, sold, or otherwise finally disposed of within 30 days after the effective date of readjustment shall be valued pursuant to the provisions of Sec. 206.257 of this subpart, and royalties shall be paid at the royalty rate specified in the readjusted lease.

[54 FR 1523, Jan. 13, 1989, as amended at 61 FR 5480, Feb. 12, 1996]

Sec. 206.257 Valuation standards for ad valorem leases.

(a) This section is applicable to coal leases on Federal lands which provide for the determination of royalty as a percentage of the amount of value of coal (ad valorem). The value for royalty purposes of coal from such leases shall be the value of coal determined under this section, less applicable coal washing allowances and transportation allowances determined under Secs. 206.258 through 206.262 of this subpart, or any allowance authorized by Sec. 206.265 of this subpart. The royalty due shall be equal to the value for royalty purposes multiplied by the royalty rate in the lease.

(b)(1) The value of coal that is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(2), (b)(3), and (b)(5) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either

directly or indirectly from the buyer to the seller for the coal produced. If the contract does not reflect the total consideration, then the MMS may require that the coal sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be based on less than the gross proceeds accruing to the lessee for the coal production, including the additional consideration.

(3) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract

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do not reflect the reasonable value of the production 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 MMS shall require that the coal production be valued pursuant to paragraph (c)(2)(ii), (iii), (iv), or (v) of this section, and in accordance with the notification requirements of paragraph (d)(3) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported coal value.

(4) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the coal production.

(5) The value of production for royalty purposes shall not include payments received by the lessee pursuant to a contract which the lessee demonstrates, to MMS's satisfaction, were not part of the total consideration paid for the purchase of coal production.

(c)(1) The value of coal from leases subject to this section and which is not sold pursuant to an arm's-length contract shall be determined in accordance with this section.

(2) If the value of the coal cannot be determined pursuant to paragraph (b) of this section, then the value shall be determined through application of other valuation criteria. The criteria shall be considered in the following order, and the value shall be based upon the first applicable criterion:

(i) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition of produced coal by other than an arm's-length contract), provided that those gross proceeds are within the range of the gross proceeds derived from, or paid under, comparable arm's-length contracts between buyers and sellers neither of whom is affiliated with the lessee for sales, purchases, or other dispositions of like-quality coal produced in the area. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of coal, quantity, and such other factors as may be appropriate to reflect the value of the coal;

(ii) Prices reported for that coal to a public utility commission;

(iii) Prices reported for that coal to the Energy Information Administration of the Department of Energy;

(iv) 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 types of coal;

(v) If a reasonable value cannot be determined using paragraphs (c)(2)(i), (ii), (iii), or (iv) of this section, then a net-back method or any other reasonable method shall be used to determine value.

(3) When the value of coal is determined pursuant to paragraph (c)(2) of this section, that value determination shall be consistent with the provisions contained in paragraph (b)(5) of this section.

(d)(1) Where the value is determined pursuant to paragraph (c) of this section, that value does not require MMS's prior approval. However,

the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal lessee will make available upon request to the authorized MMS or State representatives, to the Inspector General of the Department of the Interior or other persons authorized to receive such information, arm's-length sales value and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by the lessee from the area.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraphs (c)(2) (ii), (iii), (iv), or (v) of this section. The notification shall be by letter to the Associate Director for Minerals Revenue Management of his/her designee. The letter shall identify

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the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on the Form MMS-4430 using a valuation method authorized by paragraphs (c)(2) (ii), (iii), (iv), or (v) of this section, and each time there is a change in a method under paragraphs (c)(2) (iv) or (v) of this section.

(e) If MMS determines that a lessee has not properly determined value, the lessee shall be liable for the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also be liable for interest computed pursuant to 30 CFR 218.202. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provisions of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for the disposition of produced coal less applicable provisions of paragraph (b)(5) of this section and less applicable allowances determined pursuant to Secs. 206.258 through 206.262 and Sec. 206.265 of this subpart.

(h) The lessee is required to place coal in marketable condition at no cost to the Federal Government. Where the value established under this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds has been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee to place the coal in marketable condition.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactively applied to value for royalty purposes for a period not to exceed two years, unless MMS approves a longer period. If the lessee makes timely application for

a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of coal.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation, coal washing, or other allowances under Sec. 206.265 of this subpart, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt shall be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act

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regulation of the Department of the Interior, 43 CFR part 2.

[54 FR 1523, Jan. 13, 1989, as amended at 55 FR 35433, Aug. 30, 1990; 57 FR 52720, Nov. 5, 1992; 61 FR 5480, Feb. 12, 1996; 66 FR 45769, Aug. 30, 2001]

Sec. 206.258 Washing allowances--general.

(a) For ad valorem leases subject to Sec. 206.257 of this subpart, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to wash coal, unless the value determined pursuant to Sec. 206.257 of this subpart was based upon like-quality unwashed coal. Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

(b) If MMS determines that a lessee has improperly determined a washing allowance authorized by this section, then the lessee shall be liable for any additional royalties, plus interest determined in accordance with 30 CFR 218.202, or shall be entitled to a credit without interest.

(c) Lessees shall not disproportionately allocate washing costs to Federal leases.

(d) No cost normally associated with mining operations and which are necessary for placing coal in marketable condition shall be allowed as a cost of washing.

(e) Coal washing costs shall only be recognized as allowances when the washed coal is sold and royalties are reported and paid.

[54 FR 1523, Jan. 13, 1989, as amended at 61 FR 5480, Feb. 12, 1996; 64 FR 43288, Aug. 10, 1999]

Sec. 206.259 Determination of washing allowances.

(a) Arm's-length contracts. (1) For washing costs incurred by a lessee under an arm's-length contract, the washing allowance shall be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. MMS' prior approval is not required

before a lessee may deduct costs incurred under an arm's-length contract. The lessee must claim a washing allowance by reporting it as a separate line entry on the Form MMS-4430.

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

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

(4) Where the lessee's payments for washing under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent. Washing allowances shall be expressed as a cost per ton of coal washed.

(b) Non-arm's-length or no contract. (1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. The lessee must claim a washing allowance by reporting it as a separate line entry on the Form MMS-4430. When

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necessary or appropriate, MMS may direct a lessee to modify its estimated or actual washing allowance.

(2) The washing allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for washing during the reported period, including 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 depreciable investment in the wash plant multiplied by the rate of return in accordance with paragraph (b)(2)(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 wash 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 which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the wash plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the wash plant is an allowable expense. State and Federal income taxes and severance taxes, including royalities, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or (B) of this section. After a lessee has elected to use either method for a wash plant, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the wash plant services, whichever is appropriate, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a wash plant shall not alter the depreciation schedule established by the original operator/lessee for purposes of the allowance calculation. With or without a change in ownership, a wash plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable capital investment in the wash plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service or acquired after March 1, 1989.

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be 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) The washing allowance for coal shall be determined based on the lessee's reasonable and actual cost of washing the coal. The lessee may not take an allowance for the costs of washing lease production that is not royalty bearing.

(c) Reporting requirements--(1) Arm's-length contracts. (i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS-4430.

(ii) The MMS may require that a lessee submit arm's-length washing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(2) Non-arm's-length or no contract. (i) The lessee must notify MMS of an allowance based on the incurred costs by using a separate line entry on the Form MMS-4430.

(ii) For new washing facilities or arrangements, the lessee's initial washing deduction shall include estimates of the allowable coal washing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the washing system or, if such data are not

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available, the lessee shall use estimates based upon industry data for similar washing systems.

(iii) Upon request by MMS, the lessee shall submit all data used to prepare the allowance deduction. The data shall be provided within a reasonable period of time, as determined by MMS.

(d) Interest and assessments. (1) If a lessee nets a washing allowance on the Form MMS-4430, then the lessee shall be assessed an amount up to 10 percent of the allowance netted not to exceed $250 per lease selling arrangement per sales period.

(2) If a lessee erroneously reports a washing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) Adjustments. (1) If the actual coal washing allowance is less than the amount the lessee has taken on Form MMS-4430 for each month during the allowance reporting period, the lessee shall pay additional royalties due plus interest computed under 30 CFR 218.202 from the date when the lessee took the deduction to the date the lessee repays the difference to MMS. If the actual washing allowance is greater than the amount the lessee has taken on Form MMS-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 MMS-4430 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

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

[54 FR 1523, Jan. 13, 1989, as amended at 57 FR 52720, Nov. 5, 1992; 61 FR 5480, Feb. 12, 1996; 64 FR 43288, Aug. 10, 1999; 66 FR 45769, Aug. 30, 2001]

Sec. 206.260 Allocation of washed coal.

(a) When coal is subjected to washing, the washed coal must be allocated to the leases from which it was extracted.

(b) When the net output of coal from a washing plant is derived from coal obtained from only one lease, the quantity of washed coal allocable to the lease will be based on the net output of the washing plant.

(c) When the net output of coal from a washing plant is derived from coal obtained from more than one lease, unless determined otherwise by BLM, the quantity of net output of washed coal allocable to each lease will be based on the ratio of measured quantities of coal delivered to the washing plant and washed from each lease compared to the total measured quantities of coal delivered to the washing plant and washed.

Sec. 206.261 Transportation allowances--general.

(a) For ad valorem leases subject to Sec. 206.257 of this subpart, where the value for royalty purposes has been determined at a point remote from the lease or mine, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to:

(1) Transport the coal from a Federal lease to a sales point which is remote from both the lease and mine; or

(2) 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. In-mine transportation costs shall not be included in the transportation allowance.

(b) Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

(c)(1) When coal transported from a mine to a wash plant is eligible for a transportation allowance in accordance with this section, the lessee is not required to allocate transportation costs between the quantity of clean coal output and the rejected waste material. The transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of cleaned coal transported.

