



Crown Minerals (Royalties for Minerals Other than Petroleum) Regulations 2013

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 20th day of May 2013

Present:

His Excellency the Governor-General in Council

Pursuant to sections 105 and 105A of the Crown Minerals Act 1991, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Energy and Resources, makes the following regulations.

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Royalty payable for certain Tier 2 permits**Regulations****1 Title**

These regulations are the Crown Minerals (Royalties for Minerals Other than Petroleum) Regulations 2013.

2 Commencement

These regulations come into force on 24 May 2013.

Part 1**Preliminary provisions****3 Application**

- (1) These regulations apply in relation to—
- (a) exploration permits for minerals granted after the commencement of these regulations; and
 - (b) mining permits for minerals granted after the commencement of these regulations other than those that fall within a category described in subclause (2)(b) or (c).
- (2) These regulations do not apply to—
- (a) prospecting permits for minerals; or

- (b) permits for minerals to which clause 4 of Schedule 1 of the Act applies; or
 - (c) exploration or mining permits for minerals granted after the commencement of these regulations that are in exchange for a permit to which clause 4 of Schedule 1 of the Act applies.
- (3) Despite subclause (2), Part 3 of these regulations applies to permits for minerals to which subclause (2)(b) or (c) applies, except that any terms used in that Part and defined in these regulations must be read—
- (a) as those terms are defined in the relevant minerals programme for the permit concerned; or
 - (b) if the terms are not defined in that minerals programme, as those terms are defined in the Crown Minerals (Minerals Other than Petroleum) Regulations 2007 before the commencement of the Crown Minerals (Minerals Other than Petroleum) Amendment Regulations 2013.

4 Interpretation

- (1) In these regulations, unless the context otherwise requires,—
- accounting profits** has the meaning given in regulation 20
- accounting profits royalty** or **APR** means a royalty in respect of accounting profits resulting from mining activities and determined in accordance with regulations 20 to 36
- Act** means the Crown Minerals Act 1991
- ad valorem royalty** means a royalty in respect of net sales revenues resulting from mining activities and determined in accordance with regulations 16 to 19
- allowable APR deductions** has the meaning given in regulation 20(2)
- arm's length**, in relation to contracts and transactions, means contracts and transactions that are entered into freely and independently by parties that are not related parties
- arm's length value**, in relation to costs, prices, and revenues, means the value that a willing buyer and a willing seller, who are not related parties, would agree is fair in the circumstances

auditor means—

- (a) a chartered accountant (within the meaning of section 19 of the New Zealand Institute of Chartered Accountants Act 1996); or
- (b) a member, a fellow, or an associate of an association of accountants constituted outside New Zealand that is for the time being approved for the purposes of section 199 of the Companies Act 1993 by the Registrar of Companies by notice in the *Gazette*

calendar year means a period of 12 months ending with 31 December

capital proceeds means the proceeds calculated in accordance with regulation 21

construction costs means the costs incurred by a permit holder up to the point of valuation in establishing and commissioning facilities for the extraction, treatment, and transportation of saleable product, including costs relating to relevant infrastructure, buildings, machinery, and equipment

development costs has the meaning given in regulation 5

exploration costs has the meaning given in regulation 6

feasibility study costs means the costs incurred by a permit holder in determining the technical feasibility and commercial viability of an exploration permit or a mining permit, including the following:

- (a) determining the volume and grade of the natural resource concerned;
- (b) examining and testing extraction methods and metallurgical or treatment processes;
- (c) carrying out surveys of transportation and infrastructure requirements;
- (d) carrying out market and finance studies

finance lease—

- (a) means a lease that transfers substantially all the risks and rewards incidental to ownership of an asset to the lessee, whether or not title has been transferred; and
- (b) includes a lease where the leased assets are of such a specialised nature that only the lessee can use them without major modifications; and

- (c) includes a contract for the hire of an asset that contains a provision transferring title to the asset on the fulfilment of agreed conditions

fixed asset—

- (a) means land, buildings, machinery, and equipment; and
- (b) includes land, buildings, machinery, and equipment owned or utilised by a permit holder by virtue of a finance lease that is expected to be used during more than 1 reporting period and is expected to benefit future operations

form prescribed by the chief executive includes, where applicable, also in the manner prescribed by the chief executive

GAAP means generally accepted accounting practice as that term is defined in section 3 of the Financial Reporting Act 1993

gross sales revenues has the meaning given in regulation 17

GST means goods and services tax

half-year means the 6-month period ending on 30 June in each calendar year

head office costs means costs incurred by a permit holder that are not directly attributable to the mining permit operations and that, although they in some manner may benefit the mining permit, do not qualify as indirect costs

hybrid royalty means a royalty in relation to which the permit holder must,—

- (a) for the purposes of providing any interim royalty return, calculate the *ad valorem* royalty for the corresponding reporting period (and pay that amount as the royalty for that period); and
- (b) for the purposes of providing each annual royalty return other than the final royalty return, calculate both the *ad valorem* royalty and the provisional accounting profits royalty for the corresponding reporting period (and pay the higher amount as the royalty for that period); and
- (c) for the purposes of providing the final royalty return, calculate both the *ad valorem* royalty and the final accounting profits royalty (and, if applicable, pay the higher amount as the royalty)

indirect costs means the following costs incurred by a permit holder:

- (a) actual general and administrative costs (other than pre-production costs, non-allowable costs, production costs, or restoration costs) that are directly related to mining activities and carried out under or because of the mining permit;
- (b) costs incurred, in keeping with normal business practices, that provide reasonable and prudent protection against risk of loss of assets, equipment, personnel, or other things related to the permit and that result from the payment of premiums to an insurance company;
- (c) marketing costs incurred up to the point of sale that are directly related to minerals mined under the mining permit;
- (d) communications, travel, audit, legal, or office expenses

land access costs means—

- (a) payments made by a permit holder to landowners or land occupiers, or both, to gain access to their land to conduct mining; or
- (b) costs incurred by a permit holder in purchasing land to gain access to land to conduct mining, in which case the amount that can be claimed is—
 - (i) the actual land purchase price or twice the rating valuation of the land at the commencement date of the mining permit, whichever is the lesser; or
 - (ii) if the land is purchased after the commencement date of the mining permit, the actual purchase price or twice the rating valuation of the land at the date of purchase, whichever is the lesser

mineral means—

- (a) a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water, including, to avoid doubt, all industrial rocks and building stones, all metallic minerals, and all non-metallic minerals (as those terms as defined in section 2(1) of the Act); and
- (b) any concentrate of a mineral described in paragraph (a); and

(c) coal (within the meaning of section 2(1) of the Act)

(d) any output from underground coal gasification

Minister means the Minister of Energy and Resources

net allowable APR deductions means allowable APR deductions less capital proceeds

net forward has the meaning given in regulation 18(1)

net sales revenues means the revenues calculated in accordance with regulation 16

netback has the meaning given in regulation 18(1)

non-allowable costs means costs in the following categories:

(a) royalties payable to the Crown or to any other party from the proceeds of production:

(b) head office costs:

(c) interest costs or costs of equity:

(d) the interest component of a finance lease:

(e) income tax and GST:

(f) costs incurred in purchasing title to an existing exploration permit or mining permit or in purchasing an ownership interest in such a permit:

(g) cash bonus bid payments:

(h) foreign exchange gains and losses:

(i) donations:

(j) directors' fees:

(k) any other costs that do not fall into any one of the categories of allowable APR deductions:

(l) other costs not directly associated with the permit concerned:

