

engage in employment without additional evidence. Before we will assign an SSN to you that is valid for work, you must give us proof (as explained in § 422.107(e)(2)) that:

(1) You have authorization from your school to engage in employment, and

(2) You are engaging in, or have secured, employment.

■ 3. Section 422.107 is amended by redesignating paragraph (e) as paragraph (e)(1), adding a heading for paragraph (e)(1), and adding a new paragraph (e)(2) to read as follows:

**§ 422.107 Evidence requirements.**

\* \* \* \* \*

(e) *Evidence of alien status*—(1) *General evidence rules.* \* \* \*

(2) *Additional evidence rules for F-1 students*—(i) *Evidence from your designated school official.* If you are an F-1 student and do not have a separate DHS employment authorization document as described in § 422.105(a) and you are not authorized for curricular practical training (CPT) as shown on your SEVIS Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, you must give us documentation from your designated school official that you are authorized to engage in employment. You must submit your SEVIS Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status. You must also submit documentation from your designated school official that includes:

(A) The nature of the employment you are or will be engaged in, and

(B) The identification of the employer for whom you are or will be working.

(ii) *Evidence of your employment.* You must also provide us with documentation that you are engaging in, or have secured, employment; e.g., a statement from your employer.

**§§ 422.103, 422.107, and 422.110 [Amended]**

■ 4. In addition to the amendments set forth above, remove the terms “Immigration and Naturalization Service (INS),” “Immigration and Naturalization Service,” and “INS” and, in their place, add the term “Department of Homeland Security” in the following places:

a. Section 422.103(b)(3), and (c)(3);

b. Section 422.107(d)(4), and (d)(6); and

c. Section 422.110(b).

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**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

**30 CFR Part 204**

**RIN 1010-AC30**

**Accounting and Auditing Relief for Marginal Properties**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** MMS is promulgating new regulations to implement certain provisions in the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. These regulations explain how lessees and their designees can obtain accounting and auditing relief for production from Federal oil and gas leases and units and communitization agreements that qualify as marginal properties.

**DATES:** Effective September 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Sharron L. Gebhardt, Lead Regulatory Specialist, Chief of Staff Office, Minerals Revenue Management, MMS, telephone (303) 231-3211, fax (303) 231-3781, or e-mail [sharron.gebhardt@mms.gov](mailto:sharron.gebhardt@mms.gov).

The principal authors of this rule are Sarah L. Inderbitzin of the Office of the Solicitor and Mary A. Williams of Minerals Revenue Management, MMS, Department of the Interior (Department).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA).<sup>1</sup> RSFA amends the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA).<sup>2</sup> Section 7 of RSFA allows MMS and the State concerned (defined under RSFA as “a State which receives a portion of royalties or other payments under the mineral leasing laws from [a Federal onshore or OCS oil and gas lease]”) <sup>3</sup> to provide royalty prepayment and regulatory relief for production from marginal properties for Federal onshore and Outer Continental Shelf (OCS) oil and gas leases.<sup>4</sup> The stated purpose of granting relief to production from marginal properties under RSFA is to promote production, reduce administrative costs, and increase net receipts to the United

States and the States.<sup>5</sup> Specifically, paragraph (c) of the new 30 U.S.C. 1726 enacted by RSFA section 7 directed the Secretary of the Interior (and States that had received a delegation of audit authority) to “provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop” marginal properties, “[p]rovided that such relief will only be available to lessees in a State that concurs.” If royalty payments from a lease are not shared with a State under applicable law, then the Secretary alone determines whether to provide relief.

In response to the RSFA section 7 amendments, MMS conducted three workshops to receive input from a wide variety of constituent groups to develop a proposed rule. The workshops were held at MMS offices in Denver, Colorado, on October 31, 1996; January 23, 1997; and November 5, 1997. Representatives from several Federal and State government organizations participated along with industry organizations representing both small and large Federal oil and gas lessees. The input received during these workshops was instrumental in developing the proposed rule that was published in the **Federal Register** on January 21, 1999 (64 FR 3360). The proposed rule addressed only accounting and auditing relief. It did not propose prepayment relief. The final rule also does not include any provisions authorizing prepayment relief. That subpart is reserved for possible later rulemaking.

Public comments received in response to the proposed rule were sharply contradictory. The comments fell into two general categories:

1. The States believed that MMS was offering too much relief to industry; and
2. Industry believed that the rule was too complicated and did not offer enough relief.

Because of the contradictory opinions, the Associate Director for Minerals Revenue Management asked the Department’s Royalty Policy Committee (RPC) to form a subcommittee to review the marginal property issue and make recommendations to the Department on how MMS should proceed. The RPC appointed a subcommittee with members from several industry associations and the major States affected by the relief provisions. MMS employees and a representative of the Office of the Solicitor served as technical advisors to the subcommittee.

The RPC subcommittee prepared a report and submitted it to the RPC on

<sup>1</sup> Pub. L. 104-185, as corrected by Pub. L. 104-200.

<sup>2</sup> 30 U.S.C. 1701 *et seq.*

<sup>3</sup> 30 U.S.C. 1702(31).

<sup>4</sup> 30 U.S.C. 1726.

<sup>5</sup> 30 U.S.C. 1726(a).

March 27, 2001. The RPC accepted the subcommittee's recommendations. On August 2, 2001, the Acting MMS Director—on behalf of the Secretary—approved the report and advised MMS to proceed with a supplementary proposed rule incorporating the subcommittee's recommendations. The MMS published a supplementary proposed rule on March 31, 2003 (68 FR 15390), that included the RPC subcommittee's recommendations with one exception described in the response to comments in the next two sections.

## II. Comments on the 1999 Proposed Rule

MMS received comments on the initial proposed rule published on January 21, 1999 (64 FR 3360), from the following nine entities:

- 3 States;
- 1 State and Indian audit organization;
- 2 oil and gas producers;
- 2 industry associations; and
- 1 law firm [hereinafter the "law firm"] representing 1 industry association and 11 oil and gas companies.

These comments are analyzed and discussed below:

### *Definition of Base Period*

**1999 Proposed Rule.** In § 204.2, MMS proposed to define the base period as the 12-month period from October 1 through September 30 immediately preceding the calendar year in which the lessee takes or requests marginal property relief.

**Public Comments.** One State commented that the base period should track as closely as possible to the beginning of the applicable calendar year in which the lessee takes marginal property relief. One producer requested that the base period be moved from October 1 through September 30 to September 1 through August 31 because the proposed period did not allow sufficient time for producers to report. One industry association also requested that the base period be moved back to give industry more time for calculations.

**RPC Subcommittee Recommendation.** The subcommittee members discussed the need to change the proposed base period. Producer groups indicated that the base period needed to be moved back at least 1 or 2 months. However, one State representative said that the base period needed to be as close to the calendar year as possible, but the State could accept moving it back to September 1 through August 31. The subcommittee ultimately recommended changing the base period to July 1 through June 30. The subcommittee

agreed that it was necessary to move the base period back in order for MMS to publish a **Federal Register** notice before the first of the calendar year listing which States were participating in the marginal property relief options. The subcommittee decided that the following schedule should meet the needs of all parties (industry, States, and MMS):

August 15 Operators submit production reports for June production.

October 1 MMS furnishes States a report of marginal properties for July–June base period.

November 1 States notify MMS if they wish to opt in or out of marginal property accounting and auditing relief (if a State fails to notify MMS, it is deemed to have opted out).

December 1 MMS publishes a **Federal Register** notice listing which States are opting in or out.

January 31 Payor notifications are due on the marginal properties that they will begin reporting annually.

February 28 Payor's annual royalty report and payment are due on marginal properties for which relief was taken for the previous calendar year (unless an estimated payment is on file, in which case the royalty report and payment are due on March 31).

**MMS Response.** We agree with the RPC subcommittee recommendation to change the period to July 1 through June 30.

### *Definition of "Producing Wells"*

**1999 Proposed Rule.** In § 204.2, MMS proposed to define producing wells as only those producing oil or gas that contribute to the sum of the barrels of oil equivalent (BOE) used in the calculation of a marginal property under § 204.4. The definition excludes injection or water wells.

**MMS Response.** MMS is clarifying the definition of "producing wells" in the final rule to further specify which wells will be included in calculating a marginal property. We are adding a sentence to clarify that wells with multiple zones commingled downhole are considered as a single well. Counting each commingled zone as a separate completion overstates the number of producing well days in determining the average daily well production for a property.

### *Definition of "Property"*

Although the proposed rule did not contain a definition of "property," we added a definition to the final rule for clarification. The rule uses the term

"property," and not all properties will qualify as marginal properties. Therefore, we are defining property as a lease, a portion of a lease, or an agreement that may be a marginal property if it meets the qualifications of this subpart. Section 204.4 explains what criteria a property must meet to qualify as a marginal property.

### *Definition of "Marginal Property"*

**1999 Proposed Rule.** In § 204.4, MMS proposed to define a "marginal property" as a property having average daily well production of less than 15 BOE per well per day during the base period.

**Public Comments.** The law firm and the two industry associations suggested that MMS establish separate production levels for different situations, particularly offshore and onshore properties. One State was concerned that using all producing wells in the calculation could result in classifying properties with high-producing wells as marginal. The same State also objected to MMS delegating to itself the determination of what marginal production is because RSFA stated that MMS and the States should determine the definition jointly.