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(2) For coal that is not washed at a wash plant, the transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of coal transported.

(3) Transportation costs shall only be recognized as allowances when the transported coal is sold and royalties are reported and paid.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this section, then the lessee shall pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.202, or shall be

entitled to a credit, without interest.

(e) Lessees shall not disproportionately allocate transportation costs to Federal leases.

[54 FR 1523, Jan. 13, 1989, as amended at 61 FR 5481, Feb. 12, 1996; 64 FR 43288, Aug. 10, 1999]

Sec. 206.262 Determination of transportation allowances.

(a) Arm's-length contracts. (1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS-4430.

(2) In conducting reviews and audits, MMS 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 paid, then the MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(3) If the MMS determines that the consideration paid pursuant to 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 MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) Non-arm's-length or no contract--(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS-4430. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including 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 depreciable investment in the transportation system multiplied by the rate of return in accordance with paragraph (b)(2)(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

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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 which 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 which the lessee can document.

(iii) Overhead 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) A lessee may use either paragraph (b)(2)(iv)(A) or paragraph (b)(2)(iv)(B) 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 approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, whichever is appropriate, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(B)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service or acquired after March 1, 1989.

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be 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) A lessee may apply to MMS for exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) and (b)(2) of this section. MMS will grant the exception only if the lessee has a rate for the transportation approved by a Federal agency or by a State regulatory agency (for Federal leases). MMS shall deny the exception request if it determines that the rate is excessive as compared to arm's-length transportation charges by systems, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if:

(i) No Federal or State regulatory agency costs analysis exists and the Federal or State regulatory agency, as applicable, has declined to investigate under MMS timely objections upon filing; and

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

(c) Reporting requirements--(1) Arm's-length contracts. (i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS-4430.

(ii) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(2) Non-arm's-length or no contract-- (i) The lessee must notify MMS of an allowance based on the incurred costs by using a separate line

entry on Form MMS-4430.

(ii) For new transportation facilities or arrangements, the lessee's initial deduction shall include estimates of the

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allowable coal transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(iii) Upon request by MMS, the lessee shall submit all data used to prepare the allowance deduction. The data shall be provided within a reasonable period of time, as determined by MMS.

(iv) If the lessee is authorized to use its Federal- or State-agency-approved rate as its transportation cost in accordance with paragraph (b)(3) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(d) Interest and assessments. (1) If a lessee nets a transportation allowance on Form MMS-4430, the lessee shall be assessed an amount of up to 10 percent of the allowance netted not to exceed $250 per lease selling arrangement per sales period.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) Adjustments. (1) If the actual coal transportation allowance is less than the amount the lessee has taken on Form MMS-4430 for each month during the allowance reporting period, the lessee shall pay additional royalties due plus interest computed under 30 CFR 218.202 from the date when the lessee took the deduction to the date the lessee repays the difference to MMS. If the actual transportation allowance is greater than amount the lessee has taken on Form MMS-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 MMS-4430 to reflect actual costs, together with any payments, in accordance with instructions provided by MMS.

(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]

Sec. 206.263 [Reserved]

Sec. 206.264 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 MMS. The MMS will review the lessee's proposal and issue a value determination. The lessee may use its proposed value until MMS issues a value determination.

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

Sec. 206.265 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 Sec. 206.257(h) of this subpart, the lessee shall notify MMS that such processing is occurring or will occur. The value of that production shall be determined as follows:

(a) A value established for the feedstock coal in marketable condition by application of the provisions of Sec. 206.257(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 Sec. 206.257(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 MMS-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 Sec. 206.259(b)(2)(v) of this subpart.

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Subpart G--Other Solid Minerals

Sec. 206.301 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: 56 FR 57276, Nov. 8, 1991, unless otherwise noted.

Sec. 206.350 Purpose and scope.

(a) This subpart is applicable to all geothermal resources produced from Federal geothermal leases issued pursuant to the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 et seq.). The purpose of this subpart is to establish the value of geothermal production for royalty purposes.

(b) All royalty payments made to MMS are subject to audit and

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Subpart H—Geothermal Resources

Source: 72 FR 24459, May 2, 2007, unless otherwise noted.

§ 206.350 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 MMS 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 MMS Director or Assistant Secretary, Land and Minerals Management of the Department of the Interior that:

(i) Establishes a method to determine the royalty from any lease that MMS expects at least would approximate the value or royalty established under this subpart; and

(ii) Includes a value or gross proceeds determination under §206.364 of this subpart.

§ 206.351 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 MMS 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, MMS 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 MMS–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.

§ 206.352 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 §206.361 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 §206.353 and §206.354 of this part, multiplied by the royalty rate in your lease. See §206.361 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 MMS under §206.364 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 §206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales. You may not reduce gross proceeds by any deductions.

§ 206.353 How do I determine transmission deductions?

(a) If you determine the value of your geothermal resources under §206.352(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 §206.354(b)(1). After you choose a deduction period, you may not later elect to use a different deduction period without MMS 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 MMS 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 MMS. 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 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. Redetermine the rate at the beginning of each subsequent calendar year.

(l) 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 MMS–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 §218.302). You are entitled to a credit for or refund of any overpaid royalties.

(n) In conducting reviews and audits, MMS 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 MMS specifies. Recordkeeping requirements are found at part 212 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.

§ 206.354 How do I determine generating deductions?

(a) If you determine the value of your geothermal resources under §206.352(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 §206.353(b)(1). After you choose a deduction period, you may not later elect to use a different deduction period without MMS 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 MMS 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 MMS. 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 MMS–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 §218.302). You are entitled to a credit for or refund of any overpaid royalties.

(n) In conducting reviews and audits, MMS 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 MMS specifies. Recordkeeping requirements are found at part 212 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.

§ 206.355 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 §206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales.

§ 206.356 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 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:

Where h_{in} is the enthalpy in Btu/lb at the direct use facility inlet (based on measured inlet temperature), h_{outl} 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 MMS. The methods of measuring resource parameters (temperature, volume, etc.) and the frequency of computing 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 MMS or the Assistant Secretary, Land and Minerals Management of the Department of the Interior, under §206.364 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
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 MMS, in consultation with BLM, will develop and publish a revised fee schedule in theFederal Register,as needed.

(iii) The MMS, in consultation with BLM, will calculate revised fees schedules using the following formulas:

Where:

R_V= Royalty due as a function of produced volume in the fee schedule, expressed as dollars per million (10^6) gallons;

R_m= Royalty due as a function of produced mass in the fee schedule, expressed as dollars per million (10^6) pounds;

ρ[rho] = Water density at inlet temperature expressed as lbs per gallon;

T_{in}= Measured inlet temperature in °F (as required by BLM under 43 CFR part 3275);

T_{out}= Established assumed outlet temperature of 130°F;

e = Boiler Efficiency Factor for coal of 70 percent;

P_{prbc}= 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_{rr}= 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 MMS data showing the amount of geothermal production 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 §218.302.

(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 MMS 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, MMS will determine fees on a case-by-case basis.

§ 206.357 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 §§206.358 and 206.359. See §206.361 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 MMS.

§ 206.358 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 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 MMS–2014 to notify MMS of a transportation allowance.

(2) In conducting reviews and audits, MMS 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 MMS specifies. Recordkeeping requirements are found at part 212 of this chapter.

(e) Byproduct transportation allowances are subject to monitoring, review, and audit. If, after a review or audit, MMS determines that you have improperly determined a byproduct transportation allowance, you must pay any additional royalties due (plus interest computed under §218.302). 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.

§ 206.359 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, MMS 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, MMS may require you to determine the byproduct transportation allowance under paragraph (b) of this section.

(2) If MMS 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, MMS will require you to determine the byproduct transportation allowance under paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS 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;

(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 MMS 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 MMS 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 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)(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 MMS–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 §218.302). You are entitled to a credit for or a refund of any overpaid royalties.

§ 206.360 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 212 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 MMS. You must comply with any such requirement within the time MMS specifies.

§ 206.361 How will MMS 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 MMS may review and audit your data, and MMS 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 MMS 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 §218.302) 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 MMS 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 MMS 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, MMS may require you to increase the gross proceeds to reflect any additional consideration. Alternatively, for Class I leases, MMS may require you to use another valuation method in the regulations applicable to dispositions other than under an arm's-length contract. The MMS 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) The MMS 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.

§ 206.362 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.

§ 206.363 When is an MMS 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 MMS of royalty or fees due under this subpart is considered final or binding as against the Federal Government or its beneficiaries until MMS formally closes the audit period in writing.

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

(a) You may request a value determination from MMS 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 MMS 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, Land and Minerals Management, may issue a determination; or

(2) The MMS may issue a determination; or

(3) The MMS may inform you in writing that MMS will not provide a determination. Situations in which MMS 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, Land and Minerals Management, is binding on both you and MMS 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 §218.302.

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

(1) A determination by MMS is not an appealable decision or order under 30 CFR part 290 subpart B.

(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 290 subpart B.

(e) In making a determination, MMS 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 the MMS or the Assistant Secretary modifies or rescinds the determination.

(g) The MMS 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) The MMS may make requests and replies under this section available to the public, subject to the confidentiality requirements under §206.365.

§ 206.365 Does MMS protect information I provide?

Certain information you submit to MMS 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, MMS 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.

§ 206.366 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. The MMS will determine the fee on a case-by-case basis.

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[Title 30, Volume 2]
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TITLE 30--MINERAL RESOURCES

DEPARTMENT OF *THE INTERIOR*

PART 206--PRODUCT VALUATION--Table of Contents

Subpart J--Indian Coal

annual reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period.

Subpart I--OCS Sulfur [Reserved]

Subpart J--Indian Coal

Source: 61 FR 5481, Feb. 12, 1996, unless otherwise noted.

Sec. 206.450 Purpose and scope.