(m) costs not incurred by the permit holder

offshore means anywhere that is the seaward side of the mean high-water mark

onshore means anywhere that is the landward side of the mean high-water mark

operating losses carried forward means the costs described in regulation 27

permit maintenance and consent costs—

(a) means payments made to the Crown and other governmental authorities by a permit holder to maintain an exploration permit or a mining permit, or both, including

payments made to maintain associated resource consents and costs in relation to the preparation of any environmental impact statement required under the Resource Management Act 1991; but

- (b) does not mean—
- (i) cash bonus bid payments; or
 - (ii) costs incurred in purchasing title to an existing exploration permit or mining permit or in purchasing an ownership interest in such a permit; or
 - (iii) costs incurred in buying back into an agreement commonly known as a sole risk venture; or
 - (iv) costs incurred by a permit participant to increase equity in the permit

point of sale means the point at which the sale of minerals by a permit holder is deemed to have occurred, calculated in accordance with GAAP

point of valuation has the meaning given in regulation 19

PPI means the producers price index as specified in the *All industries excluding administration, health, and education index* (SN8) published by Statistics New Zealand

pre-production costs means exploration costs, land access costs, permit maintenance and consent costs, development costs, feasibility study costs, and construction costs

production costs has the meaning given in regulation 7

production unit means a mining project that comprises 2 or more permits, or a permit and 1 or more existing privileges, held by the permit holder where the permits and existing privileges are being worked together as a single project and this can be clearly established

related parties has the meaning given in regulation 9

reporting period means the period of time described in regulation 37

restoration costs has the meaning given in regulation 8

royalty return means an interim royalty return, an annual royalty return, and a final royalty return

specific rate royalty means a royalty that is—

- (a) payable by the holder of a Tier 2 exploration or mining permit for minerals specified in the Schedule; and
- (b) calculated in accordance with regulation 15(1)

tangible assets includes fixed assets

Tier 1 exploration or mining permit means an exploration or a mining permit that falls within the definition of Tier 1 permit

Tier 2 exploration or mining permit means an exploration or a mining permit that falls within the definition of Tier 2 permit

Tier 1 permit has the same meaning as in section 2B(1) of the Act

Tier 2 permit has the same meaning as in section 2B(2) of the Act

unclaimed restoration costs means costs described in regulation 28.

- (2) A term that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

5 Meaning of development costs

(1) Development costs—

- (a) means costs incurred by a permit holder up to the point of valuation in establishing access to the natural resource and in preparing for its commercial production; and
- (b) includes the costs incurred in establishing shafts and underground drives, the permanent excavation of roads and tunnels, and advance removal of overburden and waste rock.

- (2) **Development costs** does not include land access costs or permit acquisition costs.

6 Meaning of exploration costs

- (1) **Exploration costs** means the costs incurred by the permit holder that are reasonably necessary to determine the nature and size of a mineral deposit or occurrence, including the costs of any drilling, dredging, or excavations (whether surface or subsurface).

- (2) **Exploration costs** does not include development costs, production costs, indirect costs, restoration costs, or non-allowable costs.

7 **Meaning of production costs**

(1) **Production costs—**

- (a) means operating costs incurred by the permit holder in the extraction, crushing, processing, sorting, refining, washing, or concentration of a mineral; and
- (b) includes direct and indirect costs of production incurred up to the point of valuation, including, but not limited to,—
- (i) labour costs in operating and maintaining equipment and facilities used in the mining process, including remuneration elements, such as wages and salaries, and reasonable fringe benefits as provided for in employment contracts, such as housing, education, health care, and recreation;
 - (ii) costs of repairs and maintenance of equipment and facilities used in production;
 - (iii) costs of materials, supplies used, and purchased fuel consumed in operating mines and related equipment and facilities;
 - (iv) site maintenance costs during production;
 - (v) costs of leasing or hiring fixed assets.
- (2) If support equipment or facilities serve activities under 2 or more exploration or mining permits or existing privileges, or serve transportation, refining, and marketing activities after the point of valuation, the chief executive and the permit holder must, before the filing of the first annual royalty return, agree on the allocation of all common production costs between the permits or between different facets of the permit holder's business.
- (3) The total of the agreed allocated costs under subclause (2) must not exceed the total costs to be allocated.
- (4) If a third party utilises a permit holder's production facilities or any other fixed assets of the permit holder and the permit holder generates revenue as a result, that revenue must be de-

ducted from any claims for production costs up to the total deduction claimed for those production costs.

8 Meaning of restoration costs

(1) Restoration costs—

- (a) means the costs incurred by a mining permit holder up to the point of valuation—
 - (i) in abandoning and restoring sites used for the mining of minerals; and
 - (ii) in dismantling or demolishing equipment or structures used for the mining of minerals; and
- (b) includes the costs incurred by the permit holder in complying with legislative requirements related to the abandonment and restoration of sites used for the mining of minerals, including those costs relating to resource consents.

(2) Restoration costs may be incurred—

- (a) as part of ongoing development of a site:
- (b) when mining ceases at a site.

9 Meaning of related parties

- (1) Entities are related parties of a permit holder if the entities directly or through 1 or more intermediaries exercise control over that permit holder or are controlled by, or are under common control with, the permit holder. Such entities may include, but are not limited to, holding companies, subsidiaries and associates and fellow subsidiaries and associates, joint ventures involving entities, and other contractual arrangements involving entities.
- (2) Individuals and their close family members or controlled trusts are related parties of a permit holder if they own, directly or indirectly, an interest in the voting power of that permit holder that gives them significant influence over that permit holder.
- (3) Key management personnel are related parties of a permit holder if they have authority and responsibility for planning, directing, and controlling the activities of that permit holder. Such key management personnel may include, but are not limited to, directors and officers of companies and close members of the families of those individuals.

- (4) Entities are related parties of a permit holder if a substantial interest in their voting power is owned, directly or indirectly, by any person described in subclause (2) or (3) who is able to exercise significant influence over that permit holder. Such entities may include, but are not limited to, entities owned by directors or major shareholders of that permit holder and entities that have a member of key management in common with that permit holder.
- (5) To the extent that these regulations apply to 2 or more permit participants (in their capacity as a permit participant rather than a permit holder), this regulation applies for that purpose as if each reference to a permit holder were a reference to a permit participant.

10 GAAP accounting procedures to be used

- (1) In calculating royalties, including each element of the calculation, for the purposes of these regulations, a permit holder must use accounting procedures that are in accordance with GAAP.
- (2) Subclause (1) applies unless a provision of these regulations provides otherwise.

11 Form of provision of document if not prescribed

- (1) This regulation applies if any information, document, or other thing—
 - (a) is required to be provided in a form prescribed by the chief executive; and
 - (b) no such form has been prescribed.
- (2) The information, document, or other thing must nevertheless be provided in a form and in a manner acceptable to the chief executive.

Part 2

Royalties for minerals

Subpart 1—When royalties payable and rates of royalties

12 Permit holder must pay royalties

- (1) A permit holder must calculate and pay to the Crown royalties (in accordance with the relevant provisions of regulations 13 to 15) in respect of all minerals obtained under the permit that—
 - (a) are sold; or
 - (b) are used in the production process (as a substitute for otherwise having to purchase a mineral for this purpose); or
 - (c) are otherwise exchanged or removed from the permit without sale; or
 - (d) remain unsold on the surrender, expiry, or revocation of the permit.
- (2) Despite subclause (1), no royalty is payable for any mineral that, in the opinion of the Minister, has been unavoidably lost.
- (3) Despite subclause (1), no royalty is payable in respect of a reporting period if—
 - (a) the permit is not part of a production unit and the net sales revenues from the permit for the reporting period are less than \$200,000; or
 - (b) the permit is not part of a production unit, the permit holder is required to pay an interim royalty, and the net sales revenues from the permit for the reporting period concerned average less than \$16,666 per month; or
 - (c) the permit is part of a production unit and the combined net sales revenues of all permits and privileges in the production unit—
 - (i) are less than \$200,000 for a reporting period; or
 - (ii) if the permit holder is required to pay an interim royalty, average less than \$16,666 per month for the reporting period concerned; or
 - (d) the royalty is payable in accordance with regulation 15 and the amount calculated as payable—
 - (i) is less than \$2,000 for a reporting period; or

- (ii) if the permit holder is required to pay an interim royalty, averages less than \$167 per month for the interim royalty reporting period.