**RPC Subcommittee Recommendation.** The subcommittee members discussed the comment that separate qualification rates should be established for offshore and onshore properties. MMS representatives advised the subcommittee that industry had previously formed an operational group to establish a rate for offshore, but the group could not agree and the idea was dropped. Subcommittee members also discussed whether the States could set their own individual qualification rates. The subcommittee members decided this was not acceptable because of the administrative burden associated with tracking and auditing different rates for different States. One State representative was concerned that some States might want to offer some relief but not at an average daily production of less than 15 BOE. The RPC subcommittee did not recommend any changes in the definition of "marginal property."

**MMS Response.** In the final rule MMS retains the definition of "marginal property" contained in the 1999 proposed rule with minor modifications to clarify how a lease qualifies as marginal. We moved the information regarding Indian leases not being eligible for relief to § 204.1, and added to the first sentence of § 204.200 that you may obtain accounting and auditing relief for "Federal onshore or OCS

lease” production from a marginal property.

Also, as explained in the proposed rule, under § 204.4(a)(1), if your lease is not in an agreement, then your entire lease is a property that must qualify as a marginal property under paragraph (b) of this section. In other words, these are stand-alone Federal leases, and the entire lease would have to qualify under § 204.4.

Under § 204.4(a)(2), if all or a portion of your lease is in one agreement, then the entire agreement must qualify as a marginal property under paragraph (b) of this section. For example, even if other leases in the agreement are not Federal leases, you must use the production attributable to those leases, as well as your lease, in order to make the calculation under paragraphs (b) and (c) of this section to determine whether the agreement meets the production level limits under paragraph (b). If the agreement does qualify, then the production attributable to your lease is eligible for relief under this part. If there are other Federal leases in the agreement, then production attributable to those leases also could qualify for relief, but the lessees or designees of those leases will need to apply individually.

Under § 204.4(a)(3), if all or a portion of your lease is in more than one agreement, then each agreement must qualify separately as a marginal property under paragraph (b) of this section. In addition, for each agreement that qualifies, only the production attributable to your lease or to the part of your lease in that agreement would be eligible for relief under this part. For example, if 50 percent of your lease is included in agreement “A,” and 50 percent of your lease is included in agreement “B,” then agreement “A” must qualify as marginal in order for the production attributable to your lease included in agreement “A” to be eligible for relief. Likewise, in order for the production attributable to the 50 percent of your lease included in agreement “B” to be eligible for relief, agreement “B” must qualify as marginal. Any production from your lease that is not committed to an agreement also may be eligible for separate relief under paragraph (4) of this section.

Under § 204.4(a)(4), if only a portion of your lease is in an agreement and you have production from the stand-alone portion of the Federal lease that is not in the agreement, then the stand-alone portion must qualify separately as a marginal property under paragraph (b) of this section. For example, if 50 percent of your lease is included in an agreement and 50 percent is not, the 50

percent that is not included in the agreement must qualify separately as marginal property under paragraph (b) of this section. This would be the case even if the 50 percent that is included in the agreement did not qualify as a marginal property.

In this final rule, we deleted the word “entire” from paragraph (a)(1) because it is unnecessary since there is only one lease. In addition, in paragraph (a)(3), we revised the rule to add language like paragraph (a)(2) making it clear that any production from your lease that is not in the agreement may be separately eligible for relief under section (a)(4).

We also modified paragraph (c) by removing “on or attributable to” in the first sentence to clarify that the entire property (whether a stand-alone lease, or agreement) must qualify as marginal, not just the production attributable to your lease, or portion of your lease. We also added language in the first sentence to state that you must divide the sum of all BOE for all producing wells on the property “during the base period” to clarify the calculation. In addition, to clarify that the “property” (whether a stand-alone lease, or agreement) must qualify as marginal, not just the production attributable to your lease which may be only a part of the relevant property (e.g., an agreement), we replaced “your property” with “the property.” Also, throughout the final rule, we have replaced “marginal property” with “marginal property production” when required to distinguish between the “marginal property” that the calculation in this section applies to and your “marginal property production” for which you are seeking relief.

MMS agrees with the subcommittee’s conclusion that using different State production levels to define “marginal property” would be too administratively onerous for use. Such an approach also would result in a Federal law having different meanings in different States, which would raise serious legal concerns.

Although using all producing wells in the calculation to determine whether a property is marginal may result in some leases or units with high-producing wells being classified as marginal properties, we believe it would be too administratively burdensome to allow relief for individual wells, rather than by lease or unit or communitization agreement (hereinafter referred to as “agreement” in this context) as the rule provides. Moreover, MMS believes that, because a State may opt out on providing relief if it does not concur with the definition of “marginal property,” the final rule allows the

Secretary (acting through MMS) and the State to “jointly determine, on a case-by-case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof” may obtain royalty accounting and auditing relief, as the statute provides (30 U.S.C. 1726(a)). Several State representatives on the subcommittee ultimately recommended using the production level in the proposed rule.

#### *Statutory Requirements for Relief*

*1999 Proposed Rule.* In § 204.5, MMS reiterated the RSFA statutory requirements that any relief granted for marginal properties must promote production, reduce administrative costs, and increase net receipts to the Federal Government and the States.

*Public Comments.* One State asserted that the proposed rule was contrary to law because it was unlikely to promote production or increase net receipts and there is no way to determine whether or not the relief will increase net receipts. The State also expressed concern about the loss of the time value of royalty receipts if we allow delayed reporting.

*RPC Subcommittee Recommendation.* The subcommittee discussed numerous times the difficulty in finding possible relief options that would meet all three RSFA objectives. The subcommittee recommended that two relief options be retained—cumulative reporting and “other” relief.

*MMS Response.* We understand the State’s concerns but do not agree that the relief offered will not promote production or increase net receipts. Because use of the annual reporting option is limited in § 204.202 to properties producing 1,000 BOE or less annually, we believe there will be little loss, if any, of time value of the royalties. Moreover, we believe the administrative savings to the lessee will promote production, and the administrative savings to MMS and the States will more than offset any possible loss of interest. A member of MMS’s reengineering team informed the subcommittee that each different relief option would require modifications to MMS’s compliance programs and thus add cost. In the final rule, we limit our relief options to those recommended by the subcommittee to avoid being cost prohibitive.

However, in order to partially address the State’s concerns and to be consistent with RSFA’s language, we modified § 204.5(b) to make it clear that MMS, with a State’s concurrence, may decide to discontinue any relief granted, at any time. In addition, we made it clear that MMS’s decision to discontinue relief is not appealable within the Department.

Thus, MMS will consult with the States about whether to discontinue relief, but MMS will issue the decision to discontinue relief.

Section 204.5(b)(1) also explains that, if MMS terminates your cumulative reports and payments relief under this section, your relief continues until the end of the calendar year in which you received the notice. For other types of relief, MMS's notice will tell you when your relief terminates.

#### *State Liability for Denials of Requests for Relief*

**1999 Proposed Rule.** In § 204.6, MMS proposed that, if MMS denied a request for relief based on a State's denial, then the decision was final for the Department and could not be appealed administratively.

**Public Comments.** One State expressed the opinion that MMS's interpretation of RSFA was incorrect and left the States open to litigation in Federal court. Another State indicated that the proposed rule did not clearly acknowledge that nothing in RSFA serves to waive a State's immunity from suit.

**RPC Subcommittee Recommendation.** All of the State representatives on the subcommittee expressed concern over the language in the proposed rule that said if a decision not to grant relief is based on a State's denial, the decision would not be subject to administrative appeal. This would put any challenge to a decision not to grant relief directly into Federal District Court. The States were not willing to accept that risk. Based on this discussion, the subcommittee sent a request to seven State agencies asking their opinion on the comments raised by State representatives on the subcommittee. Only one agency responded, stating that it agreed with the other States' concerns. Consequently, the subcommittee recommended that each State be given the ability to determine, before each calendar year, whether it will allow either the notification-based relief option or the request-based relief option, or both. If a State decides to allow the request-based relief option, the State would thereby agree to let MMS make the final decision on the relief request. That decision could then be appealed administratively within the Department.

**MMS Response.** We agree with the subcommittee's recommendation. We also think that modifying § 204.207(b) in the final rule to read as follows will eliminate the States' concerns:

If there is a State concerned for your marginal property that has determined in advance under § 204.208 that it will allow

either or both of the relief options under this subpart, MMS will decide whether to approve, deny, or modify your relief request after consulting with the State concerned.

In addition, in § 204.206(a), we codified the RPC subcommittee's recommendation that the State be consulted. Thus, the approval process under the final rule is like the current process for issuance of orders where the State has performed the audit. Although the State would be consulted regarding whether to grant, deny, or modify relief, MMS would ultimately issue the decision and the State would not be subject to suit in Federal District Court. Moreover, any State that does not wish to allow accounting and reporting relief may opt out.

#### *Who May Request Relief?*

**1999 Proposed Rule.** In § 204.201, MMS proposed that a lessee or the lessee's designee for a Federal property could obtain relief if the property qualifies as marginal. Further, the lessee or lessee's designee could request relief only for the lessee's fractional interest in the property.

**Public Comments.** One industry association liked the fact that not all lessees in a property have to seek relief in order for an individual lessee to take relief on the lessee's portion. One State commented that RSFA did not allow designees to apply for relief in place of the lessee.

**RPC Subcommittee Recommendation.** The subcommittee suggested retaining the original proposed language concerning designees.

**MMS Response.** We agree with the State that RSFA does not specifically state that designees may seek relief on behalf of lessees. However, it also does not specifically preclude such action. Indeed, 30 U.S.C. 1726(c) merely authorizes the Secretary and delegated States to provide relief "to encourage lessees to continue to produce and develop properties" and that relief will only be "available to lessees in a State that concurs" with granting that relief. The statute is silent about who may request relief. Therefore, because the statute is silent and designees are acting as the lessee's agent, we believe it is reasonable and consistent with RSFA to authorize designees to request relief under this rulemaking.