(a) This subpart prescribes the procedures to establish the value, for royalty purposes, of all coal from Indian Tribal and allotted leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

(b) If the specific provisions of any statute, treaty, or settlement agreement between the Indian lessor and a lessee resulting from administrative or judicial litigation, or any coal lease

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subject to the requirements of this subpart, are inconsistent with any regulation in this subpart, then the statute, treaty, lease provision, or settlement shall govern to the extent of that inconsistency.

(c) All royalty payments are subject to later audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian coal leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

Sec. 206.451 Definitions.

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

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

Area means a geographic region in which coal has 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 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. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: ownership in excess of 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol which MMS 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. MMS may require the

lessee to certify ownership control. 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 in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders 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.

Coal means coal of all ranks from lignite through anthracite.

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).

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.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to a coal lessee for the production and disposition of the coal produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oils, and other preparation of the coal to the extent that the lessee is obligated to perform them at no cost to

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the Indian lessor. Gross proceeds, as applied to coal, also includes but is not limited to reimbursements for royalties, taxes or fees, and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Indian royalty interest may be 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.

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 for an Indian coal resource under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of coal--or the land covered by that authorization, whichever is required by the context.

Lessee means any person to whom the Indian Tribe or an Indian allottee 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 as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

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

Marketable condition means coal that is sufficiently free from impurities and otherwise in a condition that it will be accepted by a purchaser under a sales contract typical for that area.

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.

MMS means the Minerals Management Service of the Department of the Interior.

Net-back method means a method for calculating market value of coal at the lease or mine. Under this method, costs of transportation, washing, handling, etc., are deducted from the ultimate proceeds received for the coal at the first point at which reasonable values for the coal may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of coal, to ascertain value at the mine.

Net output means the quantity of washed coal that a washing plant produces.

Person means by individual, firm, corporation, association, partnership, consortium, or joint venture.

Selling arrangement means the individual contractual arrangements under which sales or dispositions of coal are made to a purchaser.

Spot market price means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding one year.

[61 FR 5481, Feb. 12, 1996, as amended at 64 FR 43289, Aug. 10, 1999]

Sec. 206.452 Coal subject to royalties--general provisions.

(a) All coal (except coal unavoidably lost as determined by BLM pursuant to 43 CFR group 3400) from an Indian lease subject to this part is subject to royalty. This includes coal used, sold, or otherwise disposed of by the lessee on or off the lease.

(b) If a lessee receives compensation for unavoidably lost coal through insurance coverage or other arrangements, royalties at the rate specified in the lease are to be paid on the amount of compensation received for the coal. No royalty is due on insurance compensation received by the lessee for other losses.

(c) If waste piles or slurry ponds are reworked to recover coal, the lessee shall pay royalty at the rate specified in the lease at the time the recovered coal is used, sold, or otherwise finally disposed of. The royalty rate shall be that rate applicable to the production

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method used to initially mine coal in the waste pile or slurry pond; i.e., underground mining method or surface mining method. Coal in waste pits or slurry ponds initially mined from Indian leases shall be allocated to such leases regardless of whether it is stored on Indian lands. The lessee shall maintain accurate records to determine to which individual Indian lease coal in the waste pit or slurry pond should be allocated. However, nothing in this section requires payment of a royalty on coal for which a royalty has already been paid.

Sec. 206.453 Quality and quantity measurement standards for reporting and paying royalties.

For all leases subject to this subpart, the quantity of coal on which royalty is due shall be measured in short tons (of 2,000 pounds each) by methods prescribed by the BLM. Coal quantity information shall be reported on appropriate forms required under 30 CFR part 216 and on the Solid Minerals Production and Royalty Report, Form MMS-4430, as required under 30 CFR part 210.

[61 FR 5481, Feb. 12, 1996, as amended at 66 FR 45769, Aug. 30, 2001]

Sec. 206.454 Point of royalty determination.

(a) For all leases subject to this subpart, royalty shall be computed on the basis of the quantity and quality of Indian coal in marketable condition measured at the point of royalty measurement as determined jointly by BLM and MMS.

(b) Coal produced and added to stockpiles or inventory does not require payment of royalty until such coal is later used, sold, or otherwise finally disposed of. MMS may ask BLM or BIA to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventory become excessive so as to increase the risk of degradation of the resource.

(c) The lessee shall pay royalty at a rate specified in the lease at the time the coal is used, sold, or otherwise finally disposed of, unless otherwise provided for at Sec. 206.455(d) of this subpart.

Sec. 206.455 Valuation standards for cents-per-ton leases.

(a) This section is applicable to coal leases on Indian Tribal and allotted Indian lands (except leases on the Osage Indian Reservation, Osage County, Oklahoma) which provide for the determination of royalty on a cents-per-ton (or other quantity) basis.

(b) The royalty for coal from leases subject to this section shall be based on the dollar rate per ton prescribed in the lease. That dollar rate shall be applicable to the actual quantity of coal used, sold, or otherwise finally disposed of, including coal which is avoidably lost as determined by BLM pursuant to 43 CFR part 3400.

(c) For leases subject to this section, there shall be no allowances for transportation, removal of impurities, coal washing, or any other processing or preparation of the coal.

(d) When a coal lease is readjusted pursuant to 43 CFR part 3400 and the royalty valuation method changes from a cents-per-ton basis to an ad valorem basis, coal which is produced prior to the effective date of readjustment and sold or used within 30 days of the effective date of readjustment shall be valued pursuant to this section. All coal that is not used, sold, or otherwise finally disposed of within 30 days after the effective date of readjustment shall be valued pursuant to the provisions of Sec. 206.456 of this subpart, and royalties shall be paid at the royalty rate specified in the readjusted lease.

Sec. 206.456 Valuation standards for ad valorem leases.

(a) This section is applicable to coal leases on Indian Tribal and allotted Indian lands (except leases on the Osage Indian Reservation, Osage County, Oklahoma) which provide for the determination of royalty as a percentage of the amount of value of coal (ad valorem). The value for royalty purposes of coal from such leases shall be the value of coal determined pursuant to this section, less applicable coal washing allowances and transportation allowances determined pursuant to Secs. 206.457 through 206.461 of this subpart, or any allowance authorized by Sec. 206.464 of this subpart. The royalty due shall be equal

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to the value for royalty purposes multiplied by the royalty rate in the lease.

(b)(1) The value of coal that is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(2), (b)(3), and (b)(5) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the coal produced. If the contract does not reflect the total consideration, then MMS may require that the coal sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be based on less than the gross proceeds accruing to the lessee for the coal production, including the additional consideration.

(3) If MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production 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 MMS shall require that the coal production be valued pursuant to paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), or (c)(2)(v) of this section, and in accordance with the notification requirements of paragraph (d)(3) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported coal value.

(4) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the coal production.

(5) The value of production for royalty purposes shall not include payments received by the lessee pursuant to a contract which the lessee demonstrates, to MMS' satisfaction, were not part of the total consideration paid for the purchase of coal production.

(c)(1) The value of coal from leases subject to this section and which is not sold pursuant to an arm's-length contract shall be determined in accordance with this section.

(2) If the value of the coal cannot be determined pursuant to paragraph (b) of this section, then the value shall be determined through application of other valuation criteria. The criteria shall be considered in the following order, and the value shall be based upon the first applicable criterion:

(i) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition of produced coal by other than an arm's-length contract), provided that those gross proceeds are within the range of the gross proceeds derived from, or paid under, comparable arm's-length contracts between buyers and sellers neither of whom is affiliated with the lessee for sales, purchases, or other dispositions of like-quality coal produced in the area. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of coal, quantity, and such other factors as may be appropriate to reflect the value of the coal;

(ii) Prices reported for that coal to a public utility commission;

(iii) Prices reported for that coal to the Energy Information Administration of the Department of Energy;

(iv) 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 salability of certain types of coal;

(v) If a reasonable value cannot be determined using paragraphs (c)(2)(i), (c)(2)(ii), (c)(2)(iii), or (c)(2)(iv) of this section, then a net-back method or any other reasonable method shall be used to determine value.

(3) When the value of coal is determined pursuant to paragraph (c)(2) of this section, that value determination shall be consistent with the provisions

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contained in paragraph (b)(5) of this section.

(d)(1) Where the value is determined pursuant to paragraph (c) of this section, that value does not require MMS' prior approval. However, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) An Indian lessee will make available upon request to the authorized MMS or Indian representatives, or to the Inspector General of the Department of the Interior or other persons authorized to receive such information, arm's-length sales and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by the lessee from the area.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), or (c)(2)(v) of this section. The notification shall be by letter to the Associate Director for Minerals Revenue Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on the Form MMS-4430 using a valuation method authorized by paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), or (c)(2)(v) of this section, and each time there is a change in a method under paragraphs (c)(2)(iv) or (c)(2)(v) of this section.

(e) If MMS determines that a lessee has not properly determined value, the lessee shall be liable for the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also be liable for interest computed pursuant to 30 CFR 218.202. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provisions of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for the disposition of produced coal less applicable provisions of paragraph (b)(5) of this section and less applicable allowances determined pursuant to Secs. 206.457 through 206.461 and Sec. 206.464 of this subpart.

(h) The lessee is required to place coal in marketable condition at no cost to the Indian lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds has been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee to place the coal in marketable condition.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactively applied to value for royalty purposes for a period not to exceed two years, unless

MMS approves a longer period. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional

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royalties unless or until monies or consideration resulting from the price increase are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of coal.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Indian Tribes or allottees until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation, coal washing, or other allowances pursuant to Secs. 206.457 through 206.461 and Sec. 206.464 of this subpart, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt shall be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease or applicable law.

[61 FR 5481, Feb. 12, 1996, as amended at 66 FR 45769, Aug. 30, 2001]

Sec. 206.457 Washing allowances--general.