13 Royalty payable for Tier 1 permits

- (1) The holder of a Tier 1 exploration or mining permit for coal must pay an *ad valorem* royalty of 2% of the net sales revenue of the coal obtained under the permit if the accounting profits of the permit holder for the coal for the reporting period are less than or equal to \$5 million.
- (2) The holder of a Tier 1 exploration or mining permit for gold must pay an *ad valorem* royalty of 2% of the net sales revenue of the gold obtained under the permit if the accounting profits of the permit holder for the gold for the reporting period are less than or equal to \$2 million.
- (3) The holder of an exploration or a mining permit for underground coal gasification must pay the higher of—
 - (a) an *ad valorem* royalty of 1% of the net sales revenue of the products obtained under the permit; and
 - (b) an accounting profits royalty of 10% of the accounting profits, or provisional accounting profits, as the case may be, of the products obtained under the permit.
- (4) In any other case, the holder of a Tier 1 exploration or mining permit must pay the higher of—
 - (a) an *ad valorem* royalty of 2% of the net sales revenue of the minerals obtained under the permit; and
 - (b) an accounting profits royalty of 10% of the accounting profits, or provisional accounting profits, as the case may be, of the minerals obtained under the permit.
- (5) A royalty payable under this regulation is payable for each reporting period.

14 Royalty payable for Tier 2 permits

- (1) The holder of a Tier 2 exploration or mining permit for coal must pay royalties in accordance with regulation 13(1).
- (2) The holder of a Tier 2 exploration or mining permit for a mineral specified in the Schedule must pay a royalty for the minerals obtained under the permit,—

- (a) for the reporting period ending 31 December 2013, at the rate specified in the Schedule; and
 - (b) for the reporting period ending 31 December 2014, at the rate specified in the Schedule; and
 - (c) for each subsequent reporting period, at the rate specified in the Schedule as adjusted in accordance with regulation 15.
- (3) In any other case, the holder of a Tier 2 exploration or mining permit must pay an *ad valorem* royalty of 1% of the net sales revenues of the minerals obtained under the permit.
- (4) A royalty payable under this regulation is payable for each reporting period.

15 Royalty rate for minerals specified in Schedule

- (1) For the purposes of regulation 14(2)(c), the chief executive must calculate the rate of royalty for each mineral specified in the Schedule in accordance with this regulation and using the following formula:

$$r = s \times (1 + (\text{PPI}_x \div \text{PPI}_{13} - 1))$$

where—

r is the rate of royalty

s is the rate specified in the second column of the Schedule

PPI_x is the PPI for the final quarter of the reporting period immediately preceding the reporting period for which the rate is being calculated

PPI_{13} is the PPI for the final quarter of the 2013 reporting period.

- (2) The calculation must be rounded to the nearest cent.
- (3) The calculation must be made annually at the close of each reporting period.
- (4) The rates, as amended by each calculation, take effect for the following reporting period.
- (5) As soon as practicable after calculating the rates, the chief executive must notify in the *Gazette*—
 - (a) each rate for the reporting year to which the calculation relates; and

- (b) the difference between that rate and the corresponding rate in the immediately preceding reporting period.
- (6) The first calculation must be made at the close of the 2014 reporting period to take effect for the 2015 reporting period.

Subpart 2—How to calculate net sales revenues, gross sales revenues, accounting profits, and allowable APR deductions

16 Net sales revenues

- (1) Net sales revenues must be calculated—
 - (a) so that all revenues are included as realised; and
 - (b) in accordance with—
 - (i) the formula in subclause (2), if the point of sale is downstream of the point of valuation:
 - (ii) the formula in subclause (3), if the point of sale is upstream of the point of valuation.

- (2) The formula for the purposes of subclause (1)(b)(i) is—

$$r = g + p - n$$

where—

- r is the net sales revenues
- g is the gross sales revenues
- p is the value of minerals not sold but on which a royalty is payable
- n is the netbacks.

- (3) The formula for the purposes of subclause (1)(b)(ii) is—

$$r = g + p + n$$

where—

- r is the net sales revenues
- g is the gross sales revenues
- p is the value of minerals not sold but on which a royalty is payable
- n is the net forwards.

17 Gross sales revenues

- (1) **Gross sales revenues** means the total sales of minerals from a permit during the period for which a royalty return must be provided.
- (2) In the case of a take or pay contract or a forward sales contract,—
 - (a) the sale of minerals must be included in the gross sales revenues at the date of delivery; and
 - (b) the sales price is the price received under the contract.
- (3) The sales price to be used for calculating gross sales revenues for gold and silver if a forward sales contract applies or if gold bullion is used to pay a gold loan must be calculated using the prevailing spot price of gold or silver as determined by the London Bullion Market Association (pm fix) on the day before the date of delivery.
- (4) If any sales price has been denominated in a foreign currency, the exchange rate to be used for calculating the gross sales revenues is the lower of—
 - (a) the exchange rate actually received; and
 - (b) the buy rate on the date of sale set by a major New Zealand trading bank.
- (5) If any gross sales revenues amount has not been determined on an arm's length basis (for example, pursuant to a contract between related parties), the permit holder must value the mineral using an arm's length value, as determined by the Minister in accordance with regulation 32.
- (6) The value of minerals not sold, but for which royalty is payable, must be determined using an arm's length value, as determined by the Minister in accordance with regulation 32.
- (7) The calculation of gross sales revenues must exclude—
 - (a) foreign currency losses and gains, and losses, gains, and costs associated with futures contracts used for hedging or other purposes; and
 - (b) payments received in respect of a take or pay contract that are not recompensed with delivery of minerals at a later date before the expiry of the permit.
- (8) In this regulation,—

forward sales contract—

- (a) means a contract to sell production under a permit at a future date; and
- (b) includes a contract without a specified price or fixed date of delivery (for example, a spot deferred contract)

futures contract means a transaction undertaken for hedging purposes that involves the purchase and sale of a contract to supply minerals on a recognised futures trading exchange

take or pay contract means a contract pursuant to which the purchaser agrees to take or pay for a minimum quantity of minerals per year whether or not the purchaser takes delivery of the minerals.

- (9) For the purposes of this regulation,—

date of delivery means the actual date minerals are physically delivered to a purchaser or a purchaser's agent (as in free on board, free on road, or free on rail sales)

date of sale means the date on which the sale is deemed to have occurred in accordance with GAAP.