The RPC subcommittee also recommended that we not require all lessees or designees for a property to apply for relief. Therefore, in the final rule, we added language in § 204.201(a)(3) to specifically state that you may obtain relief even if the other lessees and designees for your property do not request relief.

#### *Cumulative Reporting and Payment Relief*

**1999 Proposed Rule.** In § 204.203, MMS proposed to allow lessees to report quarterly, semiannually, or annually depending upon the volume of royalty BOE produced on the property.

**Public Comments.** One State objected to allowing payments less often than monthly because that is what is required by lease terms. The law firm commented that cumulative reporting should not be less often than annually. One industry association suggested that the thresholds for the lessee to be allowed to submit cumulative reports should be higher. The other industry association was concerned that lessees could not perform the complicated calculations to determine the level of relief and suggested MMS establish a consistent production level for eligibility for relief. The industry association also stated that the calculations to determine cumulative royalty reporting relief were too narrow and too burdensome, and all marginal properties should get the same relief. The association also suggested that MMS eliminate the requirement to report allowances separately on marginal properties and explain how estimates would work with reporting less often than monthly. One State was concerned that MMS would have to develop a separate database to track reporting dates and royalty rates by lessee.

**RPC Subcommittee Recommendation.** A representative of the MMS financial reengineering team was invited to a subcommittee meeting on cumulative reporting. The reengineering team representative stated that MMS would have to make some modifications to its financial system in order to process reporting on a periodic, cumulative basis. The representative explained that each reporting frequency would require funding for system modifications; thus, we would probably have to limit the available relief options to avoid being cost prohibitive. Consequently, the subcommittee recommended that only annual cumulative reporting be retained as a notification-based relief option and that this option be limited to marginal properties producing 1,000 BOE or less annually.

**MMS Response:** We agree with the subcommittee's recommendations. Moreover, with respect to one State's concern regarding the lease instrument's requirement that lessees pay monthly, the Government may, by rule, modify an obligation under the lease terms if doing so does not change the lessee's position to its detriment.

In addition, to clarify the requirements of this section (redesignated from § 204.203 to § 204.202 in this final rule), without changing the substance of the proposed rule, we reorganized this section of the final rule and added language to make clear when you must submit reports and payments, and how you must fill out your Report of Sales and Royalty Remittance, Form MMS-2014.

Further, as originally proposed § 204.202(g) addressed situations where \* \* \* you dispose of a *marginal property* for which you have taken relief \* \* \* (emphasis added). However, as discussed above, the lease for which you took relief may or may not be the entire marginal property. For example, your lease may be in an agreement, and the agreement is the “marginal property.” If the agreement does qualify and you take relief for your lease production, but later dispose of your lease, you have not disposed of the “marginal property,” only your “ownership interest” in the marginal property. Therefore, we have revised the rule in § 204.202(e) to state “[I]f you dispose of your ownership interest in a marginal property for which you have taken relief. \* \* \*”

Finally, in § 204.202(e)(2) (proposed 204.202(g)(2)), we added language to codify the existing principle that late payment interest is owed if you do not report and pay timely after disposing of your ownership interest in a marginal property as required under this paragraph.

#### Complex Calculations

*1999 Proposed Rule.* In §§ 204.203, 204.204, and 204.205, the level of relief in each reporting option was based on various levels of marginal production. The calculations required lessees to multiply the BOE attributable to a marginal property by the applicable lease royalty rate.

*Public Comments.* One State commented that it believed MMS did not provide any rationale for the volume cut-offs for relief. Another State commented that it was unclear how MMS derived production levels for the levels of relief.

*RPC Subcommittee Recommendation.* Discussion in the subcommittee centered on the complexity of the calculations required to determine whether a marginal property qualified for a particular form of accounting relief. The proposed rule included five different production levels for the five different forms or levels of accounting relief. The subcommittee ultimately decided to recommend volume limits based on total BOE rather than royalty

BOE. The subcommittee also reduced the number of volume levels from five to one. This simplified the calculations significantly.

*MMS Response.* We agree with the subcommittee’s recommendations.

#### Net Adjustment Reporting

*1999 Proposed Rule.* In § 204.204, MMS proposed to allow net adjustment reporting as one of the notification-based relief options. In this reporting scenario, lessees could adjust a previously reported royalty line in a one-line net entry on the Form MMS-2014, rather than using MMS’s traditional two-line adjustment process.

*Public Comments.* One State objected to allowing net adjustments. One industry association stated that net adjustment reporting should be allowed for all leases under MMS’s reengineered system. The law firm, however, commented that net adjustments would not be “relief” for marginal properties if it is allowed for all reporters in the reengineered system.

*RPC Subcommittee Recommendation.* The subcommittee members discussed the problems MMS’s financial reengineering team had encountered in trying to implement net adjustment reporting. Because of very specific requirements in FOGRMA for certain data elements to be displayed on the Explanation of Payments (EOP) sent to States and tribes, the reengineering team and MMS’s industry partners found net adjustment reporting unworkable. However, MMS continues to look for acceptable net adjustment reporting options for reengineering purposes. Based on MMS’s continuing efforts to offer net adjustment reporting for all reporters, the subcommittee recommended that the net adjustment reporting relief option be dropped.

*MMS Response.* We agree with the subcommittee’s recommendation.

#### “Rolled-Up” Reporting Relief Option

*1999 Proposed Rule.* In § 204.205, MMS proposed to allow “rolled-up” reporting as one of the notification-based relief options. In this reporting scenario, lessees could report all selling arrangements for a revenue source under a single selling arrangement on the Form MMS-2014.

*Public Comments.* The law firm stated that “rolled-up” reporting was not significant relief. One of the industry associations agreed that, if all product codes could not be rolled up, this was not significant relief.

*RPC Subcommittee Recommendation.* The subcommittee recommended that the “rolled-up” reporting relief option be dropped. This recommendation was,

again, associated with the problem of accommodating required EOP information and the fact that selling arrangements were dropped from the revised Form MMS-2014 effective October 1, 2001.

*MMS Response.* We agree with the subcommittee’s recommendation.

#### Alternative Valuation Relief Option

*1999 Proposed Rule.* In § 204.206, MMS proposed to allow lessees to request approval to report and pay royalties using a valuation method other than that required under 30 CFR part 206.

*Public Comments.* In comments to the 1999 proposed rule and the 2003 supplementary proposed rule, one State and one industry association did not think alternative valuation relief was necessary because lessees already have that option under current valuation regulations. The law firm was troubled by the provision that the proposed valuation method should “approximate 30 CFR part 206.” The law firm stated that, with all the litigation currently in progress, it would be difficult for someone to determine what that value should be. Another State commented that the proposed rule invited litigation because there was no way for a State or MMS to determine whether an alternative valuation method would “approximate” royalties in the future. The State further added that alternative valuation relief was not accounting, reporting, or auditing relief but really royalty relief.

*RPC Subcommittee Recommendation.* The subcommittee recommended dropping this option.

*MMS Response.* We agree with removal of this option because alternative valuation is still an option a lessee may request under “other relief” in § 204.203 of this final rule.

However, MMS believes the comments to the 1999 proposed rule and the 2003 supplementary proposed rule merit further response. First, the current rules under 30 CFR part 206.107(a)(6) do offer “alternative valuation relief.” However, the fact that lessees may request alternative valuation relief under § 206.107(a)(6) does not preclude MMS from offering valuation relief as an option under this subpart. Second, there does not seem to be any real difficulty to ensure that royalties due under an alternative method approximate royalties due under 30 CFR part 206. Either the requested alternative method comes up with nearly the same royalties that would be due under 30 CFR part 206, or it does not. To that end, the 1999 proposed rule required that “any

alternative valuation method \* \* \* [m]ust be readily determinable and certain. \* \* \* If MMS and the State concerned cannot determine that royalties due under the requested method approximate royalties due under 30 CFR part 206, then MMS can deny the request. In fact, in the 1999 proposed rule, MMS assumed that any request "would propose a simplified valuation method because it would reduce administrative costs."

Finally, "alternative valuation relief" does not equal "royalty relief." As MMS explained in the 1999 proposed rule and the 2003 supplementary proposed rule, the "alternate valuation relief option" would allow lessees and designees to "request and report and pay royalties using a valuation method other than that required under 30 CFR part 206." The "royalty relief" the Department offers under different rules is not an alternative valuation method, but rather a "royalty rate reduction." Accordingly, alternative valuation does not equal royalty relief—the savings under alternative valuation relief are administrative, whereas the savings under royalty relief are decreased royalties paid.

*1999 Proposed Rule.* In § 204.211, MMS proposed how it would review requests for alternative relief. MMS did not propose timeframes within which it would review requests.

*RPC Subcommittee Recommendation.* The subcommittee recommended that MMS have 120 days to review alternative relief requests. The subcommittee recommended that, if MMS did not complete the review within the prescribed 120 days, requests would be deemed "approved."

*MMS Response.* In the March 31, 2003, supplementary proposed rule, MMS described its concerns about deeming a request "approved" based solely on the length of time elapsed after receipt of the request without any Department review. We explained that one alternative was to deem the request denied if MMS does not approve or disapprove a lessee's request within 120 days after MMS receives the request. Because denial of a request may be appealed, this alternative would give the Department the opportunity to review the request and make an informed decision. The other option was to have no timing requirements by not including any provision at all.