(a) For ad valorem leases subject to Sec. 206.456 of this subpart, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to wash coal, unless the value determined pursuant to Sec. 206.456 of this subpart was based upon like-quality unwashed coal. Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to zero.

(b) If MMS determines that a lessee has improperly determined a washing allowance authorized by this section, then the lessee shall be liable for any additional royalties, plus interest determined in accordance with 30 CFR 218.202, or shall be entitled to a credit, without interest.

(c) Lessees shall not disproportionately allocate washing costs to Indian leases.

(d) No cost normally associated with mining operations and which are necessary for placing coal in marketable condition shall be allowed as a cost of washing.

(e) Coal washing costs shall only be recognized as allowances when the washed coal is sold and royalties are reported and paid.

[61 FR 5481, Feb. 12, 1996, as amended at 64 FR 43289, Aug. 10, 1999]

Sec. 206.458 Determination of washing allowances.

(a) Arm's-length contracts. (1) For washing costs incurred by a lessee pursuant to an arm's-length contract, the washing allowance shall be the reasonable actual costs incurred by the lessee for washing the

coal under that contract, subject to monitoring, review, audit, and possible future adjustment. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section. A washing 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-4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the washer for the washing. If the contract reflects more than the total consideration paid, then MMS may require

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that the washing allowance be determined in accordance with paragraph (b) of this section.

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

(4) Where the lessee's payments for washing under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent. Washing allowances shall be expressed as a cost per ton of coal washed.

(b) Non-arm's-length or no contract. (1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of washing allowances is not required for non-arm's-length or no contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4292 in accordance with paragraph (c)(2) of this section. A washing 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-4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual washing allowance.

(2) The washing allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for washing during the reported period, including 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 depreciable investment in the wash plant multiplied by the rate of return in accordance with paragraph (b)(2)(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 wash 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 which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the wash plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

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

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or (b)(2)(iv)(B) of this section. After a lessee has elected to use either method for a wash plant, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the wash plant services, whichever is appropriate, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a wash plant shall not

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alter the depreciation schedule established by the original operator/lessee for purposes of the allowance calculation. With or without a change in ownership, a wash plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) MMS shall allow as a cost an amount equal to the allowable capital investment in the wash plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service or acquired after March 1, 1989.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be 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 shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent washing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The washing allowance for coal shall be determined based on the lessee's reasonable and actual cost of washing the coal. The lessee may not take an allowance for the costs of washing lease production that is not royalty bearing.

(c) Reporting requirements. (1) Arm's-length contracts. (i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS-4292 prior to, or at the same time, as the washing allowance determined pursuant to an arm's-length contract is reported on Form MMS-4430, Solid Minerals Production and Royalty Report. A Form MMS-4292 received by the end of the month that the Form MMS-4430 is due shall be considered to be received timely.

(ii) The initial Form MMS-4292 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS-4292 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the

lessee shall continue to use the allowance from the previous reporting period).

(iv) MMS may require that a lessee submit arm's-length washing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Washing allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

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

(2) Non-arm's-length or no contract. (i) With the exception of those washing allowances specified in paragraphs (c)(2)(v) and (c)(2)(vii) of this section, the lessee shall submit an initial Form MMS-4292 prior to, or at the same time as, the washing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS-4430, Solid Minerals Production and Royalty Report. A Form MMS-4292 received by the end of the month that the Form MMS-4430 is due shall be considered to be timely received. The initial reporting may be based on estimated costs.

(ii) The initial Form MMS-4292 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the washing under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

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(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS-4292 containing the actual costs for the previous reporting period. If coal washing is continuing, the lessee shall include on Form MMS-4292 its estimated costs for the next calendar year. The estimated coal washing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS-4292 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new wash plants, the lessee's initial Form MMS-4292 shall include estimates of the allowable coal washing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar coal wash plants.

(v) Washing allowances based on non-arm's-length or no contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Forms MMS-4292. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(3) MMS may establish coal washing allowance reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Washing allowances must be reported as a separate line on the Form MMS-4430, unless MMS approves a different reporting procedure.

(d) Interest assessments for incorrect or late reports and failure to report. (1) If a lessee deducts a washing allowance on its Form MMS-4430 without complying with the requirements of this section, the lessee shall be liable for interest on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a washing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) Adjustments. (1) If the actual coal washing allowance is less than the amount the lessee has taken on Form MMS-4430 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.202, retroactive to the first month the lessee is authorized to deduct a washing allowance. If the actual washing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit, without interest.

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

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

[61 FR 5481, Feb. 12, 1996, as amended at 66 FR 45769, Aug. 30, 2001]

Sec. 206.459 Allocation of washed coal.

(a) When coal is subjected to washing, the washed coal must be allocated to the leases from which it was extracted.

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(b) When the net output of coal from a washing plant is derived from coal obtained from only one lease, the quantity of washed coal allocable to the lease will be based on the net output of the washing plant.

(c) When the net output of coal from a washing plant is derived from coal obtained from more than one lease, unless determined otherwise by BLM, the quantity of net output of washed coal allocable to each lease will be based on the ratio of measured quantities of coal delivered to the washing plant and washed from each lease compared to the total measured quantities of coal delivered to the washing plant and washed.

Sec. 206.460 Transportation allowances--general.

(a) For ad valorem leases subject to Sec. 206.456 of this subpart, where the value for royalty purposes has been determined at a point remote from the lease or mine, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to:

(1) Transport the coal from an Indian lease to a sales point which is remote from both the lease and mine; or

(2) 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. In-mine transportation costs shall not be included in the transportation allowance.

(b) Under no circumstances will the authorized washing allowance and the transportation allowance reduce the value for royalty purposes to

zero.

(c)(1) When coal transported from a mine to a wash plant is eligible for a transportation allowance in accordance with this section, the lessee is not required to allocate transportation costs between the quantity of clean coal output and the rejected waste material. The transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of cleaned coal transported.

(2) For coal that is not washed at a wash plant, the transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of coal transported.

(3) Transportation costs shall only be recognized as allowances when the transported coal is sold and royalties are reported and paid.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this section, then the lessee shall pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.202, or shall be entitled to a credit, without interest.

(e) Lessees shall not disproportionately allocate transportation costs to Indian leases.

[61 FR 5481, Feb. 12, 1996, as amended at 64 FR 43289, Aug. 10, 1999]

Sec. 206.461 Determination of transportation allowances.

(a) Arm's-length contracts. (1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4293, Coal 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-4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, MMS 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 paid, then MMS

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may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(3) If MMS determines that the consideration paid pursuant to 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 MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value

equivalent for the purposes of this section.

(b) Non-arm's-length or no contract. (1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of transportation allowances is not required for non-arm's-length or no contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4293 in accordance with paragraph (c)(2) 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-4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including 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 depreciable investment in the transportation system multiplied by the rate of return in accordance with paragraph (b)(2)(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 which 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 which the lessee can document.

(iii) Overhead 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) A lessee may use either paragraph (b)(2)(iv)(A) or paragraph (b)(2)(iv)(B) 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 approval of MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, whichever is appropriate,

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or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) MMS shall allow as a cost an amount equal to the allowable capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(B)(v) of this section.

No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service or acquired after March 1, 1989.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average as published in Standard and Poor's Bond Guide for the first month of the reporting period of which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) A lessee may apply to MMS for exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) and (b)(2) of this section. MMS will grant the exception only if the lessee has a rate for the transportation approved by a Federal agency for Indian leases. MMS shall deny the exception request if it determines that the rate is excessive as compared to arm's-length transportation charges by systems, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if:

(i) No Federal regulatory agency cost analysis exists and the Federal regulatory agency has declined to investigate pursuant to MMS timely objections upon filing; and

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

(c) Reporting requirements. (1) Arm's-length contracts. (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS-4293 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS-4430, Solid Minerals Production and Royalty Report.

(ii) The initial Form MMS-4293 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS-4293 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period). Lessees may request special reporting procedures in unique allowance reporting situations, such as those related to spot sales.

(iv) MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances that are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

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

(2) Non-arm's-length or no contract. (i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v) and (c)(2)(vii) of this section, the lessee shall submit an initial Form

MMS-4293 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS-4430, Solid Minerals Production and Royalty Report. The initial report may be based on estimated costs.

(ii) The initial Form MMS-4293 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS-4293 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on Form MMS-4293 its estimated costs for the next calendar year. The estimated transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments that are based on the lessee's knowledge of decreases or increases that will affect the allowance. Form MMS-4293 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS-4293 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no contract-based transportation allowances that are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS-4293. The data shall be provided within a reasonable period of time, as determined by MMS.

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

(viii) If the lessee is authorized to use its Federal-agency-approved rate as its transportation cost in accordance with paragraph (b)(3) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) MMS may establish reporting dates for individual lessees different than those specified in this paragraph in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS-4430, unless MMS approves a different reporting procedure.

(d) Interest assessments for incorrect or late reports and failure to report. (1) If a lessee deducts a transportation allowance on its Form MMS-4430 without complying with the requirements of this section, the lessee shall be liable for interest on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) Adjustments. (1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS-4430 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest, computed pursuant to 30 CFR 218.202, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit, without interest.

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

(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.

[61 FR 5481, Feb. 12, 1996, as amended at 64 FR 43289, Aug. 10, 1999; 66 FR 45769, Aug. 30, 2001]

Sec. 206.462 [Reserved]

Sec. 206.463 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 MMS. MMS will review the lessee's proposal and issue a value determination. The lessee may use its proposed value until MMS issues a value determination.