18 Netbacks and net forwards

- (1) A **netback** or a **net forward** is that portion of the sale price of minerals that represents the cost (if any) to the permit holder of transporting, storing, and processing minerals between the point of valuation and the point of sale.
- (2) For the purposes of determining a netback or a net forward, the permit holder may deduct from gross sales revenues the following costs:
 - (a) the direct transportation costs and costs of transit insurance incurred by a party other than the permit holder between the point of valuation and the point of sale;
 - (b) the direct costs relating to storage and loading of minerals onto ships, rail wagons, trucks, or other forms of transport outside the boundaries of the mining permit area incurred by a party other than the permit holder between the point of valuation and the point of sale;
 - (c) the share of the costs of operating transportation, storage, and loading facilities that are shared between several permits or existing privileges and incurred by the

- permit holder between the point of valuation and the point of sale,—
 - (i) excluding interest charges; but
 - (ii) including maintenance, insurance, and depreciation in relation to fixed assets:
 - (d) the costs of operating dedicated storage facilities outside the boundaries of the mining permit incurred by the permit holder between the point of valuation and the point of sale,—
 - (i) excluding interest charges; but
 - (ii) including maintenance, insurance, and depreciation in relation to fixed assets and land rental or rates:
 - (e) the costs of operating dedicated facilities to load minerals onto ships, rail wagons, trucks, or other forms of transport outside the boundaries of the mining permit incurred by the permit holder between the point of valuation and the point of sale,—
 - (i) excluding interest charges; but
 - (ii) including maintenance, insurance, and depreciation in relation to fixed assets:
 - (f) the processing costs incurred by a party other than the permit holder between the point of valuation and the point of sale:
 - (g) the costs of operating dedicated transportation facilities incurred by the permit holder between the point of valuation and the point of sale,—
 - (i) excluding interest charges; but
 - (ii) including maintenance, insurance, and depreciation in relation to fixed assets and land rental or rates.
- (3) If any of the costs of transporting, storing, and processing are not considered to have been charged on an arm's length basis (for example, if they have been determined pursuant to a contract between related parties), the permit holder must calculate the netbacks or net forwards using an arm's length value, as determined by the Minister in accordance with regulation 32.
- (4) A netback amount must not exceed the gross sales revenues amount.

- (5) The capital costs of any transportation, storage, or processing assets owned by the permit holder are non-allowable costs and must not be used in determining a netback or net forward.
- (6) Any processing costs incurred by the permit holder between the point of valuation and the point of sale are non-allowable costs and must not be used in determining a netback or net forward.

19 Point of valuation

- (1) The **point of valuation** is the point at which net sales revenues for each mineral product stream are calculated.
- (2) The Minister must determine the point of valuation,—
 - (a) in the case of a mining permit, at the time of granting the permit:
 - (b) in the case of an exploration permit, by written notice to the permit holder—
 - (i) within 30 working days after the date on which the permit is granted; or
 - (ii) as soon as practicable after the time when production of minerals under the permit commences.
- (3) In making a determination, the Minister must have regard to the following principles:
 - (a) for each mineral product stream, the point of valuation should ordinarily be the same as, or very close to, the point of sale of the product to an arm's length purchaser:
 - (b) netbacks or net forwards will not ordinarily arise or will not be significant, although separate points of valuation may be set for various mineral product streams:
 - (c) the point of valuation for alluvial gold should ordinarily be after the final wash-up:
 - (d) the point of valuation for hard rock gold should ordinarily be where the bullion is cast (or poured):
 - (e) the point of valuation for any other mineral should ordinarily be at the first point in the mining operations where the mineral has attained an acceptable saleable condition.
- (4) The Minister must consult the permit holder before making a determination.

- (5) If a significant change to the production facilities has resulted in a point of valuation that is not the same as or very close to the point of sale for the mineral product stream, the Minister may, after consultation with the permit holder, amend the point of valuation for calculating net sales revenues so as to set the point of valuation at or close to the point of sale for the product stream.
- (6) For the purposes of subclause (3)(e), **first point in the mining operations where the mineral has attained an acceptable saleable condition** means, as the case may be,—
- (a) the exit point of the final stockpile or other storage facility of the mineral within or near to the mining permit area; or
 - (b) the exit point of the processing plant associated with the mining operations.

20 Calculation of accounting profits

- (1) For each reporting period, **accounting profits** (the excess of net sales revenues over the net allowable APR deductions) must be calculated in accordance with the following formula:

$$p = r - (a - c)$$

where—

- p is the accounting profits
- r is the net sales revenues (calculated in accordance with regulation 15)
- a is the allowable APR deductions
- c is the capital proceeds.

- (2) **Allowable APR deductions** means pre-production costs, production costs, indirect costs, restoration costs, depreciation, operating losses carried forward, and unclaimed restoration costs.
- (3) For the purposes of calculating the allowable APR deductions, all costs are to be included as incurred.
- (4) Allowable APR deductions claimed must be reduced by any revenue generated by the permit holder from tangible assets for which a deduction has already been claimed up to the total deduction claimed for that tangible asset.

- (5) If capital proceeds exceed allowable APR deductions, the excess must be carried forward as a gain on disposal and applied against allowable APR deductions in subsequent reporting periods until it is fully written off.
- (6) Royalties due in a reporting period are **provisional accounting profits royalties** pending the calculation of the unclaimed restoration costs for the duration of the permit concerned. Once unclaimed restoration costs are taken into account (in accordance with regulation 28), the final accounting profits royalty must be determined (in accordance with regulation 29).
- (7) To avoid doubt,—
 - (a) only those costs specified in subclause (2) as allowable APR deductions may be deducted when calculating accounting profits for accounting profits royalty purposes; and
 - (b) in accordance with regulation 31, no deduction may be made more than once in respect of any amount expended.

21 Calculation of capital proceeds

- (1) Capital proceeds must be calculated in accordance with the following formula:

$$p = a + b + c - d$$

where—

- p is the capital proceeds
 - a is the proceeds from hire, lease, or rental of fixed assets (to the limit of the original value of the assets)
 - b is any gain on the disposal of fixed assets above the net book value of the assets (to the limit of the original value of the assets)
 - c is any insurance reimbursement resulting from loss of or damage to fixed assets (to the limit of the original value of the assets)
 - d is any loss on the disposal of fixed assets below the net book value of the assets.
- (2) For the purposes of this regulation, **net book value**,—

- (a) in relation to land, is the original value of the land less the accumulated amortisation of the land included in pre-production costs:
 - (b) in any other case, is the original value less the accumulated depreciation.
- (3) For the purposes of calculating capital proceeds, **the original value**—
 - (a) of a fixed asset includes the purchase price of the asset plus any improvements, additions, or work done on the asset to extend its life or to improve its capacity or efficiency:
 - (b) of land is limited to twice the rating valuation of the land at the commencement date of the permit or at the date the land was purchased, whichever occurred later.
- (4) If fixed assets, the cost of which has previously been claimed as an allowable APR, have been transferred, either in whole or in part, to or in respect of another exploration or mining permit without being sold, the sale of the assets must be treated as having occurred, with the proceeds of sale being the arm's length value of the whole or the part of the assets, as the case may be.
- (5) Fixed assets that remain unsold at the time of the final royalty return must be valued on an arm's length basis, and any gain or loss above or below the net book value of those assets must be included in the final royalty return.

22 Allowable deductions for exploration costs

- (1) Exploration costs that are allowable APR deductions (as pre-production costs) are the following costs incurred by the permit holder (but not previously claimed against another mining permit):
 - (a) in respect of the area defined in the mining permit, the costs incurred after the date on which the mining permit was granted; and
 - (b) in respect of any area defined in the prospecting permit from which the mining permit was derived, the costs incurred after the date on which the prospecting permit was granted and before the exploration permit from which the mining permit was derived was

- granted (including prospecting costs within any part of the prospecting permit area, even if the area was relinquished in accordance with section 35C of the Act); and
- (c) in respect of any area defined in the exploration permit from which the mining permit was derived, the costs incurred after the date on which the exploration permit was granted and before the mining permit was granted (including exploration costs within any part of the exploration permit area, even if the area was relinquished in accordance with section 35C of the Act); and
 - (d) in respect of any area added by way of an extension to the mining permit, the costs incurred before the inclusion of that area in the mining permit; and
 - (e) any costs incurred in purchasing the results of a speculative study or of a survey carried out by a previous prospecting permit holder—
 - (i) in an area that includes the area defined in the mining permit; and
 - (ii) before the bidding round in relation to which the permit holder was granted an exploration permit.
- (2) The maximum area in relation to which exploration costs may be drawn is—
- (a) 500 square km, if the mining permit is onshore;
 - (b) 5 000 square km, if the mining permit is offshore.
- (3) The value of any minerals obtained as a result of exploration activities must be deducted from exploration costs when an amount in respect of subclause (1)(a) to (e) is calculated.