Because of these concerns, we specifically requested comments on:

- Whether there should be a time limit on MMS approval after it receives a request for reporting, accounting, and auditing relief;

- Whether the request should be deemed approved or denied after some time period, and what that period should be; and

- Any other alternative approaches.

MMS did not receive any comments in response to these questions. In this final rule, MMS decided to have no time requirement for reviewing requests for alternative relief under § 204.206.

#### *Audit Relief Option*

*1999 Proposed Rule.* In § 204.207, MMS proposed to allow audit relief such as audits of limited scope, audits coordinated with other State or Federal agencies, or audits by independent public accountants.

*Public Comments.* One State objected to any limit on the scope of audits. The State further added that independent auditors do not review whether royalties are paid correctly. Another State asserted that it did not think audit relief was warranted and would not participate in it. The third State wanted to remove the audit relief option related to "coordinated royalty and severance tax audits" because it compromised the State's right to audit.

The law firm stated that audit relief was inconsequential because under the current strategy, marginal properties are seldom audited. One industry association agreed that audit relief was not of significant benefit because the States and MMS already practice coordinated audits. The other industry association, however, strongly supported audit relief.

*RPC Subcommittee Recommendation.* The subcommittee recommended dropping this option.

*MMS Response.* We agree with removal of this option because audit relief is still an option a lessee may request under "other" relief in § 204.203 of the final rule.

However, the comments to the 1999 proposed rule merit further response. First, in the 1999 proposed rule MMS gave three examples of potential audit relief: (1) audits of limited scope, (2) coordinated royalty and severance tax audits, and (3) reliance by MMS on independent certified audits. Interestingly, both Wyoming and South Dakota allow voluntary environmental audits where the lessees perform self-evaluations and are then immune from prosecution under certain conditions if they report violations. MMS's example in the 1999 proposed rule of possibly accepting a company's "affirmative statement in the audit report of the company's independent certified auditors that they have reviewed the company's royalty accounting practices with respect to marginal properties and

found them to be in compliance with Federal lease terms, laws, and regulations" is similar. Although MMS did not propose to allow immunity to lessees who perform their own audits, there is no question that such audit relief would provide relief to lessees who would not have to spend the time and money to respond to MMS or State audit requests. It would also meet RSFA's goals to "reduce administrative costs, and increase net receipts to the United States and the States \* \* \*" by saving MMS and States audit time on properties that produce nominal royalties.

With respect to comments that audit relief could interfere with MMS's or States' right to audit, we believe that § 204.204(a) negates this concern. This section explicitly states that MMS would not approve a request for accounting and auditing relief if the request "(a) Prohibits MMS or the State from conducting any form of audit." As MMS explained in the 1999 proposed rule, MMS developed an audit strategy to assure compliance with laws, regulations, and lease terms. To administer this strategy, MMS and the States must audit a sample of leases consisting of a wide range of conditions. Therefore, MMS proposed to deny any relief requested under this subpart that prevents it or a State from conducting an audit of a marginal property. Thus, fears of diminished capacity to audit due to audit relief granted seem largely unwarranted.

#### *Other Relief Option*

*1999 Proposed Rule.* In § 204.208, MMS proposed to allow a lessee to request any type of accounting and auditing relief that was appropriate for a specific marginal property provided that it was not specifically prohibited.

*Public Comments.* One State opposed the other relief option because the burden to evaluate the request was too great for a meaningless level of cost savings.

*RPC Subcommittee Recommendation.* The subcommittee members discussed all three approval-based relief options contained in the 1999 proposed rule. Because of sensitive issues in the original proposal, the subcommittee decided to recommend an approval-based relief option called "other" relief.

Other relief would apply to all marginal properties and could be anything within MMS authority that the lessee or his/her designee thinks would be marginal property relief. The lessee or designee would need to submit a proposal to MMS for approval. After consultation with the State or States concerned, MMS would decide whether

to grant the requested relief. Examples of what might be considered are audit relief or an alternative valuation method as discussed above under "Alternative Valuation Relief Option".

*MMS Response.* We agree with the subcommittee's recommendation. Further, we disagree with one State's comment that such an option is too great a burden relative to any savings. Any relief requested must meet the statutory requirements in RSFA to promote production, increase net receipts, and reduce administrative costs. The other relief option is now addressed in § 204.203 of this final rule.

#### *Disallowed Relief Options*

*1999 Proposed Rule.* In § 204.209, MMS listed relief items that MMS would not approve if requested by lessees.

*Public Comments.* One State wanted to add three items to the types of relief that MMS would not approve. The items were any relief request that (1) decreases royalty income below true market value, (2) increases allowances, or (3) reduces royalty-bearing volumes.

*RPC Subcommittee Recommendation.* The subcommittee recommended retaining the list of disallowed items with no changes.

*MMS Response.* We agree with the subcommittee. The relief options not allowed are now addressed in § 204.204 of this final rule. We believe § 204.203(a)(1) in the final rule, which provides that any alternative valuation methodology must approximate royalties payable under 30 CFR part 206, addresses the State's concern.

#### *Notification-Based Relief*

*1999 Proposed Rule.* In § 204.210(a), MMS described the information a lessee must submit to MMS before taking any notification-based relief.

*Public Comment.* One industry association supported notification-based relief rather than request-based relief. The other industry association did not want any required notification for taking relief in §§ 204.203, 204.204, and 204.205.

Two States opposed the automatic relief options. One of those States indicated that all relief should be gained through an approval process. One industry association liked the provision that would allow lessees to file a single notification for multiple marginal properties.

*RPC Subcommittee Recommendation.* The subcommittee recommended only one type of notification-based relief—cumulative annual reporting.

*MMS Response.* We agree with the subcommittee recommendation to allow

only notification-based relief for annual reporting. The notification-based relief option is now at § 204.202 of this final rule.

#### *Approval Process*

*1999 Proposed Rule.* In §§ 204.212 and 204.213, MMS described the approval process for request-based relief.

*Public Comments.* All three States thought that the approval process placed too much administrative burden on the States. One State objected to MMS telling the States what the scope, timing, or process should be for its review of a request. The same State noted that MMS cannot tell a State who in the State will make determinations on relief or how long they have to make the determinations. One industry association suggested that authority to approve alternative valuation should be delegated to someone below the Assistant Secretary for Land and Minerals Management (AS/LM). The other industry association wanted approval authority for all properties to be with the AS/LM. The law firm, one State, and one industry association commented that they did not agree with the fact that the regulation required States to do things within specified time periods, but not MMS. One State did not agree with the provision that, if the State did not notify MMS of its decision within 30 days, then the State is deemed to agree with MMS's determination. One industry association was concerned that States might be given more than 30 days to review and decide relief options. The same industry association supported publication of States' decisions to allow or disallow certain types of relief and wanted MMS and the States to develop criteria for analyzing relief requests.

*RPC Subcommittee Recommendation.* The subcommittee recommended that MMS consult with the State concerned about a request for relief rather than requiring a decision from the State in a specific period of time.

*MMS Response.* The State's concerns regarding timing are no longer an issue because the final rule requires consultation with the State concerned, rather than specific timing requirements. See discussion on § 204.207(b) under the topic "State Liability" above for denials of requests for relief.

#### *Length of Relief*

*1999 Proposed Rule.* In § 204.217, MMS proposed that any approved relief would remain in effect for as long as the property qualified as marginal.

*Public Comments.* One State opposed continuous relief throughout the life of

a lease and thought the marginal properties should be monitored periodically. One industry association supported relief for the life of the lease.

*RPC Subcommittee Recommendation.* The subcommittee did not recommend any changes in § 204.217.

*MMS Response.* We agree that properties should have relief for the life of the lease only if they continue to qualify as marginal. Moreover, nothing in the final rule precludes MMS from monitoring and auditing leases for compliance with other MMS regulations and lease terms. Section 204.217 is redesignated as § 204.209 in this final rule.

#### *Relationship to Other Incentive Programs*

*1999 Proposed Rule.* In § 204.218, MMS proposed that a lessee could obtain accounting and auditing relief for a marginal property even if the property benefited from other Federal or State production incentive programs.

*Public Comments.* One State commented that lessees should be required to disclose other types of relief they are receiving. One industry association supported the provision allowing lessees to get marginal property relief even if they benefit from other incentive programs.

*RPC Subcommittee Recommendation.* The subcommittee did not recommend any changes in this provision.

*MMS Response.* We agree that lessees should get marginal property accounting and auditing relief even if they benefit from other relief programs. Nothing in RSFA precludes obtaining marginal property relief if a lessee obtains other relief. Section 204.218 is now redesignated as § 204.213 in this final rule.

#### *Fees*

*1999 Proposed Rule.* In § 204.210(b), MMS listed the information that lessees must submit in their requests for accounting and auditing relief and the requirement to submit a \$50 fee with each request.

*Public Comments.* One State indicated that the items to be included in the written request for relief were inadequate. Two States said the \$50 fee is too low compared to the cost incurred by States and MMS to process requests. The commenters suggested the fees should be shared with the States. Both industry associations opposed the fee. One commented that small independent producers could not afford the fee and objected to the fee because MMS would not refund it for any reason.

*RPC Subcommittee Recommendation.* The subcommittee recommended

elimination of the fee for request-based relief.

