

estimated or actual generating deduction and adjust royalty values accordingly.

(2) Pursuant to subpart H of 30 CFR part 212, the lessee must maintain all data and records supporting its generating deduction. These data and records must be made available to MMS and other authorized personnel upon request, and shall be maintained in a confidential manner in accordance with applicable laws and regulations pursuant to § 206.352 of this subpart.

(f) A one-time refund of royalties equal to the royalty amount of actual dismantlement costs attributable to the powerplant that are in excess of actual income attributable to the salvage of the powerplant will be allowed at the completion of the dismantlement and salvage operations.

§ 206.355 Valuation standards for direct utilization.

(a) The value of geothermal resources produced for leases subject to this subpart and used in direct utilization processes 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 these reviews and audits, MMS will examine whether or not 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 geothermal resource sold pursuant to that contract be valued in accordance with paragraph (d) of this section. Value shall not be less than the gross proceeds accruing to the lessee, including any additional consideration received.

(iii) 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 geothermal resource 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, MMS shall require the geothermal resource to be valued pursuant to paragraph (d) of this section and in accordance with the notification requirements of paragraph (e) 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 value.

(2) 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 geothermal resource.

(c)(1) The value of geothermal resources subject to this section that are sold under a non-arm's-length contract shall be determined in accordance with the first applicable of the following paragraphs:

(i) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest-priced available comparable arm's-length contract for sales of geothermal resources to the lessee-affiliate's same direct utilization facility (the "minimum value"). If the gross proceeds under the lessee's non-arm's-length contract are less than the "minimum value" under available comparable arm's-length contracts, or if there are no available comparable arm's-length contracts, value will be determined by the weighted average of the gross proceeds established under arm's-length contracts for the sale of significant quantities of geothermal resources to the same direct utilization facility. Available contracts will mean contracts in the possession of the lessee, the lessee's affiliate, or MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Time of execution, duration, terms, quality of the geothermal resource, volume, dedication to the same direct utilization facility,

and other factors that may be appropriate to reflect the value of the resource;

(ii) The equivalent value of the least expensive, reasonable alternative energy source (fuel). The equivalent value of the least expensive, reasonable alternative energy source shall be based on the amount of thermal energy that would otherwise be used by the direct utilization process in place of the geothermal resource. That amount of thermal energy (in Btu's) displaced by the geothermal resource shall be determined by the equation

thermal energy displaced =

$$\frac{(h_{in} - h_{out}) \times \text{density} \times 0.133681 \times \text{volume}}{\text{efficiency factor}},$$

where h_{in} is the enthalpy in Btu's/lb at the utilization facility inlet (based on measured inlet temperature), h_{out} is the enthalpy in Btu's/lb at the facility outlet (based on measured outlet temperature), density is in lbs/cu ft based on inlet temperature, the factor 0.133681 (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 of the alternative energy source shall 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 shall be determined and approved by BLM; or

(iii) A value determined by any other reasonable valuation method approved by MMS.

(2) Valuations made pursuant to this paragraph are subject to the notification requirements of paragraph (e) of this section.

(d)(1) The value of geothermal resources subject to this section that are not subject to a sales transaction but are instead used by the lessee in its own direct utilization facility ("no sales" geothermal resources) shall be determined in accordance with the first applicable of the following paragraphs:

(i) 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 utilization facility. In evaluating the acceptability of arm's-length contracts, the following factors shall 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;

(ii) The equivalent value of the least expensive, reasonable alternative energy source (fuel). The equivalent value of the least expensive, reasonable alternative energy source shall be based on the amount of thermal energy that would otherwise be used by the direct utilization process in place of the geothermal resource. That amount of thermal energy (in Btu's) displaced by the geothermal resource shall be determined by the equation

thermal energy displaced =

$$\frac{(h_{in} - h_{out}) \times \text{density} \times 0.133681 \times \text{volume}}{\text{efficiency factor}},$$

where h_{in} is the enthalpy in Btu's/lb at the utilization facility inlet (based on measured inlet temperature), h_{out} is the enthalpy in Btu's/lb at the facility outlet (based on measured outlet temperature), density is in lbs/cu ft based on inlet temperature, the factor 0.133681 (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 of the alternative energy source shall 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 shall be determined and approved by BLM; or

(iii) A value determined by any other reasonable valuation method approved by MMS.

(2) Valuations made pursuant to this paragraph are subject to the notification requirements of paragraph (e) of this section.

(e)(1) Pursuant to subpart H of 30 CFR part 212, the lessee shall retain all data relevant to the determination of royalty value, particularly where the value is determined pursuant to paragraph (c) or (d) of this section. 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) Upon request, lessees shall make available to authorized MMS representatives or to other authorized persons any and all contracts for the sale or other disposition of the lease production, and any arm's-length sales and other data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field as may be necessary to support a value determination.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c) or (d) of this section. The notification shall be by letter to the MMS 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 paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS-2014 using a valuation method authorized by paragraph (c) or (d) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay 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 pay interest on that difference computed pursuant to 30 CFR 218.302. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) 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. In making a value determination, MMS may use any of the valuation criteria consistent with this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production, for royalty purposes, be less than the gross proceeds accruing to the lessee where geothermal energy is directly sold.

(i) The lessee is required to place geothermal resources in marketable condition and to deliver geothermal resources to the direct utilization facility at no cost to the Federal 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 have 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 geothermal resource in marketable condition or to deliver it to the direct utilization facility.

(j) 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 the contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee shall owe

no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits 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 geothermal resources.

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

(l) Certain information submitted to MMS to support value determinations is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department, 43 CFR part 2.

[56 FR 57276, Nov. 8, 1991; 57 FR 12376, Apr. 9, 1992]

§ 206.356 Valuation standards for byproducts.

(a) The value of geothermal byproducts, including commercially demineralized water, shall be determined pursuant to this section, less applicable byproducts transportation allowances determined pursuant to §§ 206.357 and 206.358 of this subpart.

(b)(1)(i) The value of byproducts 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 byproducts. If the contract does not reflect the total consideration, MMS may require that the byproducts sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including any additional consideration received.

(iii) 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, MMS shall require that the byproduct production be valued pursuant to paragraph (c) of this section and in accordance with the notification requirements of paragraph (d) of this section. If 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 byproduct value.

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

(c) The value of byproducts that are sold pursuant to a non-arm's-length contract or that are utilized by the lessee (no sales), except demineralized water used for the benefit of the lease pursuant to paragraph (b)(2) of § 202.351 of this subpart, shall be determined in accordance with the first applicable of the following paragraphs:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non arm's-length contract (or other disposition by other than an arm's-length contract), provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest-priced available comparable arm's-length contract for sales, purchases, or other dispositions of like-quality byproducts in the field or, if necessary to obtain a representative