23 Allowable deductions for depreciation

- (1) Depreciation is an allowable APR deduction for fixed assets used in the extraction or processing of minerals before the point of valuation, other than fixed assets of that type amortised within pre-production costs.
- (2) If a fixed asset is shared among multiple mining permits or existing privileges or shared between mining and other permits or privileges, the allowable APR deduction for depreciation must be calculated by—
- (a) apportioning the total depreciation for the fixed asset according to the proportion of total production throughput

or time usage of the asset for each permit or privilege;
or

- (b) any other method as agreed between the chief executive and the permit holder before the filing of the first annual royalty return.

24 Allowable deductions for pre-production costs (for permits other than those preceded by mining licence)

- (1) This regulation applies to mining permits other than those mining permits that are preceded by a mining licence granted under the Mining Act 1971 or the Coal Mines Act 1979.
- (2) If a permit holder wishes to claim pre-production costs as an allowable APR deduction, the initial amount of the costs must be agreed with the chief executive before—
- (a) the filing of the first annual royalty return in which an accounting profits royalty of the minerals obtained under the permit is required to be calculated; or
- (b) if the pre-production costs relate to an extension to a mining permit, the filing of the first annual royalty return after the extension is approved.
- (3) For pre-production costs incurred after the first annual royalty return, the chief executive's agreement to the amount of the costs must be sought before they are included as an allowable APR deduction in any subsequent royalty return.
- (4) Pre-production costs must be amortised over the expected period of extraction of the economically recoverable reserves under the permit and the costs determined for each reporting period according to the following formula:

$$a = \frac{b}{c}$$

where—

- a is the amortisation
- b is the quantity of mineral produced for the reporting period concerned
- c is the remaining economically recoverable reserves (estimated at the start date of the reporting period).

- (5) The estimates of economically recoverable reserves used for the purposes of subclause (4)—
- (a) must agree with the proved plus probable reserves reported in the annual report on mining activities for the permit provided under regulation 38 of the Crown Minerals (Minerals Other than Petroleum) Regulations 2007; and
 - (b) must be related to any reserve estimates contained in any financial reporting information that the permit holder is required to provide to other persons or entities (for example, the New Zealand Stock Exchange or the Australian Stock Exchange).
- (6) If a permit holder has developed several mining permits from an exploration permit area on the basis of information gained during the term of the exploration permit, the Minister and the permit holder must, before the filing of the first annual royalty return, reach agreement on the allocation of pre-production costs between the first mining permit and any additional mining permits.
- (7) In this regulation, **economically recoverable reserves** means the estimated quantity of saleable mineral product in an area containing natural resources that can be expected to be profitably extracted, processed, and sold under current and foreseeable economic conditions and using current and foreseeable technology.

25 Allowable deductions for pre-production costs (for permits preceded by existing privilege)

- (1) This regulation applies to mining permits that are preceded by a mining licence granted under the Mining Act 1971 or the Coal Mines Act 1979.
- (2) The pre-production costs that may be deducted for the first annual royalty return are—
 - (a) the net book value of pre-production costs for the mining licence and the net book values of fixed assets at the date of commencement of the mining permit; and
 - (b) land access costs; and

- (c) any additional pre-production costs and fixed asset purchase costs from the date of commencement of the mining permit.
- (3) The net book value of pre-production costs and fixed assets must be approved by the chief executive before the filing of the first royalty return under the mining permit.
- (4) For the purposes of this regulation, **net book value** has the same meaning as in regulation 21(2).

26 Allowable deductions for restoration costs

Restoration costs are an allowable APR deduction only after the actual restoration costs have been incurred.

27 Allowable deductions for operating losses carried forward

- (1) An operating loss results if the net allowable APR deductions for a reporting period exceed the net sales revenues for the period.
- (2) An operating loss for a reporting period may be accumulated as **operating losses carried forward** and deducted in subsequent reporting periods where net sales revenues exceed the net allowable APR deductions.
- (3) Operating losses carried forward must be taken forward to subsequent reporting periods until the earliest of the following events:
 - (a) the losses are fully utilised;
 - (b) the permit is surrendered;
 - (c) the permit is revoked;
 - (d) the permit expires.

28 Allowable deductions for unclaimed restoration costs

If restoration costs exceed the net sales revenues in a reporting period, a permit holder may accumulate unclaimed restoration costs in a separate restoration costs account and, subject to regulation 29, include these in the final royalty return as an allowable APR deduction.

29 Calculation of final accounting profits

- (1) For the purposes of the final royalty return, after the deduction of any ongoing monitoring costs, capital proceeds must be subtracted from the unclaimed restoration costs.
- (2) The subsequent balance must be divided over each reporting period of the life of the permit and allocated equally over each of those periods.
- (3) Final accounting profits must be calculated for each reporting period with the allowable APR deductions for each reporting period adjusted to incorporate capital proceeds.
- (4) If there is an operating loss in any of the reporting periods, the operating losses may be carried forward in accordance with regulation 27.
- (5) In subclause (1), **ongoing monitoring costs** means the costs related to any ongoing monitoring required from the permit holder under the Resource Management Act 1991, the amount of which the chief executive has agreed with the permit holder. In agreeing an amount, any bond or monetary deposit held by a local authority for that purpose may be taken into account.

30 Items not calculated according to arm's length contract

If any of the production costs, indirect costs, restoration costs, exploration costs, development costs, permit maintenance and consent costs, feasibility study costs, or capital proceeds have not been determined pursuant to an arm's length contract, the permit holder must calculate the relevant costs using an arm's length value determined by the Minister in accordance with regulation 32.

31 Deductions allowed only once

Even if an amount expended by a permit holder falls under more than 1 category of allowable APR deduction under these regulations, no deduction may be made more than once in respect of the amount expended.

32 Arm's length value

- (1) For the purposes of determining royalty payments under these regulations, the Minister may determine the arm's length value of—
- (a) costs, prices, and revenues that are not the result of arm's length transactions between parties, if the permit holder and the Minister are unable to agree on the value within a period fixed by the Minister:
 - (b) fixed assets that are not acquired or disposed of as a result of arm's length transactions, if the permit holder and the Minister are unable to agree on the value within a period fixed by the Minister.
- (2) In determining an arm's length value, the Minister may have regard to anything he or she considers relevant, including, but not limited to,—
- (a) the grade of the mineral produced:
 - (b) the point of sale and the point of valuation for the mineral under the permit:
 - (c) the nature of the market for the mineral being sold or transferred or the asset or service being purchased or acquired:
 - (d) the average price of any mineral sold at arm's length by the permit holder during the reporting period concerned:
 - (e) the terms of relevant contracts or agreements and the quantities specified in those contracts or agreements:
 - (f) the provisions of relevant contracts or agreements relating to the variation or renegotiation of prices:
 - (g) the state of the market for the mineral concerned at the time the prices in the relevant contracts or agreements were set:
 - (h) prices paid to producers of similar minerals elsewhere in arm's length transactions:
 - (i) costs incurred for similar assets or services elsewhere in arm's length transactions:
 - (j) prices recommended by international associations of governments of countries producing the mineral concerned:

- (k) any provisions in joint venture operating agreements that relate to transactions between related parties:
 - (l) declarations made to the Commissioner of Inland Revenue for the purposes of fringe benefit tax.
- (3) In determining an appropriate value, the Minister may also take into consideration that any mineral used in the production process, or otherwise exchanged or removed under a permit without sale, may have a lesser value than a similar mineral product that is being marketed.
 - (4) For the purposes of subclause (3), the value of the mineral not sold must be determined by multiplying the quantity not sold by the average price of the same mineral sold at arm's length during the reporting period concerned.
 - (5) In determining arm's length value, the Minister may seek advice from experts.
 - (6) The Minister's determination is final.