*MMS Response.* Information lessees must submit in their requests for accounting and auditing relief is now addressed in § 204.205 of this final rule. After further legal review, we have decided that it is reasonable not to recover a processing fee for requests or notices under the final rule. MMS recovers its costs under the Independent Offices Appropriations Act of 1952 (IOAA),<sup>6</sup> for Federal offshore leases, and the Federal Land Policy and Management Act of 1976 (FLPMA),<sup>7</sup> for Federal onshore leases. Thus, as part of the March 31, 2003, supplementary proposed rulemaking, we analyzed the proposed marginal property relief's cost recovery fees for reasonableness according to the factors in FLPMA § 304(b).<sup>8</sup> In that supplementary proposed rulemaking, we examined the "reasonableness factors" which FLPMA requires to be considered: (a) Actual costs (exclusive of management overhead); (b) the monetary value of the rights or privileges sought by the applicant; (c) the efficiency to the Government processing involved; (d) that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant; (e) the public service provided; and (f) other factors relevant to determining the reasonableness of the costs.

For marginal property relief taken or requested under §§ 204.202 and 204.203, the method used to evaluate the factors under the March 31, 2003, supplementary proposed rulemaking was twofold. First, we estimated actual costs and evaluated each of the remaining FLPMA reasonableness factors (b) through (f) individually to decide whether the factor might reasonably lead to an adjustment in actual costs. If so, that factor was then weighed against the remaining factors to determine whether another factor might reasonably increase, decrease, or eliminate any contemplated reduction. On the basis of that twofold analysis, although MMS's total estimated actual costs were \$2,370 to process an average request, MMS determined that a fee of \$50 to process relief requests was reasonable.

MMS determined a reduced fee was reasonable primarily based on its evaluation of FLPMA factor (f) "other factors." MMS's primary consideration under this factor was RSFA's purpose with respect to marginal properties.

Congress enacted RSFA to "promote production,"<sup>9</sup> by "encourag[ing] lessees to continue to produce and develop marginal properties."<sup>10</sup> Congress stated that "certain regulatory \* \* \* obligations should be waived if it can be demonstrated such a waiver could aid in maintaining production that might otherwise be abandoned."<sup>11</sup> However, RSFA also mandated that any relief should "reduce administrative costs, and increase net receipts to the United States and the States."<sup>12</sup> Congress stated that granting relief for marginal properties should "result in additional receipts from oil and gas production that would otherwise be abandoned, and would \* \* \* increase oil and gas production on Federal lands by creating economic efficiencies to make Federal leases more competitive with private leases."<sup>13</sup> Thus, as part of its FLPMA reasonableness analysis, MMS considered (1) whether the benefit from the increase in royalties to be gained from continued production from marginal properties and the decreased administrative burden to MMS from granting such relief merited a reduction in fee charges; and (2) whether recovering the fee would defeat the Congressional intent to provide relief by discouraging companies from requesting relief.

MMS has reexamined the analysis under factor (f) in the March 31, 2003, supplementary proposed rule to determine whether those factors warrant elimination of the proposed fee. We think they do. We agree that the administrative savings to industry if they are granted relief will not be significant enough for them to pay a fee to request relief. Moreover, we agree that the companies that most need the relief are small independents who would be discouraged from applying for relief by even the previously proposed nominal fee of \$50. Because the purpose of RSFA is to grant relief to producers so they will continue to produce, we think it is counterproductive to include a fee that will discourage many of the smaller marginal producers from requesting relief. Thus, in the final rule we do not require payment of a processing fee for relief requests.

#### *Properties Approved as Part of a Nonqualifying Agreement*

Section 204.210 explains that if the Bureau of Land Management (BLM) or

MMS's Offshore Minerals Management (OMM) retroactively approves the inclusion of a marginal property that qualified for relief as part of an agreement that does not qualify for relief under this subpart, the property qualification ceases as of December 31 of the calendar year that the BLM or OMM approval became effective. In that case, MMS will not retroactively rescind your relief. Since production is allocated to your property under the nonqualifying agreement, you must report and pay based on that allocation. In the proposed rule, we stated in paragraph (c) that if this occurs, you must adjust your royalty payments. To clarify what we meant by paragraph (c) we changed it in the final rule to read that:

(c) For the calendar year in which you receive the BLM or OMM approval, and for any previous period affected by the approval, the volumes on which you report and pay royalty for your lease must be amended to reflect all volumes produced on or allocated to your lease under the nonqualifying agreement as modified by BLM or OMM. Report and pay royalties for your production using the procedures in § 204.202(b).

For example, assume that you have a stand-alone lease for which you are taking cumulative reports and payments relief beginning January 2005, and your lease retroactively becomes part of a nonqualifying agreement in June 2005 retroactive to January 2005. In that case, your marginal property relief will terminate as of December 31, 2005, with your annual report for calendar year 2005. On your calendar year 2005 annual report, you must report and pay royalties for January 2005 through December 2005 based on the volumes produced on or allocated to your lease under the agreement.

#### *Minimum Royalty*

MMS added § 204.214 to clarify that minimum royalty is still due on marginal properties by the date prescribed in your lease and in the amount prescribed therein. Since the annual report and payment under marginal property relief may occur after minimum royalty is due, if the amount of minimum royalty you paid is less than your production royalty obligation, then you would owe additional royalties for the difference. If the minimum royalty you paid exceeds your production royalty obligation, then you would not be entitled to a credit because you must pay at least the minimum royalty amount on your lease each year.

<sup>6</sup> 31 U.S.C. 9701 *et seq.*

<sup>7</sup> 43 U.S.C. 1701.

<sup>8</sup> 64 FR 3366-69.

<sup>9</sup> RSFA section 7(a).

<sup>10</sup> S. Rep. 260, 104th Cong., 2d Sess. 20 (1996); H.R. 667, 104th Cong., 2d Sess. 20 (1996).

<sup>11</sup> H.R. 667, 104th Cong., 2d Sess. 20 (1996).

<sup>12</sup> RSFA section 7(a).

<sup>13</sup> *Id.* at 20-21.



### III. Comments on the 2003 Supplementary Proposed Rule

MMS received one comment on the supplementary proposed rule published on March 31, 2003 (68 FR 15390), from a law firm on behalf of one State. This comment is analyzed and discussed below:

*Public Comment.* The commenter asserted that subsidies and relief have not promoted oil and gas production, increased royalty receipts, or reduced administrative costs. The commenter does not believe reduced administrative costs will be offset by increased royalties. Moreover, the commenter indicated that the State will exercise its option to opt out of marginal property relief. The commenter also expressed concern about several underlying assumptions of the rule and the State's ability to protect school funds from other Federal efforts to reduce lessee obligations.

*MMS Response.* We have considered the commenter's concerns but do not agree that the relief offered will not promote production, increase royalty receipts, and reduce administrative costs. And, as indicated by the commenter, the State may exercise its option to opt out of marginal property relief.

### IV. Procedural Matters

#### 1. Summary Cost Data

We have summarized below the estimated costs and royalty impacts of this rule to all potentially affected groups: industry, State and local governments, and the Federal Government. Indian tribes and individual Indian mineral owners are not affected by this rule. The cost and royalty impact information in Item 1 of this section, Procedural Matters, is used as the basis for Department certifications in Items 2 through 14 below.

#### A. Industry

(1) *Notification-based relief—Costs of submitting notifications.* Approximately 3,000 Federal oil and gas properties produce 1,000 or less BOE annually. In the first year after this rule becomes effective, we estimate that lessees of 1,000 of these properties will submit notifications that they will take cumulative reporting and payment relief. We do not anticipate that all lessees of qualifying properties will submit notifications because not all States will allow reporting and payment relief, and large corporations may find that modifying their computer systems to report and pay on a few leases

annually rather than monthly will not be cost effective.

We further estimate that a lessee will require 2 hours to determine if a property qualifies for cumulative reporting and payment relief and then to prepare and submit the notification to MMS. Consequently, the total estimated burden for all notifications in the first year is 2,000 hours (1,000 properties  $\times$  2 hours). Using an estimated \$50 per hour cost, the total cost for all lessees to submit these notifications is \$100,000 (2,000 burden hours  $\times$  \$50).

Because the reporting and payment relief for a qualified property is for the life of the property as long as the property produces less than 1,000 BOE per year, a notification need be filed only one time. However, we estimate that MMS will receive notifications for approximately 100 newly qualifying properties in each subsequent year. The total estimated burden for each subsequent year is 200 hours (100 properties  $\times$  2 hours) for a total cost of \$10,000 (200 burden hours  $\times$  \$50).

(2) *Notification-based relief—Cost savings of reporting fewer lines.* We estimate that an average of 1,000 properties (500 leases and 500 agreements) will involve cumulative reporting and payment relief annually. This means that royalties on these properties will be reported and paid annually rather than monthly. We further estimate that lessees will submit 5,500 fewer lines for leases (1 line per month  $\times$  11 months  $\times$  500 leases) and 16,500 fewer lines for agreements (3 lines per month  $\times$  11 months  $\times$  500 agreements) on Form MMS-2014 each year for a total of 22,000 fewer lines per year. Because the time to submit the Form MMS-2014 averages 3 minutes per line, we estimate that lessees will save 1,100 burden hours (22,000 lines  $\times$  3 minutes  $\div$  60 minutes) or a total of \$55,000 (1,100 burden hours  $\times$  \$50) in the first year this rule is effective and for each year thereafter.

(3) *Request-based relief—Cost of requesting approval for other accounting and auditing relief.* MMS expects approximately 10 requests per year for other accounting and auditing relief. We estimate each request will require 4 hours for a lessee to prepare and submit. This estimate also includes providing information originally omitted from the request and lessee approval of MMS modifications, if any. The total estimated burden is 40 hours (10 requests  $\times$  4 hours). The estimated cost to lessees to request other relief is approximately \$2,000 per year (40 burden hours  $\times$  \$50).

