

Subpart G—Other Solid Minerals

§ 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.

§ 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 adjustment.

§ 206.351 Definitions.

For purposes of this subpart:

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:

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

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

(3) 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 the claimed nature of ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for the production month as well as when the contract was executed.

Audit means a procedure having the same meaning and effect as that described at 30 CFR part 217 for verifying royalty payment compliance activities of lessees or other authorized persons who pay royalties, rents, or bonuses on Federal geothermal leases.

Byproduct means:

(1) Any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or developed in association with geothermal fluids and which have a value of less than 75 per centum of the value of the geothermal energy or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves, and

(2) Commercially demineralized water.

Byproduct recovery facility means the facility or facilities at which byproducts are placed in marketable condition.

Byproduct transportation allowance means an approved allowance for the lessee's reasonable, actual costs, excluding gathering, incurred for moving byproducts, including commercially demineralized water, to a point of sale or point of delivery off the lease, unit area, or communitized area.

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 used in the geothermal netback procedure for determining the value of geothermal resources utilized by the lessee to generate electricity. *Transmission deduction* means a deduction for the lessee's reasonable actual costs incurred to wheel or transmit the electricity from the lessee's powerplant to the purchaser's delivery point. *Generating deduction* means a deduction for the lessee's reasonable, actual costs of generating plant tailgate electricity.

Delivered electricity means the amount of electricity in kilowatthours delivered to the purchaser.

Direct utilization means any process other than electrical generation in which the thermal energy of the geothermal resource is utilized, including, but not limited to, space heating, greenhouse operations, and industrial or agricultural process heat.

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 efficient movement of lease production from the wellhead to the point of utilization.

Geothermal netback procedure means the method of determining the value of geothermal resources that are utilized in a lessee-owned powerplant for the generation and sale of electricity by deducting the lessee's reasonable, actual transmission and generating costs from the sales price or value of the electricity to derive the value of the geothermal resource at the powerplant inlet.

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.

Geothermal utilization facility means a powerplant or direct utilization facility that utilizes the heat or other energy of the geothermal resource.

Gross proceeds (for royalty purposes) means the total monies and other consideration accruing to a geothermal lessee for any disposition of geothermal resources, including total payments for the sale of electricity generated by the lessee from lease-produced geothermal resources. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as effluent injection, field operation and maintenance, drilling or workover of wells, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government. Gross proceeds also includes, but is not limited to, 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. 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 a geothermal lease issued under authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*), unless the context indicates otherwise.

Lessee means any person to whom the United States issues a geothermal 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 geothermal lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility. This also includes any affiliate of the lessee that utilizes the geothermal resource to generate electricity, in a direct utilization process, or to recover byproducts, or any affiliate that transports lease production.

Like-quality lease products means lease products that have similar chemical, physical, and legal characteristics.

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

Minimum royalty means the minimum amount of annual royalty as specified in the lease or in applicable leasing regulations that the lessee must pay after commencement of geothermal production in commercial quantities.

No sales means the utilization or disposal of geothermal resources without the benefit of a sale.

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

Plant tailgate electricity means the amount of electricity in kilowatthours generated by the powerplant exclusive of plant parasitic electricity, but inclusive of any electricity generated by the powerplant 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 powerplant or direct utilization facility in which the geothermal resource (steam or hot water) is utilized.

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 utilization operations.

Secretary means the Secretary of the Department of the Interior or any person duly authorized to exercise the powers vested in that office.

Selling arrangement means the individually contracted arrangements under which sales or dispositions of geothermal resources are made, including sales or dispositions of byproducts and electricity sales where the lessee generates electricity from lease geothermal production.

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 1 year.

Wheeling means the transmission of electricity from a powerplant to the point of delivery.

§ 206.352 Valuation standards for electrical generation.

(a) The value of geothermal resources produced from leases subject to this subpart and used to generate electricity shall be determined pursuant to this section.

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

(ii) 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 geothermal resource. If the contract does not reflect the total consideration, MMS may require that the