33 Allocation of common costs and revenues where Crown owned and privately owned minerals extracted

If a permit holder extracts both Crown owned minerals and privately owned minerals as part of a single project, the permit holder must, before the filing of the first royalty return, reach agreement with the chief executive on the allocation of common costs and revenues between the Crown owned minerals and the privately owned minerals.

34 Allocation of common costs and revenues where permits worked together as single project

If several permits or existing privileges are being worked together as a single project, the Minister must, before the filing of the first royalty return, reach agreement with the permit holder concerning the allocation of all common costs and revenues between the permits or existing privileges.

35 Allowable APR deductions if transfer of participating interest

- (1) If some or all of a participating interest in a permit has been transferred, any pro rata balance of operating losses carried

forward that have not been claimed as allowable APR deductions must be carried forward and are available to the new holder of the participating interest to the same extent as if no transaction had taken place.

- (2) A permit holder or permit participant who has transferred all or part of a participating interest cannot claim any previously claimed allowable APR deductions against any other permit.
- (3) A new permit holder or new permit participant cannot claim as allowable APR deductions those costs already deducted by the previous permit holder or permit participant.

36 Calculations must be exclusive of GST

All values calculated under this subpart must be exclusive of GST.

Part 3

Royalty returns, payments, and refunds

37 Reporting period

- (1) The reporting period for the purposes of these regulations is a calendar year.
- (2) If a permit commences after 1 January in any year, the first reporting period for the permit is the balance of that calendar year.
- (3) The final reporting period for a permit commences on 1 January and ends on the date of the expiry, surrender, or revocation of the permit within that calendar year.

38 Royalty returns: categories of, and when and how required

- (1) A permit holder must provide to the chief executive—
 - (a) an annual royalty return for each reporting period for the life of the permit other than for the final reporting period; and
 - (b) a final royalty return for the final reporting period; and
 - (c) if required to make an interim royalty payment in accordance with regulation 44(3), (4), or (5), an interim royalty return for the half-year of the reporting period concerned.

- (2) An annual royalty return and a final royalty return must be provided within 90 days after the end of the reporting period.
- (3) An interim royalty return must be provided by the due date of the interim royalty payment concerned.
- (4) Despite subclauses (1) to (3), a permit holder is not required to provide a royalty return for any reporting period or an interim royalty return for any half-year of a reporting period if, in accordance with regulation 12(3), no royalty is payable under the permit for that period.
- (5) All royalty returns must be submitted in the form prescribed by the chief executive.

39 Interim royalty return: contents

- (1) An interim royalty return must include—
 - (a) the permit number; and
 - (b) for a permit holder required to pay an *ad valorem* royalty for the half-year to which the return relates, the information specified in subclause (2); and
 - (c) for a permit holder required to pay a specific rate royalty for the half-year to which the return relates, the information specified in subclause (3).
- (2) The information for the purposes of subclause (1)(b) is—
 - (a) a calculation of net sales revenues for the reporting period to which the return relates that includes, for each mineral, the following information:
 - (i) the quantity of the mineral produced; and
 - (ii) the quantity of opening stocks; and
 - (iii) the quantity and value of the mineral sold (the gross sales revenues); and
 - (iv) the quantity and value of the mineral used in production; and
 - (v) the quantity and value of the mineral gifted, exchanged, or removed without sale from the permit area; and
 - (vi) the quantity of closing stocks; and
 - (vii) any allowable netbacks and net forwards; and
 - (b) a statement of the *ad valorem* royalties payable for the reporting period; and

- (c) a declaration signed by the permit holder stating that the interim royalty return is correct.
- (3) The information for the purposes of subclause (1)(c) is—
- (a) a calculation of the quantum of the mineral sold in the reporting period to which the return relates that includes, for each mineral, the following information:
 - (i) the quantity of the mineral produced; and
 - (ii) the quantity of opening stocks; and
 - (iii) the quantity of the mineral sold; and
 - (iv) the quantity of the mineral used in production; and
 - (v) the quantity of the mineral gifted, exchanged, or removed without sale from the permit area; and
 - (vi) the quantity of closing stocks; and
 - (vii) the total revenue from sales; and
 - (b) a statement of the specific rate royalties payable for the reporting period; and
 - (c) a declaration signed by the permit holder stating that the interim royalty return is correct.

40 Annual royalty return: contents

- (1) An annual royalty return must include—
- (a) the permit number; and
 - (b) for a permit holder required to pay an *ad valorem* royalty, other than a permit holder subject to a hybrid royalty, the information specified in subclause (2); and
 - (c) for a permit holder subject to a hybrid royalty, the information specified in subclause (3); and
 - (d) for a permit holder required to pay a specific rate royalty, the information specified in subclause (5).
- (2) The information for the purposes of subclause (1)(b) is—
- (a) a calculation of net sales revenues for the reporting period to which the return relates that includes, for each mineral, the following information:
 - (i) the quantity of the mineral produced; and
 - (ii) the quantity of opening stocks; and
 - (iii) the quantity and value of the mineral sold (the gross sales revenues); and

- (iv) the quantity and value of the mineral used in production; and
 - (v) the quantity and value of the mineral gifted, exchanged, or removed without sale from the permit area; and
 - (vi) the quantity of closing stocks; and
 - (vii) any allowable netbacks and net forwards; and
 - (b) a statement of the *ad valorem* royalties payable for the reporting period; and
 - (c) a declaration signed by the permit holder stating that the annual royalty return is correct.
- (3) The information for the purposes of subclause (1)(c) is—
- (a) a calculation of net sales revenues for the reporting year to which the return relates that includes, for each mineral, the following information:
 - (i) the quantity of the mineral produced; and
 - (ii) the quantity of opening stocks; and
 - (iii) the quantity and value of the mineral sold (the gross sales revenues); and
 - (iv) the quantity and value of the mineral used in production; and
 - (v) the quantity and value of the mineral gifted, exchanged, or removed without sale from the permit area; and
 - (vi) the quantity of closing stocks; and
 - (vii) any allowable netbacks and net forwards; and
 - (b) a calculation of the *ad valorem* royalties for the reporting period; and
 - (c) a calculation of the provisional accounting profits royalty for the reporting period and a calculation of the net allowable APR deductions for the period that includes the following information:
 - (i) pre-production costs (including details of each category of those costs); and
 - (ii) production costs; and
 - (iii) depreciation (including a schedule of any fixed assets to which deductions relate); and
 - (iv) indirect costs (including details of each category of those costs); and