[61 FR 5481, Feb. 12, 1996, as amended at 64 FR 43289, Aug. 10, 1999]

Sec. 206.464 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 Sec. 206.456(h) of this subpart, the lessee shall notify MMS that such processing is occurring or will occur. The value of that production shall be determined as follows:

(a) A value established for the feedstock coal in marketable condition by application of the provisions of Sec. 206.456(c)(2) (i) through (iv) of this subpart; or,

(b) In the event that a value cannot be established in accordance with paragraph (a) of this section, then the value of production will be determined in accordance with Sec. 206.456(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 MMS-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 Sec. 206.458(b)(2)(v) of this subpart.

[61 FR 5481, Feb. 12, 1996, as amended 64 FR 43289, Aug. 10, 1999]

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TITLE 30--MINERAL RESOURCES

DEPARTMENT OF THE INTERIOR

PART 210--FORMS AND REPORTS--Table of Contents

Subpart E--Solid Minerals, General

Source: 66 FR 45771, Aug. 30, 2001, unless otherwise noted.

Sec. 210.200 What is the purpose of this subpart?

This subpart explains your reporting requirements if you produce coal or other solid minerals from Federal or Indian leases. Included are your requirements for reporting production, sales, and royalties.

Sec. 210.201 How do I submit Form MMS-4430, Solid Minerals Production and Royalty Report?

(a) What to submit. (1) You must submit a completed Form MMS-4430 for--

(i) Production of all coal and other solid minerals from any Federal or Indian lease;

(ii) Sale of any such mineral;

(iii) Any such mineral held in stockpile or inventory; and

(iv) Payment of rents (other than those for which you receive from MMS a Courtesy Notice as defined in Sec. 218.51(a) of this chapter), minimum royalty, deferred bonus, advance royalty, minimum royalty payable in advance, settlements, recoupments, and other financial obligations.

(2) You must submit a completed Form MMS-4430 for any product you sell from a remote storage site. If you sell from five or fewer remote storage sites, you must report sales from each site on separate Forms MMS-4430. If you sell from more than five remote storage sites, you must total the data from all sites and report the summarized data on one Form MMS-4430.

(3) Instructions for completing and submitting Form MMS-4430 are available on our Internet reporting web site or you may contact us toll free at 1-888-201-6416.

(b) When to submit. (1) Unless your lease terms specify a different frequency for royalty payments, you must submit your Form MMS-4430 on or before the end of the month following the month in which you produce any solid mineral, sell any solid mineral, or hold any solid mineral production in stockpile or inventory. However, if the last day of the month falls on a weekend or holiday, your Form MMS-4430 is due on the next business day.

(2) If your lease terms specify a different frequency for royalty payment, then you must submit your Form MMS-4430 on or before the date on which you must pay royalty under the terms of the lease.

(3) You must submit your Form MMS-4430 for payment of rents (other than those for which you receive from MMS a Courtesy Notice as defined in Sec. 218.51(a) of this chapter), minimum royalty, deferred bonus, advance royalty, minimum royalty payable in advance, settlements, recoupments, and other financial obligations on or before the date on which you must pay those obligations under the terms of the lease.

(4) If the information on a previously reported Form MMS-4430 is no longer correct, you must submit a revised Form MMS-4430 by the last day of the month in which you learn that the previously reported information is no longer correct, except when the last day of the month falls on a weekend or holiday. If the last day of the month falls on a weekend or holiday, your revised Form MMS-4430 is due on the first business day of the following month.

(c) How to submit. (1) You must submit Form MMS-4430 electronically using our Internet reporting web site unless you meet the conditions in paragraph (c)(2). We will provide written instructions and a valid login and password before you begin reporting.

(2) You are not required to report electronically if you are a small business as defined by the U.S. Small Business Administration (13 CFR 121.201) and you have no computer, no plans to purchase a computer, and no contract with an electronic reporting service.

(3) If you do not report electronically, you must submit the completed Form MMS-4430 to us at one of the following addresses, unless MMS publishes notice in the Federal Register giving a different address:

(i) For U.S. Postal Service regular mail or Express Mail: Minerals Management

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Service, Minerals Revenue Management, P.O. Box 5810, Denver, Colorado 80217-5810; or

(ii) For courier service or overnight mail (excluding Express Mail): Minerals Management Service, Minerals Revenue Management, Building 85, Denver Federal Center, Room A-614, Denver, Colorado 80225.

[66 FR 45771, Aug. 30, 2001; 66 FR 50827, Oct. 5, 2001]

Sec. 210.202 How do I submit sales summaries?

(a) What to submit. (1) You must submit sales summaries for all coal and other solid minerals produced from Federal and Indian leases and for any remote storage site from which you sell Federal or Indian solid minerals. You do not have to submit a sales summary for those months in which you do not sell any Federal or Indian production.

(2) If you sell from five or fewer remote storage sites, you must submit a sales summary for each site. If you sell from more than five remote storage sites, you may total the data from all sites and submit the summarized data as one sales summary. The details you report on the sales summary are for the same sales reported on Form MMS-4430.

(3) Use the following table to determine the time frames for submitting sales summaries and the data elements you must include. Your submitted sales summaries must include the following data but may be internally generated documents from your own records. You do not need to re-format them before submitting them to us:

Data element	Coal	Sodium/potassium	Western phosphate	
(i) Purchaser Name or Unique Identification.	Monthly.....	Monthly.....	Monthly.....	Mo
(ii) Sales Units.....	Monthly.....	Monthly.....	Monthly.....	Mo
(iii) Gross Proceeds.....	Monthly.....	Monthly.....	Not Required.....	Mo
(iv) Processing or washing costs	Monthly.....	Monthly.....	Not Required.....	Mo
(v) Transportation costs.....	Monthly.....	Monthly.....	Not Required.....	Mo
(vi) Name of product type sold..	Not Required.....	Monthly.....	Not Required.....	Mo
(vii) Btu/lb.....	Monthly.....	Not Required.....	Not Required.....	No
(viii) Ash %.....	Monthly.....	Not Required.....	Not Required.....	No

(ix) Sulfur %.....	Monthly.....	Not Required.....	Not Required.....	No
(x) lbs SO2.....	Monthly.....	Not Required.....	Not Required.....	No
(xi) Moisture %.....	Monthly.....	Not Required.....	Monthly.....	No
(xii) By-product Units.....	Not Required.....	As Requested.....	Monthly.....	As
(xiii) P2O5 %.....	Not Required.....	Not Required.....	Monthly.....	No
(xiv) Size.....	Not Required.....	Not Required.....	Not Required.....	No
(xv) Net Smelter Return data....	Not Required.....	Not Required.....	Not Required.....	Mo
(xvi) Other Data e.g., Royalty Calculation Worksheet.	As Requested.....	Monthly.....	As Requested.....	As

(b) When to submit. (1) For leases with ad valorem royalty terms (that is, leases for which royalty is a percentage of the value of production), you must submit your sales summaries monthly at the same time you submit Form MMS-4430. You do not have to submit a sales summary for any month in which you did not sell Federal or Indian production.

(2) For leases with no ad valorem royalty terms (that is, leases in which the royalty due is not a function of the value of production, such as cents-per-ton or dollars-per-unit), you must submit monthly sales summaries only if we specifically request you to do so.

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(c) How to submit. (1) You should provide the sales summary data via electronic mail where possible. We will provide instructions and the proper email address for these submissions.

(2) If you submit sales summaries by paper copy, mail them to one of the following addresses, unless MMS publishes notice in the Federal Register giving a different address:

(i) For U.S. Postal Service regular mail or Express Mail: Minerals Management Service, Minerals Revenue Management, Solid Minerals and Geothermal Compliance and Asset Management, P.O. Box 25165, MS 390G1, Denver, Colorado 80225-0165.

(ii) For courier service or overnight mail (excluding Express Mail): Minerals Management Service, Solid Minerals and Geothermal Compliance and Asset Management, 12600 West Colfax Avenue, Suite C-100, Lakewood, Colorado 80215.

Sec. 210.203 How do I submit sales contracts?

(a) What to submit. You must submit sales contracts, agreements, and contract amendments for the sale of all coal and other solid minerals produced from Federal and Indian leases with ad valorem royalty terms.

(b) When to submit. (1) For coal and metal production, you must submit the required documents semi-annually, no later than March 30 and September 30 of each year.

(2) For sodium, potassium, and phosphate production, and production from any other lease with ad valorem royalty terms, you must submit the required documents only if you are specifically requested to do so.

(c) How to submit. You must submit complete copies of the sales contracts and amendments to us at the applicable address given in Sec. 210.202(c)(2), unless MMS publishes notice in the Federal Register giving a different address.

Sec. 210.204 How do I submit facility data?

(a) What to submit. (1) You must submit facility data if you operate a wash plant, refining, ore concentration, or other processing facility for any coal, sodium, potassium, metals, or other solid minerals produced from Federal or Indian leases with ad valorem royalty terms, regardless of whether the facility is located on or off the lease.

(2) You do not have to submit facility data for those months in which you do not process solid minerals produced from Federal or Indian

leases and do not have any such minerals in stockpile inventory.

(3) You must include in your facility data all production processed in the facility from all properties, not just production from Federal and Indian leases.

(4) Facility data submissions must include the following minimum information:

(i) Identification of your facility;

(ii) Mines served;

(iii) Input quantity;

(iv) Input quality or ore grade (except for coal);

(v) Output quantity; and

(vi) Output quality or product grades.

(5) Your submitted facility data may be internally generated documents from your own records. You do not need to re-format them before submitting them to us.

(b) When to submit. You must submit your facility data monthly at the same time you submit your Form MMS-4430.

(c) How to submit. (1) You should provide the facility data via electronic mail where possible. We will provide instructions and the proper email address for these submissions before you begin reporting.

(2) If you submit facility data by paper copy, send it to the applicable address given in Sec. 210.202(c)(2).

Sec. 210.205 Will I need to submit additional documents or evidence to MMS?