(4) *Request-based relief—Costs or royalty impacts of taking request-based*

*relief.* We are unable to quantify the costs or royalty impacts of the request-based relief category at this time because we do not know what types of relief industry will request or how many MMS will approve.

(5) *Both types of relief—Cost of notifying MMS that relief has ceased.* When a property ceases to qualify for previously granted relief, the lessee or designee is required to notify MMS. MMS expects that 24 properties will cease to qualify for relief each year and that each notification will require 0.25 hours to prepare and submit. The total estimated burden is 6 hours (24 properties  $\times$  0.25). The estimated cost to lessees for these notifications is approximately \$300 (6 burden hours  $\times$  \$50).

*Small Business Issues.* Approximately 2,500 companies report and pay royalties to MMS. We estimate that over 97 percent of these companies are small businesses as defined by the U.S. Small Business Administration because they have 500 or fewer employees. We anticipate that most of the relief granted under this rule will benefit small companies. Typically, as properties near the end of their productive life, larger companies with higher overhead, sell their marginal properties to small companies who can operate them more profitably. We expect most small companies will avail themselves of the cumulative reporting and payment relief option. Generally, larger companies may not use this option because of the expense of modifying their large, complex computer systems to report a few leases on an annual rather than a monthly basis. However, we expect that most request-based relief will be sought by larger companies having more sophisticated and complex accounting considerations. If any company, large or small, chooses not to take the accounting and auditing relief offered in this rule, it will incur no additional expense or burden.

#### B. State and Local Governments

This rule will not impose any additional burden on local governments. MMS estimates that States impacted by this rule would incur costs and royalty impacts as calculated below:

(1) *Notification-based relief—Costs of determining State participation.* Burden hours for review and development of a blanket State policy on accounting and auditing relief are estimated to be 40 hours at the beginning of each year. Only four States have sufficient numbers of marginal properties to require an in-depth analysis of the economic impact of offering accounting and auditing relief. Consequently, we

estimate the total annual burden to establish blanket policies for all States to be approximately 160 hours (4 primary States × 40 hours) or a total cost of \$8,000 (160 burden hours × \$50).

(2) *Request-based relief—Costs of consulting with MMS on other accounting and auditing relief.* Consultation with MMS on individual requests for other accounting and auditing relief is estimated to be 4 hours per property. As noted previously, MMS expects approximately 10 requests for individual accounting and auditing relief each year for a total burden of 40 hours for all States (10 requests × 4 hours per request) or a total cost of \$2,000 (40 burden hours × \$50).

(3) *Notification-based relief—Royalty impacts of prolonging the life of marginal wells.* As discussed in Item A, we estimate that after the first year, cumulative reporting will save industry

approximately \$45,000 annually (\$55,000 – \$10,000). We expect the reduced cost of operations will prolong the life of marginal wells. If the reporting relief encourages industry to continue to produce oil and gas from marginal properties, States will benefit in the additional receipts. The States generally would receive 50 percent of the royalties collected on additional production. The States also would benefit from continued employment and economic activity resulting from production that would otherwise be abandoned. We cannot determine the length and dollar impact of this additional well life at this time. However, if a State chooses to participate in this reporting relief, we expect the net royalty impact to the State will be positive.

(4) *Notification-based relief—Royalty impact of lost time value of money.*

Because payments would be made annually rather than monthly, States will lose the time value of money on sales made in the 11 months before the royalty payment is due. Generally, States receive 50 percent of the royalties collected for onshore leases.

For example, New Mexico has the largest number of properties qualifying for cumulative reporting and payment relief—approximately 1,280. Using a value of \$30 per barrel of oil and \$5 per Mcf of gas and a 7 percent interest rate, we estimate that, if all 1,280 qualifying properties take cumulative reporting and payment relief, New Mexico would lose a maximum of \$27,000 annually in the time value of money. The calculation for New Mexico marginal properties producing 1,000 BOE per year or less is as follows:

| Action  | Gas (Mcf)   | Oil (bbl)   | Total          |
|---|-------------|-------------|----------------|
| Total qualifying volume .....                         | 1,741,829   | 154,101     | .....          |
| Multiplied by estimated unit value .....              | × \$5.00    | × \$30.00   | .....          |
| Total estimated value .....                           | \$8,709,145 | \$4,623,030 | \$13,332,175   |
| Multiplied by royalty rate <sup>1</sup> .....         |             |             | × .125         |
| Total royalty due for year .....                      |             |             | \$1,666,521.88 |
| Divided by 12 months <sup>2</sup> .....               |             |             | +12            |
| Average royalty due per month .....                   |             |             | \$138,876.82   |
| Multiplied by estimated interest rate .....           |             |             | × .07          |
| Interest on 1 mo. royalty for 1 yr. ....              |             |             | \$9,721.38     |
| Multiplied by 66/12 <sup>3</sup> .....                |             |             | × 66/12        |
| Interest (time value) lost for yr. <sup>4</sup> ..... |             |             | \$53,467.58    |

<sup>1</sup> The royalty rate for Federal onshore leases is most often 12½ percent. However, many of these marginal properties may also qualify for lower royalty rates under the stripper oil royalty rate reduction program (30 CFR 216.57). Consequently, the royalty value in this calculation could be less.

<sup>2</sup> To simplify this calculation, we divided the total royalty due for the year by 12 months on the assumption that the royalties would be evenly produced throughout the year.

<sup>3</sup> This factor reflects that different amounts of interest would accrue for each production month, beginning with 1½ of 7 percent for the first month; 10/12 of 7 percent for the second month; 9/12 of 7 percent for the third month, etc. for a total of 66/12.

<sup>4</sup> The New Mexico State share is 50 percent; the Federal share is 50 percent. We rounded each share to \$27,000.

As noted above, we calculated the time value of money lost for qualifying properties in New Mexico to be approximately \$53,500 annually (the New Mexico share is \$27,000 and the Federal Government's share is \$27,000). Because New Mexico has 43 percent of all marginal properties producing 1,000 BOE or less per year, we extrapolated the total loss for qualifying properties in all States to be \$124,419 annually (\$53,500 ÷ 0.43 = \$124,419). The share of the lost time value of money for all States would be \$62,209 and the Federal Government's share would be \$62,209.

**C. Federal Government**

(1) *Notification-based relief—Cost savings of processing fewer lines.* As noted in Item A(2) above, lessees will report—and MMS will process—approximately 22,000 fewer lines under the cumulative reporting and payment relief option. We estimate that MMS

will save approximately \$10,340 per year (22,000 lines × \$0.47 processing cost per line). We determined the cost per line using cost data from OMB Control Number 1010–0140 (\$1,167,900 to MMS to process lines received from industry on the Form MMS–2014 divided by 2,484,000 expected lines per year).

(2) *Notification-based relief—Costs to process notifications.* In the first year, MMS expects to receive 1,000 notifications from lessees who wish to report annually on their marginal properties. We estimate that recording each notification in MMS's automated records will require 5 minutes per notice. Total time to record the notifications is approximately 83 hours (1,000 notices × 5 minutes ÷ 60 minutes). Using an average cost of \$50 per hour, the total cost to the Government is estimated to be \$4,150 (83 hours × \$50).

In the second year and each year thereafter, MMS expects to receive only 100 notifications. Total time to record the notifications is approximately 8 hours (100 notices × 5 minutes ÷ 60 minutes) or a total cost of \$400 (8 hours × \$50).

(3) *Request-based relief—Costs to evaluate requests for other relief.* As noted in Item A(3) above, MMS expects to receive 10 individual accounting and auditing relief requests from lessees annually. We estimate that each request will require 40 hours to analyze. The total estimated cost is 400 hours. The total cost is \$20,000 (400 hours × \$50).

(4) *Notification-based relief—Royalty impact of prolonging the life of marginal wells.* As discussed in Item A above, we estimate that after the first year, cumulative reporting will save industry approximately \$45,000 annually (\$55,000 – \$10,000). We believe this reduced cost of operations will prolong

the life of marginal wells. We cannot determine the length and dollar impact of this additional well life at this time. The Federal Government would generally receive 50 percent of the royalties collected on additional production. We expect the net royalty impact to the Federal Government will be positive.

(5) *Notification-based relief—Royalty impact of lost time value of money.* The Federal Government will lose the time value of money on sales made in the 11 months before the royalty payment is due. Generally, the Federal Government receives 50 percent of the royalties collected for onshore leases. We think the royalty interest lost to the Federal

Government for the time value of money would be the same as for all States or \$62,209 annually (see Item B(4) above for the calculation).