- (v) restoration costs; and
 - (vi) operating losses carried forward from the previous reporting period; and
 - (vii) capital proceeds; and
 - (d) a statement of the royalty payable for the reporting period; and
 - (e) a declaration signed by the permit holder stating that the annual royalty return is correct.
- (4) Despite subclause (3), a permit holder is not required to provide the information specified in subclause (3)(c)—
- (a) if the net sales revenues for the reporting period are less than or equal to \$1 million; or
 - (b) if the permit concerned is part of a production unit, the combined net sales revenues of all permits and privileges in the production unit are less than or equal to \$1 million.
- (5) The information for the purposes of subclause (1)(d) is—
- (a) a calculation of the quantum of the mineral sold in the reporting period to which the return relates that includes, for each mineral, the following information:
 - (i) the quantity of the mineral produced; and
 - (ii) the quantity of opening stocks; and
 - (iii) the quantity of the mineral sold; and
 - (iv) the quantity of the mineral used in production; and
 - (v) the quantity of the mineral gifted, exchanged, or removed without sale from the permit area; and
 - (vi) the quantity of closing stocks; and
 - (vii) the total revenue from sales; and
 - (b) a statement of the specific rate royalties payable for the reporting period; and
 - (c) a declaration signed by the permit holder stating that the annual royalty return is correct.
- (6) Despite subclauses (1)(b) and (c), if a permit holder has already supplied an interim royalty return in accordance with regulation 39 that covers the half-year of the reporting period to which the annual royalty return relates, a statement supplied under subclause (2)(a) or (3)(a) for the reporting period may

comprise a summation of the net sales revenue details in relation to that half-year period.

- (7) Despite subclause (1)(d), if a permit holder has already supplied an interim royalty return in accordance with regulation 39 that covers the half-year of the reporting period to which the annual royalty return relates, a statement supplied under subclause (5)(a) for the reporting period may comprise a summation of the mineral sales details in relation to that half-year period.

41 Final royalty return: contents

A final royalty return must include,—

- (a) for a permit holder required to pay an *ad valorem* royalty, other than a permit holder subject to a hybrid royalty,—
- (i) the information required under regulation 40(2); and
 - (ii) a statement of the arm's length value of the closing stocks that are unsold at the date of the transfer, expiry, surrender, or revocation of the permit, as the case may be;
- (b) for a permit holder subject to a hybrid royalty,—
- (i) the information required under regulation 40(3); and
 - (ii) a statement of the arm's length value of the closing stocks that are unsold at the date of the transfer, expiry, surrender, or revocation of the permit, as the case may be; and
 - (iii) if the permit holder has paid provisional accounting profits royalty for any reporting period,—
 - (A) details of the net allowable APR deductions (other than restoration costs or restoration costs carried back) that the permit holder is claiming for the royalty return, including pre-production costs, production costs, depreciation (including a schedule of any fixed assets to which the deduction relates), indirect costs, operating losses carried forward (from the

- immediately preceding reporting period), and capital proceeds; and
 - (B) details of the restoration costs to be carried back and any recapture of capital expenditure deductions; and
 - (C) for each reporting period over the life of the permit in which a provisional accounting profits royalty was paid, a calculation of the *ad valorem* royalty and the final accounting profits royalty; and
 - (D) a statement of any refund or overpayment of final accounting profits royalty claimed:
- (c) for a permit holder required to pay a specific rate royalty,—
- (i) the information required under regulation 40(5); and
 - (ii) the quantity of closing stocks that are unsold at the date of the transfer, expiry, surrender, or revocation of the permit, as the case may be.

42 Royalty returns where permit holder 2 or more permit participants

- (1) This regulation applies if a permit holder comprises 2 or more permit participants.
- (2) A royalty return may comprise separate returns from each permit participant detailing each participant's share of the following as applicable:
 - (a) for a permit holder required to pay an *ad valorem* royalty, other than a permit holder subject to a hybrid royalty,—
 - (i) if an interim royalty return, the net sales revenues (provided in accordance with regulation 39(2));
 - (ii) if an annual royalty return, the net sales revenues (provided in accordance with regulation 40(2));
 - (iii) if a final royalty return,—
 - (A) the net sales revenues (provided in accordance with regulation 40(2)); and
 - (B) a statement of the arm's length value of the closing stocks that are unsold at the

- date of the transfer, expiry, surrender, or revocation of the permit, as the case may be:
- (b) for a permit holder subject to a hybrid royalty,—
 - (i) if an interim royalty return, the net sales revenues (provided in accordance with regulation 39(2):
 - (ii) if an annual royalty return, the net sales revenues and the provisional accounting profits royalty (provided in accordance with regulation 40(3)):
 - (iii) if a final royalty return, the information required under regulation 41(b)(ii) and (iii):
 - (c) for a permit holder required to pay a specific rate royalty,—
 - (i) if an interim royalty return, the royalty payable (provided in accordance with regulation 39(3)):
 - (ii) if an annual royalty return, the royalty payable (provided in accordance with regulation 40(5)):
 - (iii) if a final royalty return—
 - (A) the royalty payable (provided in accordance with regulation 41(c); and
 - (B) the quantity of unsold closing stock at the date of the transfer, expiry, surrender, or revocation of the permit, as the case may be.
- (3) If a participating interest in a permit is transferred to a new permit participant, the new permit participant must provide—
- (a) a separate annual royalty return for the balance of the current reporting period starting from the day after the date of transfer of the participating interest; and
 - (b) if applicable, any separate interim royalty returns for the same period.

43 Accountant or auditor statement

- (1) This regulation applies to permit holders subject to a hybrid royalty.
- (2) An annual royalty return or a final royalty return must be accompanied by a statement, in the form prescribed by the chief executive, that confirms the matters in subclause (4) if—

- (a) the net sales revenues for the exploration or mining permit concerned or the combined net sales revenues for the production unit concerned are more than \$1 million in a reporting period or, if an interim reporting period, average more than \$83,333 per month; or
- (b) the net sales revenues for the exploration or mining permit concerned or the combined net sales revenues for the production unit concerned—
 - (i) are less than or equal to \$1 million in a reporting period or, if an interim reporting period, average less than or equal to \$83,333 per month; and
 - (ii) an accountant or auditor has prepared the royalty return.
- (3) The statement may be made by an accountant or an auditor. However, if subclause (2)(a) applies and an auditor has reviewed the permit holder's statements of financial information for the purposes of the Companies Act 1993 or the Financial Reporting Act 1993, the statement must be made by an auditor.
- (4) Each statement provided under this regulation must confirm that—
 - (a) the deductions set out in the return have been checked by the auditor or accountant and are in accordance with the permit; and
 - (b) the calculations set out in the return have been checked by the auditor or accountant and are in accordance with the permit; and
 - (c) the return has been checked by the auditor or accountant for arithmetical accuracy; and
 - (d) the return has been compared with the permit holder's trial balance and the amounts in the return have been correctly extracted.

44 Payment and refund of royalties

- (1) A permit holder must pay the royalty due for any reporting period for which a royalty return must be provided within 90 days after the end of the reporting period.
- (2) Subclause (1) is subject to subclauses (3) to (9).