(a) Federal and Indian lease terms allow us to request detailed statements, documents, or other evidence necessary to verify compliance with lease terms and conditions and applicable rules.

(b) We will request this additional information as we need it, not as a regular submission.

Sec. 210.206 How will information submissions be kept confidential?

Information submitted under this part that constitutes trade secrets or

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commercial and financial information that is identified as privileged or confidential, or that is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, shall not be available for public inspection or made public or disclosed without the consent of the lessee, except as otherwise provided by law or regulation.

Subpart F--Coal [Reserved]

Subpart G--Other Solid Minerals [Reserved]

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TITLE 30--MINERAL RESOURCES

DEPARTMENT OF THE INTERIOR

PART 210--FORMS AND REPORTS--Table of Contents

Subpart H--Geothermal Resources

Source: 56 FR 57286, Nov. 8, 1991, unless otherwise noted.

Sec. 210.350 Definitions.

Terms used in this **subpart** shall have the same meaning as in 30 CFR 206.351.

Sec. 210.351 Required recordkeeping.

Information required by MMS shall be filed using the forms prescribed in this **subpart**, which are available from MMS. Records may be maintained on microfilm, microfiche, or other recorded media that are easily reproducible and readable. See **subpart H** of 30 CFR part 212.

Sec. 210.352 Payor information forms.

The Payor Information Form (Form MMS-4025) must be filed for each Federal lease on which geothermal royalties (including byproduct royalties) are paid. Where specifically determined by MMS, Form MMS-4025 is also required for all Federal leases on which rent is due. The completed form must be filed by the party who is making the rent or royalty payment (payor) for each revenue source. Form MMS-4025 must be filed no later than 30 days after issuance of a new lease or a modification to an existing lease that changes the paying responsibility on the lease. The Form MMS-4025 shall identify the payor of production royalty, and identify revenue sources and selling arrangements for all leased geothermal resources (including byproducts). After filing the initial form, a new Form MMS-4025 must be filed no later than 30 days after the occurrence of any of the following:

(a) Assignment of all or any part of the lease;
(b) Production of new product;
(c) A change in a selling arrangement;
(d) Change in royalty rate;
(e) Change of payor; or
(f) Abandonment of a lease.

Sec. 210.353 Special forms and reports.

The MMS may require submission of additional information on special forms or reports. When special forms or reports other than those referred to in this **subpart** are necessary, MMS will give instructions for the filing of such forms or reports. Requests for the submission of such forms will be made in conformity with the requirements of the Paperwork Reduction Act of 1980 and other applicable laws.

Sec. 210.354 Monthly report of sales and royalty.

A completed Report of Sales and Royalty Remittance (Form MMS-2014) must be submitted each month once sales or utilization of production occur, even though sales may be intermittent, unless otherwise authorized by MMS. This report is due on or before the last day of the month following the month in which production was sold or utilized, together with the royalties due the United States.

Sec. 210.355 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in an MMS Oil and Gas Payor Handbook which is available from the Minerals Management Service, Royalty Management Program, P.O. Box 5760, Denver, Colorado 80217-5760.

(b) Royalty payors should refer to this handbook for specific guidance with respect to geothermal resources reporting requirements. If additional information is required, the payor should contact the MMS at the above address. The appropriate telephone numbers are listed in the handbook.

[56 FR 57286, Nov. 8, 1991, as amended at 58 FR 64902, Dec. 10, 1993]

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Subpart I--OCS Sulfur [Reserved]

during the period for which they have paying or operating responsibility on the lease for a period of 6 years.

(c) *Inspection of records.* The lessee, operator, revenue payor, or other person required to keep records shall be responsible for making the records available for inspection. Records shall be provided at a business location of the lessee, operator, revenue payor, or other person during normal business hours upon the request of any officer, employee or other party authorized by the Secretary. Lessees, operators, revenue payors, and other persons will be given a reasonable period of time to produce historical records.

[49 FR 37345, Sept. 21, 1984; 49 FR 40576, Oct. 17, 1984, as amended at 67 FR 19111, Apr. 18, 2002]

§ 212.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

[49 FR 37345, Sept. 21, 1984]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals—General

§ 212.200 Maintenance of and access to records.

(a) All records pertaining to Federal and Indian solid minerals leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the record holder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the record holder is released by written notice of the obligation to maintain records.

(b) The MMS shall have access to all records of the operator/lessee pertaining to compliance to Federal royalties, including, but not limited to:

(1) Qualities and quantities of all products mined, processed, sold, delivered, or used by the operator/lessee.

(2) Prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices.

(3) Costs of mining, processing, handling, and transportation.

[47 FR 33193, July 30, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and amended at 51 FR 15767, Apr. 28, 1986; 54 FR 1532, Jan. 13, 1989]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources

SOURCE: 56 FR 57286, Nov. 8, 1991, unless otherwise noted.

§ 212.350 Definitions.

Terms used in this subpart shall have the same meaning as in 30 CFR 206.351.

§ 212.351 Required recordkeeping and reports.

(a) *Records.* Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of royalties, rentals, and other amounts due under Federal geothermal leases are in compliance with laws, lease terms, regulations, and orders. Records covered by this section include those specified by lease terms, notices, and orders, and those identified in paragraph (c) of this section. Records also include computer programs, automated files, and supporting systems documentation used to produce automated reports or magnetic tapes submitted to MMS.

(b) *Period for keeping records.* All records pertaining to Federal geothermal leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, before the expiration of that 6-year period that records must be maintained for a longer period for purposes of audit or investigation. When an audit or investigation is underway, records shall be maintained until the recordholder is

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TITLE 30--MINERAL RESOURCES

CHAPTER II--MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

PART 212_RECORDS AND FILES MAINTENANCE--Table of Contents

Subpart H_Geothermal Resources

Sec. 212.351 Required recordkeeping and reports.

(a) Records. Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of royalties, rentals, and other amounts due under Federal geothermal leases are in compliance with laws, lease terms, regulations, and orders. Records covered by this section include those specified by lease terms, notices, and orders, and those identified in paragraph (c) of this section. Records also include computer programs, automated files, and supporting systems documentation used to produce automated reports or magnetic tapes submitted to MMS.

(b) Period for keeping records. All records pertaining to Federal geothermal leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, before the expiration of that 6-year period that records must be maintained for a longer

period for purposes of audit or investigation. When an audit or investigation is underway, records shall be maintained until the recordholder is

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released by written notice of the obligation to maintain records.

(c) Access to records. The Associate Director for Minerals Revenue Management shall have access to all records in the possession of the lessee, operator, revenue payor, or other person pertaining to compliance with royalty obligations under Federal geothermal leases (regardless of whether such records were generated more than 6 years before a request or order to produce them and they otherwise were not disposed of), including, but not limited to:

(1) Qualities and quantities of all products extracted, processed, sold, delivered, or used by the operator/lessee;

(2) Prices received for products, prices paid for like or similar products, and internal transfer prices; and

(3) Costs of extraction, power generation, electrical transmission, and byproduct transportation.

(d) Inspection of Records. The lessee, operator, revenue payor, or other person required to keep records shall be responsible for making the records available for inspection. Records shall be made available at a business location of the lessee, operator, revenue payor, or other person during normal business hours upon the request of any officer, employee, or other party authorized by the Secretary. Lessees, operators, revenue payors, and other persons will be given a reasonable period of time to produce records.

[56 FR 57286, Nov. 8, 1991, as amended at 67 FR 19111, Apr. 18, 2002]

Subpart I--OCS Sulfur [Reserved]

PART 217—AUDITS AND INSPECTIONS

Section Contents

Authority: 35 Stat. 312; 35 Stat. 781, as amended; secs. 32, 6, 26, 41 Stat. 450, 753, 1248; secs. 1, 2, 3, 44 Stat. 301, as amended; secs. 6, 3, 44 Stat. 659, 710; secs. 1, 2, 3, 44 Stat. 1057; 47 Stat. 1487; 49 Stat. 1482, 1250, 1967, 2026; 52 Stat. 347; sec. 10, 53 Stat. 1196, as amended; 56 Stat. 273; sec. 10, 61 Stat. 915; sec. 3, 63 Stat. 683; 64 Stat. 311; 25 U.S.C. 396, 396a–f, 30 U.S.C. 189, 271, 281, 293, 359. Interpret or apply secs. 5, 5, 44 Stat. 302, 1058, as amended; 58 Stat. 483–485; 5 U.S.C. 301, 16 U.S.C. 508b, 30 U.S.C. 189, 192c, 271, 281, 293, 359, 43 U.S.C. 387, unless otherwise noted.

Subpart A—General Provisions [Reserved]

Subpart B—Oil and Gas, General

Authority: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.).*

Source: 49 FR 37345, Sept. 21, 1984, unless otherwise noted.

§ 217.50 Audits of records.

The Secretary, or his/her authorized representative, shall initiate and conduct audits relating to the scope, nature and extent of compliance by lessees, operators, revenue payors, and other persons with rental, royalty, net profit share and other payment requirements on a Federal or Indian oil and gas lease. Audits also will relate to compliance with applicable regulations and orders. All audits will be conducted in accordance with the notice and other requirements of 30 U.S.C. 1717.

§ 217.51 Lease account reconciliation.

Specific lease account reconciliations shall be performed with priority being given to reconciling those lease accounts specifically identified by a State or Indian tribe as having significant potential for underpayment.

§ 217.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

Subpart C—Oil and Gas, Onshore [Reserved]

Subpart D—Oil, Gas and Sulfur, Offshore [Reserved]

Subpart E—Coal

§ 217.200 Audits.