*D. Summary of Costs and Royalty Impacts*

| Description   | Cost +/-     |                  |
|---|--------------|------------------|
|   | First year   | Subsequent years |
| <b>A. Industry:</b>   |              |                  |
| (1) Notification-based relief—Costs of submitting notifications .....                               | \$ - 100,000 | \$ - 10,000      |
| (2) Notification-based relief—Cost savings of reporting fewer lines .....                           | 55,000       | 55,000           |
| (3) Request-based relief—Cost of requesting approval for other accounting and auditing relief ..... | - 2,000      | - 2,000          |
| (4) Request-based relief—Costs or royalty impacts of taking request-based relief .....              | 1            | 1                |
| (5) Both types of relief—Cost of notifying MMS that relief has ceased .....                         | - 300        | - 300            |
| Net impact to Industry .....  | - 47,300     | 42,700           |
| <b>B. State and Local Governments:</b>  |              |                  |
| (1) Notification-based relief—Costs of determining State participation .....                        | - 8,000      | - 8,000          |
| (2) Request-based relief—Costs of consulting with MMS on other accounting and auditing relief ..... | - 2,000      | - 2,000          |
| (3) Notification-based relief—Royalty impacts of prolonging the life of marginal wells .....        | 1            | 1                |
| (4) Notification-based relief—Royalty impact of lost time value of money .....                      | - 62,209     | - 62,209         |
| Net impact to State and Local Governments .....   | - 72,209     | - 72,209         |
| <b>C. Federal Government:</b>   |              |                  |
| (1) Notification-based relief—Cost savings of processing fewer lines .....                          | 10,340       | 10,340           |
| (2) Notification-based relief—Costs to process notifications .....                                  | - 4,150      | - 400            |
| (3) Request-based relief—Costs to evaluate requests .....   | - 20,000     | - 20,000         |
| (4) Notification-based relief—Royalty impact of prolonging the life of marginal wells .....         | 1            | 1                |
| (5) Notification-based relief—Royalty impact of lost time value of money .....                      | - 62,209     | 62,209           |
| Net impact to Federal Government .....  | - 76,019     | - 72,269         |

<sup>1</sup> Unknown.

2. Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to formal review by the Office of Management and Budget (OMB) under Executive Order 12866.

a. This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients.

d. This rule does not raise novel legal or policy issues.

3. Administrative Procedure Act (APA)

The MMS has determined that it will waive the 30-day delay of effectiveness provisions of the APA 5 U.S.C. 553(d), in this rulemaking. Section 553(d) of the APA permits waiver of the 30 day delayed effective date requirement for final rules for, *inter alia*, good cause or

where a rule relieves a restriction. MMS finds that good cause exists because the 30-day delay will result in postponement of the relief for industry until 2006. Alternative Accounting and Auditing Requirements are mandated by Sec. 7(c) of RSFA. The final rule establishes schedules and timeframes for annual reporting relief. If the rule is not effective prior to October 1, 2004, the first deadline, the relief as outlined in the rule will not begin until calendar year 2006. The October 1, 2004, deadline is when MMS would furnish the States a report of marginal properties for the July 2003–June 2004 base period so that the States can decide whether to allow marginal property relief in 2005.

Accordingly the rule must be effective before October 1, 2004, or relief for industry will be postponed until February 2006. Therefore, MMS finds that there is good cause to make the final rule effective immediately upon publication in the **Federal Register**.

4. Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Approximately 2,500 companies report and pay royalties to MMS. We estimate that over 97 percent of these companies are small businesses as defined by the U.S. Small Business Administration because they have 500 or fewer employees. We anticipate that most of the relief granted under this rule will benefit small companies. Typically, as properties near the end of their productive life, larger companies with higher overhead sell their marginal properties to small companies who can operate them more profitably.

We expect most small companies will avail themselves of the notification-based cumulative reporting and payment relief option. Generally, larger companies may not use this option because of the expense of modifying their large, complex computer systems to report a few leases on an annual rather than a monthly basis. However, we expect that most larger companies, having more sophisticated and complex accounting considerations, will choose the request-based relief option. If any company, large or small, chooses not to take the accounting and auditing relief offered in this rule, it will incur no additional expense or burden.

*Your comments are important.* The Small Business and Agricultural

Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department.

#### 5. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Will not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

#### 6. Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### 7. Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings), Executive Order 12630

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule does not impose conditions or limitations on the use of any private property; consequently, a takings implication assessment is not required.

#### 8. Federalism, Executive Order 13132

In accordance with Executive Order 13132, this rule does not have any significant Federalism implications. This rule does not substantially or directly affect the relationship between Federal and State governments. This

rule does not impose any additional burden on local governments. MMS will consult with the State concerned on any notification or request-based relief. Only four States have sufficient numbers of marginal properties that will require a yearly analysis of the economic impact of offering accounting and auditing relief. Any consultation with a concerned State on request-based relief is expected to be minimal as MMS anticipates receiving only about 10 requests annually. Although consultation with the State concerned on whether to allow relief on Federal marginal properties in their State does impose some costs, the amount is not significant and States can opt out of allowing any relief, eliminating the cost.

#### 9. Civil Justice Reform, Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

#### 10. Paperwork Reduction Act of 1995

The OMB has approved a new collection of information contained in this rule, entitled "30 CFR Part 204, Alternatives for Marginal Properties," under 44 U.S.C. 3501 *et seq.* The OMB-assigned control number is 1010-0155, and OMB approval of this collection expires May 31, 2006. When we renew the ICR in 2006, we will change the title to "30 CFR 204, Subpart A—General Provisions and Subpart C—Auditing and Accounting Relief" to clarify the regulatory language we are covering under 30 CFR 204, Subparts A and C.

The estimated total burden hours currently approved under ICR 1010-0155 is 2,206. The information collection applies only to §§ 204.202(b), 204.203(b), 204.205(a) and (b), 204.206(a) and (b), 204.208(c) and (d), and 204.209(b) of this rule. OMB Control number 1010-0140 covers the burden hours for §§ 204.202(b), (d), and (e), 204.210(c) and (d), and 204.214(b). We received comments from industry, but there were no changes in the burden hours from the proposed rule to the final rule. We will use this information to determine and monitor the eligibility of the lessee or designee for accounting and auditing relief for Federal marginal properties. A response is required to obtain a benefit.

This information collection does not contain confidential information. However, trade secrets and proprietary information are protected if submitted. Storage of such information and access to it are controlled by strict security

measures. None of the information requested is considered sensitive.

Submit your comments on the accuracy of this burden estimate or suggestions on reducing the burden to Sharron L. Gebhardt, Lead Regulatory Specialist, Chief of Staff Office, Minerals Revenue Management, MMS, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, the MMS courier address is Building 85, Room A-614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at [mrm.comments@mms.gov](mailto:mrm.comments@mms.gov). Include the title of the information collection and the OMB Control number in the Attention line of your comment. Also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231-3211. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### 11. National Environmental Policy Act (NEPA)

This rule deals with financial matters and has no direct effect on MMS's decisions on environmental activities. Pursuant to the Departmental Manual (DM), 516 DM 2.3A(2), § 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case." Section 1.3 of the same appendix clarifies that royalties and audits are considered to be routine financial transactions that are subject to categorical exclusion from the NEPA process.

#### 12. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and DOI DM 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes. This rule does not apply to Indian leases.

13. Effects on the Nation's Energy Supply, Executive Order 13211

This rule is not a significant rule and is not subject to formal review by the OMB under Executive Order 12866. The primary purpose of this rule is to provide accounting and auditing relief to certain lessees of Federal oil and gas properties, largely in the form of reduced records submittal requirements. This rule does not have a significant effect on energy supply, distribution, or use because, although it should promote some additional production on a subset of Federal oil and gas leases, the additional production would not be significant in comparison to total production from Federal oil and gas leases.

14. Consultation and Coordination With Indian Tribal Governments, Executive Order 13175

In accordance with Executive Order 13175, this rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

List of Subjects in 30 CFR Part 204

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: August 26, 2004.

Rebecca W. Watson,  
Assistant Secretary for Land and Minerals Management.

■ For reasons set out in the preamble, 30 CFR part 204 is added as follows:

**PART 204—ALTERNATIVES FOR MARGINAL PROPERTIES**

**Subpart A—General Provisions**

- Sec.
- 204.1 What is the purpose of this part?
- 204.2 What definitions apply to this part?
- 204.3 What alternatives are available for marginal properties?
- 204.4 What is a marginal property under this part?
- 204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?
- 204.6 May I appeal if MMS denies my request for prepayment or other relief?

**Subpart B—Prepayment of Royalty [Reserved]**

**Subpart C—Accounting and Auditing Relief**

- 204.200 What is the purpose of this subpart?
- 204.201 Who may obtain accounting and auditing relief?
- 204.202 What is the cumulative royalty reports and payments relief option?
- 204.203 What is the other relief option?
- 204.204 What accounting and auditing relief will MMS not allow?
- 204.205 How do I obtain accounting and auditing relief?
- 204.206 What will MMS do when it receives my request for other relief?
- 204.207 Who will approve, deny, or modify my request for accounting and auditing relief?
- 204.208 May a State decide that it will or will not allow one or both of the relief options under this subpart?
- 204.209 What if a property ceases to qualify for relief obtained under this subpart?
- 204.210 What if a property is approved as part of a nonqualifying agreement?
- 204.211 When may MMS rescind relief for a property?
- 204.212 What if I took relief for which I was ineligible?
- 204.213 May I obtain relief for a property that benefits from other Federal or State incentive programs?
- 204.214 Is minimum royalty due on a property for which I took relief?
- 204.215 Are the information collection requirements in this subpart approved by the Office of Management and Budget (OMB)?

Authority: 30 U.S.C. 1701 *et seq.*

**Subpart A—General Provisions**

**§ 204.1 What is the purpose of this part?**

This part explains how you as a lessee or designee of a Federal onshore or Outer Continental Shelf (OCS) oil and gas lease may obtain prepayment or accounting and auditing relief for production from certain marginal properties. This part does not apply to production from Indian leases, even if the Indian lease is within an agreement that qualifies as a marginal property.

**§ 204.2 What definitions apply to this part?**

*Agreement* means a federally approved communitization agreement or unit participating area.  
*Barrels of oil equivalent (BOE)* means the combined equivalent production of oil and gas stated in barrels of oil. Each barrel of oil production is equal to one BOE. Also, each 6,000 cubic feet of gas production is equal to one BOE.

