(2) A settlement agreement between the United States, Indian lessor, and a lessee resulting from administrative or judicial litigation;

(3) A written agreement between the Indian lessor, lessee, and the ONRR Director establishing a method to determine the value of production from any lease that ONRR expects at least would approximate the value established under this subpart; or

(4) An express provision of an oil and gas lease subject to this subpart then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR or Indian Tribes, which have a cooperative agreement with ONRR to audit under 30 U.S.C. 1732, may audit, or perform other compliance reviews, and require a lessee to adjust royalty payments and reports.

**§ 1206.51 What definitions apply to this subpart?**

For purposes of this subpart:

*Affiliate* means a person who controls, is controlled by, or is under common control with another person.

(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 non-control that ONRR may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, ONRR will consider the following factors in determining whether there is control in 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:

(A) The percentage of ownership or common ownership;

(B) The relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons;

(C) Whether a person is the greatest single owner; and

(D) Whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, 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.

*Area* means a geographic region at least as large as the defined limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

*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 under the generally accepted *Governmental Auditing Standards*, of royalty reporting and payment activities of lessees, designees, or other persons who pay royalties, rents, or bonuses on Indian leases.

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

*Condensate* means liquid hydrocarbons (generally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

*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.

*Designated area* means an area that ONRR designates for purposes of calculating Location and Crude Type Differentials applied to an IBMP value.

ONRR will post designated areas on our Web site at *www.onrr.gov.* ONRR will monitor the market activity in the designated areas and, if necessary, hold a technical conference to review, modify, or add a particular designated area. ONRR will post any change to the designated areas on our Web site at *www.onrr.gov.* Criteria to determine any future changes to designated areas include, but are not limited to: Markets served, examples include refineries and/or market centers, such as Cushing, OK; access to markets, examples include access to similar infrastructure, such as pipelines, rail lines, and trucking; and/or similar geography, examples include no challenging geographical divides, large rivers, and/or mountains.

*Exchange agreement* means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location, as well as other consideration(s). Exchange agreements:

(1) May or may not specify prices for the oil involved;

(2) Frequently specify dollar amounts reflecting location, quality, or other differentials;

(3) Include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement or in separate agreements; and

(4) May include, but are not limited to, exchanges of produced oil for specific types of oil (*e.g.* WTI); exchanges of produced oil for other oil at other locations (location trades); exchanges of produced oil for other grades of oil (grade trades); and multi-party exchanges.

*Field* means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields usually are given names, and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located.

*Gathering* means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area or to a central accumulation or treatment point off of the lease, unit, or communitized area, as BLM operations personnel approve.

*Gross proceeds* means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds also include, but are not limited to, the following examples:

(1) Payments for services, such as dehydration, marketing, measurement, or gathering that the lessee must perform—at no cost to the lessor—in order to put the production into marketable condition;

(2) The value of services to put the production into marketable condition, such as salt water disposal, that the lessee normally performs but that the buyer performs on the lessee's behalf

(3) Reimbursements for harboring or terminalling fees;

(4) Tax reimbursements, even though the Indian royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods by allocating those payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled but does not seek to collect through reasonable efforts.

*IBMP* means the Index-Based Major Portion value calculated under §1206.54.

*Indian Tribe* means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any minerals or interest in minerals is held in trust by the United States or that is subject to Federal restriction against alienation.

*Individual Indian mineral owner* means any Indian for whom minerals or an interest in minerals is held in trust by the United States or who holds title 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 under an Indian mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products. Depending on the context, lease may also refer to the land area that the authorization covers.

*Lease products* means any leased minerals attributable to, originating from, or allocated to Indian leases.

*Lessee* means any person to whom the United States, a Tribe, or individual Indian mineral owner issues a lease and any person who has been assigned an obligation to make royalty or other payments required by the lease. Lessee includes:

(1) Any person who has an interest in a lease (including operating rights owners).

(2) An operator, purchaser, or other person with no lease interest who reports and/or makes royalty payments to ONRR or the lessor on the lessee's behalf.

*Lessor* means an Indian Tribe or individual Indian mineral owner who has entered into a lease.

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

*Location and Crude Type Differential* (*LCTD)* means the difference in value between the NYMEX Calendar Monthly Average (CMA) and the value that approximates the monthly Major Portion Price for any given month, designated area, and crude oil type.

*Location differential* means an amount paid or received (whether in money or in barrels of oil) under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

*Major Portion Price* means the highest price paid or offered at the time of production for the major portion of oil produced from the same designated area for the same crude oil type.

*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 or area.

*Net* means to reduce the reported sales value to account for transportation instead of reporting a transportation allowance as a separate entry on Form ONRR–2014.

*NYMEX Calendar Month Average Price* means the average of the New York Mercantile Exchange (NYMEX) daily settlement prices for light sweet oil delivered at Cushing, Oklahoma, calculated as follows:

(1) Sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the nearest month of delivery for which NYMEX futures prices are published corresponding to each such day.