An audit of the accounts and books of operators/lessees for the purpose of determining compliance with Federal lease terms relating to Federal royalties may be required annually or at other times as directed by the Associate Director for Minerals Revenue Management. The audit shall be performed by a qualified independent certified public accountant or by an independent public accountant licensed by a State, territory, or insular possession of the United States or the District of Columbia, and at the expense of the operator/lessee. The operator/lessee shall furnish, free of charge, duplicate copies of audit reports that express opinions on such compliance to the Associate Director for Minerals Revenue Management within 30 days after the completion of each audit. Where such audits are required, the Associate Director for Minerals Revenue Management will specify the purpose and scope of the audit and the information which is to be verified or obtained.

[47 FR 33195, July 30, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, as amended at 67 FR 19112, Apr. 18, 2002]

Subpart F—Other Solid Minerals

§ 217.250 Audits.

An audit of the lessee's accounts and books may be made annually or at such other times as may be directed by the mining supervisor, by certified public accountants, and at the expense of the lessee. The lessee shall furnish free of cost duplicate copies of such annual or other audits to the mining supervisor, within 30 days after the completion of each auditing.

[37 FR 11041, June 1, 1972. Redesignated at 48 FR 35641, Aug. 5, 1983]

Subpart G—Geothermal Resources

Source: 72 FR 24468, May 2, 2007, unless otherwise noted.

§ 217.300 Audit or review of records.

The Secretary, or his/her authorized representative, will initiate and conduct audits or reviews relating to the scope, nature, and extent of compliance by lessees, operators, revenue payors, and other persons with rental, royalty, fees, and other payment requirements on a Federal geothermal lease. Audits or reviews will also relate to compliance with applicable regulations and orders. All audits or reviews will be conducted in accordance with this part.

§ 217.301 Lease account reconciliations.

Specific lease account reconciliations will be performed with priority being given to reconciling those lease accounts specifically identified by a State as having significant potential for underpayment.

§ 217.302 Definitions.

Terms used in this subpart will have the same meaning as in 30 U.S.C. 1702.

Subpart H—Indian Lands [Reserved]

amounts from the date the amounts are due.

(b) The interest charge on late payments shall be at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

(c) Interest will be charged only on the amount of the payment not received. Interest will be charged only for the number of days the payment is late.

(d) A portion of the interest collected will be paid to a State where the State shares in mineral revenues from Federal leases.

(e) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42.

[49 FR 37346, Sept. 21, 1984, as amended at 55 FR 37230, Sept. 10, 1990; 57 FR 62206, Dec. 30, 1992]

§ 218.55 Interest payments to Indians.

(a) All interest collected from unpaid or underpayments on Indian tribal or allotted leases will be paid to the tribe or allottee.

(b) Any disbursement of Indian mineral revenues not made by the due date as required in § 219.103 of this chapter shall accrue interest.

(c) Interest shall be computed at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

(d) The interest shall be payable only for the number of days the disbursement is late.

[49 FR 37346, Sept. 21, 1984, as amended at 55 FR 37230, Sept. 10, 1990]

§ 218.56 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

[49 FR 37346, Sept. 21, 1984. Redesignated at 51 FR 15767, Apr. 28, 1986]

§ 218.57 Providing information and claiming rewards.

(a) *General.* (1) If a person has any information that could lead to the recovery of royalty or other payments owed to the United States with respect to any oil and gas lease on Federal lands or the Outer Continental Shelf, such information may be provided to the Minerals Management Service (MMS) in accordance with this paragraph. The MMS is authorized, under the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1723, to pay a reward for information with respect to Federal oil and gas leases. Funds must be appropriated before payment of any reward. Criteria and procedures covering claims for and payment of rewards are provided in paragraphs (b), (c), and (d) of this section.

(2) If a person has any information he or she believes would be valuable to MMS, that person ("informant") should submit the information in writing, in the form of a letter, mailed or delivered in person to the Director, Minerals Management Service, Department of the Interior, 18th and C Street, NW., Washington, DC 20240, or to the Director's designated representative. Although written communications are preferred, oral information will be accepted.

(3) The informant should provide all data he or she has with respect to royalty or other payments owed. The information provided should include: identification of the alleged debtor; the source of the informant's knowledge of royalties or other payments owed; the date, if known, of the indebtedness; and any other information that could be used to establish indebtedness. All information received by MMS from persons providing information will be considered "highly confidential" and will not be disclosed to any individual except on a "need to know" basis in the performance of official duties.

(b) *Claim for reward.* (1) Any informant who provides information that could lead to the recovery of royalty or other payments may file a claim for reward unless the person is an officer or employee of the United States, an officer or employee of a State or Indian tribe acting pursuant to a cooperative agreement or delegation under the FOGRMA, or any person acting pursuant to a contract authorized by the FOGRMA.

(2) A claim for reward is not acceptable if filed on behalf of a claimant by

his or her agent under power of attorney. However, an agent may provide MMS with information for an unidentified informant, to be evaluated and used by MMS as it deems appropriate. The informant's identity ultimately must be disclosed if the informant intends to file a claim for reward so that MMS can report the reward as taxable income to the Internal Revenue Service. An executor, administrator, or other legal representative of a deceased informant may file a claim on behalf of such deceased informant if, prior to his or her death, the informant was eligible to file a claim under this section. The representative must attach to the claim evidence of authority to file it.

(3) To file a claim for reward the informant must:

(i) Notify the Director, MMS, or the person to whom the information was reported, that he/she is claiming a reward.

(ii) Request an "Application for Reward for Original Information" (Form MMS–4280). This form provides for information to enable MMS to determine and pay rewards, to control reward applications, and to report a claimant's reward as taxable income to the Internal Revenue Service.

(iii) File a claim for reward by completing Form MMS–4280, sign it with his or her true name, and mail or deliver it in person to the Director or to the Director's designated representative. If the informant provided the information in person, the claim should include the name and title of the person to whom the information was reported and the date that it was reported.

(4) If the informant used an identity other than his or true name when the information was originally reported, the person should attach proof to the claim that he or she is the person who gave the information. The MMS does not disclose the identity of its informants to unauthorized persons.

(c) *Basis for rejection of claims.* No reward will be paid to a claimant:

(1) Where the information originally furnished was deemed unworthy of initiating an investigation, but at some later date the records of the lessee are examined without reference to the information furnished. The claim will be rejected on the basis that the information did not cause the investigation nor did it, in itself, result in any recovery.

(2) For information that would have been discovered during the normal course of an audit or investigation.

(3) Unless the informant's true identity is disclosed.

(4) Until after all of the royalties, penalties, or other payments discovered to be owed as a result of information provided are collected and no longer subject to dispute.

(5) Unless funds are appropriated for the payment of rewards.

(d) *Basis for allowance of claims.* (1) The value of the information furnished in relation to the facts developed by the investigation will be taken into account in determining whether a reward shall be paid and, if so, the amount thereof. Information must be voluntarily given and upon the informant's own initiative to warrant the allowance of a reward. Information secured by representatives of MMS from witnesses and others in the course of their investigative activities does not constitute a basis for reward.

(2) In determining whether a reward will be allowed and, if so, the amount thereof, consideration will be given to any corresponding adjustment(s) which will result in potential savings to the lessee for other leases owned by the lessee or an affiliate of the lessee. An example of such an adjustment is a reduction in royalty payment on a different lease as the result of a revised allocation under a unitization or communitization agreement or from an offshore pipeline system. Rewards otherwise allowable will be reduced or rejected by reason of such offsetting adjustments.

(3) If several claims filed by one informant are considered in one recommendation, the reward, if any, may be allowed on one claim and the others may be closed by reference.

(4) Where an informant has provided information and filed a claim for reward with respect to royalty reports of one lessee for several leases, no reward will be granted with respect to an individual lease which has been examined until examination of all leases involved

has been completed. Because the possibility exists that adjustments made to the reports for the open leases may result in offsetting adjustments, no reward will be allowed until the overall results of the information are evaluated.

(e) *Amount and payment of reward.* (1) The Director, MMS will determine whether a reward will be paid and, if so, the amount thereof. In making this decision, the information provided will be evaluated in relation to the facts developed by the resulting investigation. Claims for reward will be paid in proportion to the value of information furnished voluntarily and on the informant's own initiative with respect to recovered royalties or other payments. The amount of reward will be determined as follows:

(i) For specific and responsible information that caused the investigation and resulted in recovery, the reward will be 10 percent of the first $75,000 recovered, 5 percent of the next $25,000, and 1 percent of any additional recovery. The total reward cannot exceed $100,000.

(ii) For information that caused the examination and was of value in determining royalty or other payments due, although not specific, and for information that was a direct factor in recovering royalty or other payments, the reward will be 5 percent of the first $75,000 recovered, 2½ percent of the next $25,000, and ½ percent of any additional recovery. The total reward cannot exceed $100,000.

(iii) For information that caused the investigation but was of no value in determining royalty or other payments due, the reward will be 1 percent of the first $75,000 recovered and ½ percent of any additional recovery. The total reward cannot exceed $100,000.

(2) Rewards will be paid only if moneys are appropriated for that purpose. Subject to appropriations, payments will be made as soon as possible after collection of the amounts owed by the lessee, and after those amounts no longer are subject to dispute by the payor. The reward payment to an informant will be net of Federal and State income tax in accordance with withholding guidelines of the Internal Revenue Service and the applicable State(s).

(3) A decision by the Director, MMS, either denying a reward or establishing the amount of any reward is a final departmental action and may not be appealed to the Interior Board of Land Appeals in accordance with the provisions of 30 CFR part 290.

(Approved by the Office of Management and Budget under control number 1010–0076)

[52 FR 24451, July 1, 1987]

Subpart C—Oil and Gas, Onshore

§ 218.100 Royalty and rental payments.

(a) *Payment of royalties and rentals.* As specified under the provisions of the lease, the lessee shall submit all rental payments when due and shall pay in value or deliver in production all royalties in the amounts of value or production determined by MMS to be due.