- (3) If net sales revenues for a Tier 1 permit are equal to or greater than \$100,000 for the half-year of a reporting period, an interim royalty payment of the following amount must be paid within 30 days after the end of the half-year:
- (a) 1% of the *ad valorem* royalty, if the permit is subject to the royalty regime set out in the 1996 Minerals Programme:
 - (b) the specific rate royalty calculated as payable under the 2008 Minerals Programme, if the permit relates to coal and is subject to the royalty regime in that programme:
 - (c) 1% of the *ad valorem* royalty, if the permit relates to gold or silver, or the permit holder is a PGE permit holder, and—
 - (i) the permit is subject to the royalty regime set out in the 2008 Minerals Programme; and
 - (ii) the net sales revenues for the half-year are less than or equal to \$1.5 million:
 - (d) 2% of the *ad valorem* royalty, if the permit relates to gold or silver, or the permit holder is a PGE permit holder, and—
 - (i) the permit is subject to the royalty regime set out in the 2008 Minerals Programme; and
 - (ii) the net sales revenues for the half-year are more than \$1.5 million:
 - (e) 2% of the *ad valorem* royalty, if the permit is a Tier 1 permit and the permit is subject to the royalty regime set out in these regulations.
- (4) If net sales revenues for a Tier 2 permit are equal to or greater than \$5,000 for the half-year of a reporting period, an interim royalty payment of the following amount must be paid within 30 days after the end of that half-year:
- (a) 1% of the *ad valorem* royalty, if the permit is subject to the royalty regime set out in the 1996 Minerals Programme:
 - (b) the specific rate royalty calculated as payable under the 2008 Minerals Programme, if the permit relates to a mineral other than gold or silver, or the permit holder is not a PGE permit holder, and the permit is subject to the royalty regime set out in that programme:

- (c) the specific rate royalty calculated as payable for the half-year under these regulations, if the permit is subject to the royalty regime set out in these regulations and the permit is for a mineral specified in the Schedule:
 - (d) 1% of the *ad valorem* royalty, if the permit is subject to the royalty regime set out in these regulations and the permit is for a mineral not specified in the Schedule.
- (5) An interim royalty payment must be paid within 30 days after the end of the half-year of a reporting period if—
 - (a) the permit is subject to the royalty regime set out in these regulations; and
 - (b) the permit is for a mineral specified in the Schedule; and
 - (c) the specific rate royalty calculated as payable is equal to or greater than \$1,000 but less than \$5,000 for the half-year.
- (6) If a royalty return has been provided with separate statements from permit participants,—
 - (a) the royalty may be paid by the participants forwarding their share of the royalty due together with a copy of their statement; and
 - (b) any interim payment under subclause (3) or (4) may also be made by each permit participant paying an agreed share.
- (7) If the chief executive is satisfied on the basis of a final royalty return that an amount should be refunded, a one-time refund must be made to the permit holder in the manner nominated by the permit holder.
- (8) If a refund is to be made and the royalties have been paid by 2 or more permit participants, the refund must be divided between the permit participants in the same proportion as the payments were made.
- (9) If the royalties paid in a reporting period vary by more than 20% from the previous reporting period, the chief executive may require the permit holder to do 1 or both of the following:
 - (a) provide an explanation of the variance:
 - (b) provide copies of the relevant records.
- (10) If, on completion of the royalty return for a reporting period, there is a balance of royalties payable net of any interim pay-

ments made in respect of the period, the permit holder must pay the balance within 90 days after the end of the reporting period.

- (11) If, on completion of an annual royalty return, the total of interim payments exceeds the amount of the royalties due for the reporting period, the chief executive must refund the overpayment unless the permit holder requests that it be applied against future liabilities (in which case it may be so applied).

- (12) In this regulation,—

1996 Minerals Programme means the *Minerals Programme for Minerals other than coal and petroleum* issued to take effect from 1 October 1996 and the Minerals Programme for Coal issued to take effect from 1 October 1996

2008 Minerals Programme means the *Minerals Programme for Minerals (Excluding Petroleum)* issued to take effect from 1 February 2008

PGE permit holder means the holder of a platinum group element permit.

45 Accounts and records

- (1) A permit holder required to pay an *ad valorem* royalty in any reporting period, other than a permit holder subject to a hybrid royalty, must keep accounts and records that verify—
- (a) details of the minerals produced from the permit for which royalties are payable, including details of the date, destination, value, and basis of valuation of each shipment, transfer, or other disposal; and
 - (b) the amount and particulars of each transaction included in gross sales revenues.
- (2) A permit holder subject to a hybrid royalty must keep accounts and records that verify—
- (a) the amount and particulars of each transaction included in gross sales revenues; and
 - (b) the amount and particulars of each expenditure in each category of allowable APR deductions, including original invoices (or true copies) received from third parties and affiliates; and
 - (c) the basis of allocation of all allocated expenditures; and

- (d) details of all fixed assets, including all transfers, sales, and disposals, if the costs of these have been previously recorded as allowable APR deductions; and
 - (e) details of the minerals produced from the permit for which royalties are payable, including details of the date, destination, value, and basis of valuation of each shipment, transfer, or other disposal.
- (3) A permit holder required to pay a specific rate royalty in any reporting period must keep accounts and records that verify—
- (a) details of the minerals produced from the permit for which royalties are payable, including details of the date, destination, value, and basis of valuation of each shipment, transfer, or other disposal; and
 - (b) the amount and particulars of each transaction included in gross sales revenues.
- (4) Accounts and records must be held for the period set out in section 33(1)(d) of the Act.

46 Transitional provision

- (1) This regulation applies to a permit—
- (a) to which clause 4 of Schedule 1 of the Act applies; and
 - (b) that, before the commencement of the Crown Minerals Amendment Act 2013, had a royalty reporting period other than a calendar year.
- (2) If that reporting period ends after 31 December 2013, the permit holder must provide an annual royalty return for the balance of the 2013 calendar year on 31 December 2013.
- (3) If that reporting period ends before 31 December 2013, the permit holder must provide—
- (a) an annual royalty for that period; and
 - (b) an annual royalty return for the balance of the 2013 calendar year.
- (4) For each successive reporting period, the permit holder must provide all royalty returns in accordance with the reporting period in these regulations.
- (5) This regulation overrides regulation 37.
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rr 4(1), 14(2), 15(1), 44

Schedule
Royalty payable for certain Tier 2 permits

Mineral	Rate of royalty per tonne sold (\$)
Aggregate and construction materials (including rock, sand, and gravel for roading, building, fill reclamation, and protection purposes)	0.11
Bentonite	0.92
Clay for brick and tiles	0.11
Clay for pottery	0.34
Decorative/dimension building stone	1.72
Decorative pebbles	0.34
Diatomite	1.72
Dolomite	0.23
Limestone for agriculture, cement, and industry	0.23
Marl	0.11
Perlite	0.34
Pumice	0.11
Serpentinite	0.34
Silica sand for industry	0.34
Zeolite	1.72
	Rate of royalty per cubic metre sold (\$)
Mineral	
Peat	0.34

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 24 May 2013, provide for the calculation and payment of, and reporting requirements relating to, mineral royalties (other than for petroleum).

Regulations 1 and 2 relate to the Title and commencement.

Part 1 concerns preliminary matters. It specifies which of these regulations apply to various exploration and mining permits. None of these regulations applies to prospecting permits. Among other things, *Part 1* also defines terms that are used in these regulations.

Part 2 concerns royalties for minerals and contains 2 subparts.

Subpart 1 specifies when royalties are payable and the rates of royalties. Royalties are payable on the sale, use, exchange, and removal of minerals and in relation to any unsold stocks on the surrender, expiry, or revocation of the permit concerned. The rates of royalties payable differ depending on various specified circumstances.

Subpart 2 sets out how to calculate the various revenues, profits, and deductions that are used to determine royalties under these regulations.

Part 3 sets out the reporting periods for royalties, the timing of returns and payments that must be made, circumstances in which a refund may be paid, and reports and records that must be kept to verify royalty calculations. It also provides a transitional arrangement for permits that exist on the commencement of the Crown Minerals Amendment Act 2013 that have a reporting period other than a calendar year.

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These regulations are administered by the Ministry of Business, Innovation, and Employment.