(2) Divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

*Oil* means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil.

*ONRR* means the Office of Natural Resources Revenue of the Department of the Interior.

*Operating rights owner*, also known as a working interest owner, means any person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease until the operating rights have been transferred from record title (see Bureau of Land Management regulations at 43 CFR 3100.0–5(d)).

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

*Processing* means any process designed to remove elements or compounds (hydrocarbon and non-hydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes that normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

*Prompt month* means the nearest month of delivery for which NYMEX futures prices are published during the trading month.

*Quality differential* means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

*Roll* means an adjustment to the NYMEX price that is calculated as follows: Roll = $.6667 \times (P_0 - P_1) + .3333 \times (P_0 - P_2)$, where: $P_0$ = the average of the daily NYMEX settlement prices for deliveries during the prompt month that is the same as the month of production, as published for each day during the trading month for which the month of production is the prompt month; $P_1$ = the average of the daily NYMEX settlement prices for deliveries during the month following the month of production, published for each day during the trading month for which the month of production is the prompt month; and $P_2$ = the average of the daily NYMEX settlement prices for deliveries during the second month following the month of production, as published for each day during the trading month for which the month of production is the prompt month. Calculate the average of the daily NYMEX settlement prices using only the days on which such prices are published (excluding weekends and holidays). ONRR reserves the option of terminating the use of the roll when ONRR believes that the roll is no longer a common industry practice. ONRR also retains the option to redefine how to calculate the roll to comport with changes in industry practice. To terminate or otherwise redefine how to calculate the roll, ONRR will explain its rationale for terminating or redefining how to calculate the roll by publishing a notice in the FEDERAL REGISTER, to provide an opportunity for comment.

(1) *Example 1: Prices in out months are lower going forward.* The month of production for which you must determine royalty value is December 2012. December was the prompt month from October 23 through November 20. January was the first month following the month of production, and February was the second month following the month of production. $P_0$, therefore, is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between October 23 and November 20. $P_1$ is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between October 23 and November 20. $P_2$ is the average of the daily NYMEX settlement prices for deliveries during February published for each business day between October 23 and November 20. In this example, assume that $P_0$ = \$95.08 per bbl; $P_1$ = \$95.03 per bbl; and $P_2$ = \$94.93 per bbl. In this example (a declining market), Roll = $.6667 \times (\$95.08 - \$95.03) + .3333 \times (\$95.08 - \$94.93) = \$0.03 + \$0.05 = \$0.08$. You add this number to the NYMEX price.

(2) *Example 2: Prices in out months are higher going forward.* The month of production for which you must determine royalty value is November 2012. November was the prompt month from September 21 through October 22. December was the first month following the month of production, and January was the second month following the month of production. $P_0$, therefore, is the average of the daily NYMEX settlement prices for deliveries during November published for each business day between September 21 and October 22. $P_1$ is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between September 21 and October 22. $P_2$ is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between September 21 and October 22. In this example, assume that $P_0$ = \$91.28 per bbl; $P_1$ = \$91.65 per bbl; and $P_2$ = \$92.10 per bbl. In this example (a rising market), Roll = $.6667 \times (\$91.28 - \$91.65) + .3333 \times (\$91.28 - \$92.10) =$

(−$0.25) + (−$0.27) = (−$0.52). You add this negative number to the NYMEX price (effectively a subtraction from the NYMEX price).

*Sale* means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer and does not retain any related rights, such as the right to buy back similar quantities of oil from the buyer elsewhere.

(2) The buyer pays money or other consideration for the oil.

(3) The parties' intent is for a sale of the oil to occur.

*Sales type code* means the contract type or general disposition (*e.g.* arm's-length or non-arm's-length) of production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm's-length or non-arm's-length nature of a transportation allowance.

*Trading month* means the period extending from the second business day before the 25th day of the second calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official Web site, *www.nymex.com*, in which case, the NYMEX definition will apply.

*Transportation allowance* means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off of the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

*WTI* means West Texas Intermediate.

*You* means a lessee, operator, or other person who pays royalties under this subpart.

### § 1206.52 How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract?

(a) The value of production for royalty purposes for your lease is the higher of either the value determined under this section or the IBMP value calculated under § 1206.54. The value of oil under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the arm's-length contract, less applicable allowances determined under § 1206.56 or § 1206.57. You must use this paragraph (a) to value oil when:

(1) You sell under an arm's-length sales contract.

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the higher of the volume-weighted average of the values established under this section for all contracts for the sale of oil produced from that lease or the IBMP value calculated under § 1206.54.

(c) If ONRR determines that the gross proceeds accruing to you or your affiliate does not reflect the reasonable value of the production due to either:

(1) Misconduct by or between the parties to the arm's-length contract; or

(2) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor, ONRR will establish a value based on other relevant matters.

(i) ONRR will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(ii) The fact that the price received by the seller under an arm's-length contract is less than other measures of market price is insufficient to establish breach of the duty to market unless ONRR finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil produced from the lease.