(b) If the lessor elects to take royalty in oil or gas, unless otherwise agreed upon, such royalty shall be delivered on the leasehold, by the lessee to the order of and without cost to the lessor, as instructed by the Associate Director.

(c) *Method of payment.* The payor shall tender all payments in accordance with 30 CFR 218.51.

[47 FR 47773, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and amended at 52 FR 23815, June 25, 1987]

§ 218.101 Royalty and rental remittance (naval petroleum reserves).

Remittance covering payments of royalty or rental on naval petroleum reserves must be accomplished by necessary identification information and sent direct to the Director, Naval Petroleum Reserves in California.

[47 FR 47773, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983]

§ 218.102 Late payment or underpayment charges.

(a) The failure to make timely or proper payments of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection by the MMS of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted

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TITLE 30--MINERAL RESOURCES

DEPARTMENT OF THE INTERIOR

PART 218--COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT--Table of Contents

Subpart E--Solid Minerals--General

Sec. 218.200 Payment of royalties, rentals, and deferred bonuses.

As specified under the provisions of the lease, the lessee shall submit all rental and deferred bonus payments when due and shall pay in value all royalties in the amount determined by MMS to be due.

[52 FR 23815, June 25, 1987]

Sec. 218.201 Method of payment.

You must tender all payments in accordance with Sec. 218.51, except as follows:

(a) For purposes of this section, report means the Solid Minerals Production and Royalty Report, Form MMS-4430, rather than the Form MMS-2014.

(b) For Form MMS-4430 payments, include both your customer identification and your customer document identification numbers on your payment document, rather than the information required under Sec. 218.51(f)(1).

(c) For a rental payment that is not reported on Form MMS-4430, include the MMS Courtesy Notice when provided or write your customer identification number and Government-assigned lease number on the payment document, rather than the information required under Sec. 218.51(f)(4)(iii).

[66 FR 45773, Aug. 30, 2001]

Sec. 218.202 Late payment or underpayment charges.

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these rules will result in the collection by MMS of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by MMS to the operator/lessee. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the amount overdue is owed.

(b) Late payment charges will be assessed on any late payment or underpayment from the date that the payment was due until the date that the payment was received at the MMS addresses specified in Sec. 218.51. Payments received at the specified MMS addresses after 4 p.m. mountain time are considered received the following business day.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license or contract provision prescribing a different rate, this percentage

assessment rate is prescribed by the Department of the Treasury as the ``Treasury Current Value of Funds Rate.''

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of the Federal Register and indexed under ``Fiscal Service/ Notices/Funds Rate; Treasury Current Value.''

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production, minimum, or advance royalties; assessments for liquidated damages; or any other payments, fees, or assessments that an operator/lessee is required to pay by a specified date. The failure to pay past due payments, including late payment

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charges, will result in the initiation of other enforcement proceedings.

(f) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in Sec. 218.42.

[47 FR 33195, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and further redesignated at 52 FR 23815, June 25, 1987, as amended at 57 FR 41868, Sept. 14, 1992; 57 FR 62207, Dec. 30, 1992; 59 FR 14559, Mar. 29, 1994; 65 FR 55189, Sept. 13, 2000; 67 FR 19112, Apr. 18, 2002]

Sec. 218.203 Recoupment of overpayments on Indian mineral leases.

(a) Whenever an overpayment is made under an Indian solid mineral lease, a payor may recoup the overpayment through a recoupment on Form MMS-4430 against the current month's royalties or other revenues owed on the same lease. However, for any month a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month under an individual allotted lease or more than 100 percent of the royalties or other revenues owed in that month under a tribal lease.

(b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the lessor. A copy of the tribe's written permission must be furnished to MMS for reporting recoupments. Call 1-888-201-6416 for instructions. Recouping overpayments on one allotted lease from royalties paid to another allotted lease is specifically prohibited.

(c) Overpayments subject to recoupment under this section include all payments made in excess of the required payment for royalty, rental, bonus, or other amounts owed as specified by statute, regulation, order, or terms of an Indian mineral lease.

(d) The MMS Director or his/her designee may order any payor to not recoup any amount for such reasonable period of time as may be necessary for MMS to review the nature and amount of any claimed overpayment.

[60 FR 3087, Jan. 13, 1995, as amended at 66 FR 45773, Aug. 30, 2001; 66 FR 50827, Oct. 5, 2001]

Title 30: Mineral Resources

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT AND CREDITS AND INCENTIVES DUE LESSEES

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Subpart F—Geothermal Resources

§ 218.300 Payment of royalties, rentals, and deferred bonuses.

As specified under the provisions of the lease, the lessee shall submit all rental and deferred bonus payments when due and shall pay in value all royalties in the amount determined by MMS to be due.

[52 FR 23815, June 25, 1987]

§ 218.301 Method of payment.

The payor shall tender all payments in accordance with 30 CFR 218.51.

[52 FR 23815, June 25, 1987]

§ 218.302 Late payment or underpayment charges.

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with the instructions provided by the MMS to the payor.

(b) Late payment charges will be assessed on any late payment or underpayment from the date that the payment was due until the date that the payment was received at the MMS addresses specified in §218.51. Payments received at the specified MMS addresses after 4 p.m. Mountain Time are considered received the following business day.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the “Treasury Current Value of Funds Rate.”

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of theFederal Registerand indexed under “Fiscal Service/Notices/Funds Rate; Treasury Current Value.”

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production, minimum, and compensatory royalties; assessments for liquidated damages; administrative fees and payments by purchasers of royalty taken-in-kind; or any other payments, fees, or assessments that a lessee/operator/payor/royalty taken-in-kind purchaser is required to pay by a specified date. The failure to pay past due payments, including late payment charges, will result in the initiation of other enforcement proceedings.

(f) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in §218.42.

[47 FR 22528, May 25, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and further redesignated at 51 FR 15767, Apr. 28, 1986 and 52 FR 23815, June 25, 1987, as amended at 57 FR 41868, Sept. 14, 1992; 57 FR 62207, Dec. 30, 1992; 59 FR 14559, Mar. 29, 1994; 65 FR 55189, Sept. 13, 2000; 67 FR 19112, Apr. 18, 2002]

§ 218.303 May I credit rental towards royalty?

(a)(1) For Class II leases as defined in 30 CFR 206.351, and for Class III leases as defined in that section that elect under 43 CFR 3200.7(a)(2) to be subject to all of the BLM regulations promulgated for leases issued after August 8, 2005 you may credit the annual rental that you paid before the first day of the year for which the annual rental is owed against the royalty due for the lease year for which the rental was paid. You may not apply any annual rental paid in excess of the royalty due for a particular lease year as a credit against any royalty due in any subsequent lease year.

(2) For purposes of this section, the term “royalty” includes any advanced royalty payable under 30 U.S.C. 1004(f) for a cessation of production.

(b) If portions of your lease are located both within and outside of a participating area, you may credit against royalty under paragraph (a) only that percentage of the rental you paid that corresponds to the percentage of the lease within the participating area on a per-acre basis.

[72 FR 24468, May 2, 2007]

§ 218.304 May I credit rental towards direct use fees?

You may not credit annual rental toward direct use fees you are required to pay that year under §206.356(b). You must pay the direct use fees in addition to the annual rental due.

[72 FR 24468, May 2, 2007]

§ 218.305 How do I pay advanced royalties I owe under BLM regulations?

If you pay advanced royalties under 43 CFR 3212.15(a)(1) to retain your lease:

(a) You must pay an advanced royalty monthly equal to the average monthly royalty you paid under 30 CFR part 206, subpart H (including the amount against which you applied the annual rental as a credit) for the last 3 years the lease was producing. If your lease has been producing for less than 3 years, then use the average monthly royalty payment for the entire period your lease has been producing continuously;

(b) The MMS must receive your advanced royalty payment before the end of each full calendar month in which no production occurs;

(c) You may credit any advanced royalty you pay against production royalties you owe after your lease resumes production. You may not reduce the amount of any production royalty paid for any year below zero.

[72 FR 24468, May 2, 2007]

§ 218.306 May I receive a credit against production royalties for in-kind deliveries of electricity I provide under contract to a State or county government?

(a) You may receive a credit against royalties for in-kind deliveries of electricity you provide under contract to a State or county government if:

(1) The State or county to which you provide electricity would receive a portion of the royalties you paid in money for the lease under 30 U.S.C. 191 or 30 U.S.C. 1019, except as otherwise provided under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355, because your lease is located in that State or county. If your lease is located in more than one State or county, the revenues are paid to the respective States or counties based on their proportionate shares of the total acres in the lease;

(2) The MMS approves in advance your contract with the State or county to which you are providing in-kind electricity; and

(3) Your contract provides that you will use the wholesale value of the electricity for the area where your lease is located to establish the specific methodology to determine the amount of the credit; and

(b) The maximum credit you may take under this section is equal to the portion of the royalty revenue that MMS would have paid to the State or county that is a party to the contract had you paid royalty in money on all of the electricity you delivered to the State or county based on the wholesale value of the electricity. You must pay in money any royalty amount that is not offset by the credit allowed under this section, calculated based on the wholesale value of the electricity.

(c) The electricity the State or county government receives from you satisfies the Secretary's payment obligation to the State or county under 30 U.S.C. 191 or 30 U.S.C. 1019.

[72 FR 24468, May 2, 2007]

§ 218.307 How do I pay royalties due for my existing leases that qualify for near-term production incentives under BLM regulations?

If you qualify for a production incentive under BLM regulations at 43 CFR subpart 3212, your royalty due on the production BLM determines to be qualified for a production incentive under 43 CFR 3212.23 and 3212.24 is 50 percent of the amount of the total royalty that would otherwise be due under 30 CFR part 206, subpart H.

[72 FR 24468, May 2, 2007]