*Base period* means the 12-month period from July 1 through June 30 immediately preceding the calendar year for which you take or request marginal property relief. For example, if you request relief for calendar year 2006, your base period is July 1, 2004, through June 30, 2005.

*Combined equivalent production* means the total of all oil and gas production for the marginal property, stated in BOE.

*Designee* means the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

*Producing wells* means only those producing oil or gas wells that contribute to the sum of BOE used in the calculation under § 204.4(c). Producing wells do not include injection or water wells. Wells with multiple zones commingled downhole are considered as a single well.

*Property* means a lease, a portion of a lease, or an agreement that may be a marginal property if it meets the qualification requirements of § 204.4.

*State concerned (State)* means the State that receives a statutorily prescribed portion of the royalties from a Federal onshore or OCS lease.

**§ 204.3 What alternatives are available for marginal properties?**

If you have production from a marginal property, MMS and the State may allow you the following options:  
(a) *Prepay royalty.* MMS and the State may allow you to make a lump-sum advance payment of royalties instead of monthly royalty payments for the remainder of the lease term. See Subpart B for prepayment of royalty requirements.

(b) *Take accounting and auditing relief.* MMS and the State may allow various accounting and auditing relief options to encourage you to continue to produce and develop your marginal property. See Subpart C for accounting and auditing relief requirements.

**§ 204.4 What is a marginal property under this part?**

(a) To qualify as a marginal property eligible for royalty prepayment or accounting and auditing relief under this part, the property must meet the following requirements:

|                               |  |           |
|-------------------------------|--|-----------|
| If your lease is . . .        | Then . . .   | And . . . |
| (1) Not in an agreement ..... | The lease must qualify as a marginal property under paragraph (b) of this section. |           |

| If your lease is . . .  | Then . . .   | And . . .  |
|---|--|--|
| (2) Entirely or partly committed to one agreement.  | The entire agreement must qualify as a marginal property under paragraph (b) of this section.  | Agreement production allocable to your lease may be eligible for relief under this part. Any production from your lease that is not committed to the agreement also may be eligible for separate relief under paragraph (a)(4) of this table.  |
| (3) Entirely or partly committed to more than one agreement.  | Each agreement must qualify separately as a marginal property under paragraph (b) of this section.   | For any agreement that does qualify, that agreement's production allocable to your lease may be eligible for relief under this part. Any production from your lease that is not committed to an agreement also may be eligible for separate relief under paragraph (a)(4) of this table. |
| (4) Partly committed to an agreement and you have production from the part of the lease that is not committed to the agreement. | The part of the lease that is not committed to the agreement must qualify separately as a marginal property under paragraph (b) of this section. |  |

(b) To qualify as a marginal property for a calendar year, the combined equivalent production of the property during the base period must equal an average daily well production of less than 15 barrels of oil equivalent (BOE) per well per day calculated under paragraph (c) of this section.

(c) To determine the average daily well production for a property, divide the sum of the BOE for all producing wells on the property during the base period by the sum of the number of days that each of those wells actually produced during the base period. If the property is an agreement, your calculation under this paragraph must include all wells included in the agreement, even if they are not on a Federal onshore or OCS lease.

**§ 204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?**

(a) MMS and the State may allow royalty prepayment or accounting and auditing relief for your marginal property production if MMS and the State jointly determine that the prepayment or accounting and auditing relief is in the best interests of the Federal Government and the State to:

- (1) Promote production;
- (2) Reduce the administrative costs of MMS and the State; and
- (3) Increase net receipts to the Federal Government and the State.

(b) At any time, if MMS and the State determine that either prepayment or accounting and auditing relief no longer meets the criteria in paragraph (a) of this section, MMS, with the State's concurrence, may discontinue any prepayment or accounting and auditing relief options granted for production from any marginal property.

(1) MMS will provide you written notice of the decision to discontinue relief.

(i) If you took the cumulative reports and payments relief option under § 204.202, your relief will terminate at the end of the calendar year in which you received the notice.

(ii) If you were approved for prepayment relief under subpart B of this part or other relief under § 204.203, MMS's notice will tell you when your relief terminates.

(2) MMS's decision to discontinue relief is not subject to administrative appeal.

**§ 204.6 May I appeal if MMS denies my request for prepayment or other relief?**

If MMS denies your request for prepayment relief under Subpart B of this part or other relief under § 204.203, you may appeal under 30 CFR part 290.

**Subpart B—Prepayment of Royalty [Reserved]**

**Subpart C—Accounting and Auditing Relief**

**§ 204.200 What is the purpose of this subpart?**

This subpart explains how you as a lessee or designee may obtain accounting and auditing relief for your Federal onshore or OCS lease production from a marginal property. The two types of accounting and auditing relief that you can receive under this subpart are cumulative reports and payment relief (explained in § 204.202) and other accounting and auditing relief appropriate for your property (explained in § 204.203).

**§ 204.201 Who may obtain accounting and auditing relief?**

(a) You may obtain accounting and auditing relief under this subpart:

(1) If you are a lessee or a designee for a Federal lease with production from a property that qualifies as a marginal property under § 204.4;

(2) If you meet any additional requirements for specific types of relief under this subpart; and

(3) Only for the fractional interest in production from the marginal property for which you report and pay royalty. You may obtain relief even if the other lessees or designees for your lease or agreement do not request relief.

(b) You may not obtain one or both of the relief options specified in this subpart on any portion of production from a marginal property if:

- (1) The marginal property covers multiple States; and
- (2) One of the States determines under § 204.208 that it will not allow the relief option you seek.

**§ 204.202 What is the cumulative royalty reports and payments relief option?**

(a) The cumulative royalty reports and payments relief option allows you to submit one royalty report and payment annually for production during a calendar year. You are eligible for this option only if the total volume produced from the marginal property (not just your share of the production) is 1,000 BOE or less during the base period.

(b) To use the cumulative royalty reports and payments relief option, you must do all of the following:

- (1) Notify MMS in writing by January 31 of the calendar year for which you begin taking your relief. See § 204.205(a) for what your notification must contain;
- (2) Submit your royalty report and payment in accordance with 30 CFR 218.51(g) by the end of February of the year following the calendar year for which you reported annually, unless you have an estimated payment on file. If you have an estimated payment on file, you must submit your royalty report and payment by the end of March of the year following the calendar year for which you reported annually;

(3) Use the sales month prior to the month that you submit your annual report and payment under paragraph (b)(2) of this section on your Report of Sales and Royalty Remittance, Form MMS-2014, for the entire previous calendar year's production for which you are paying annually. (For example, for a report in February use January as your sales month, and for a report in March use February as your sales month, to report production for the entire previous calendar year for which you are paying annually);

(4) Report one line of cumulative royalty information on Form MMS-2014 for the calendar year, the same as if it were a monthly report; and

(5) Report allowances on Form MMS-2014 on the same annual basis as the royalties for your marginal property production.

(c) If you do not pay your royalty by the date due in paragraph (b) of this section, you will owe late payment interest determined under 30 CFR 218.54 from the date your payment was due under this section until the date MMS receives it.

(d) If you take relief you are not qualified for, you may be liable for civil penalties. Also you must:

(1) Pay MMS late payment interest determined under 30 CFR 218.54 from the date your payment was due until the date MMS receives it; and

(2) Amend your Form MMS-2014 to reflect the required monthly reporting.

(e) If you dispose of your ownership interest in a marginal property for which you have taken relief under this section (or if you are a designee who reports and pays royalty for a lessee who has disposed of its ownership interest), you must:

(1) Report and pay royalties for the portion of the calendar year for which you had an ownership interest; and

(2) Make the report and payment by the end of the month after you dispose of the ownership interest in the marginal property. If you do not report and pay timely, you will owe interest determined under 30 CFR 218.54 from the date the payment was due under this section.

#### **§ 204.203 What is the other relief option?**

(a) Under this relief option, you may request any type of accounting and auditing relief that is appropriate for production from your marginal property, provided it is not prohibited under § 204.204 and meets the statutory requirements of § 204.5. Examples of relief options you could request are:

(1) To report and pay royalties using a valuation method other than that required under 30 CFR part 206 that

approximates royalties payable under that part 206; and

(2) To reduce your royalty audit burden. However, MMS will not consider any request that eliminates MMS's or the States' right to audit.

(b) You must request approval from MMS under § 204.205(b), and receive approval under § 204.206 before taking relief under this option.

#### **§ 204.204 What accounting and auditing relief will MMS not allow?**

MMS will not approve your request for accounting and auditing relief under this subpart if your request:

(a) Prohibits MMS or the State from conducting any form of audit;

(b) Permanently relieves you from making future royalty reports or payments;

(c) Provides for less frequent royalty reports and payments than annually;

(d) Provides for you to submit royalty reports and payments at separate times;

(e) Impairs MMS's ability to properly or efficiently account for or distribute royalties;

(f) Requests relief for a lease under which the Federal Government takes its royalties in kind;

(g) Alters production reporting requirements;

(h) Alters lease operation or safety requirements;

(i) Conflicts with rent, minimum royalty, or lease requirements; or

(j) Requests relief for production from a marginal property located in whole or in part in a State that has determined that it will not allow such relief under § 204.208.

#### **§ 204.205 How do I obtain accounting and auditing relief?**

(a) To take cumulative reports and payments relief under § 204.202, you must notify MMS in writing by January 31 of the calendar year for which you begin taking your relief.

(1) Your notification must contain:

(i) Your company name, MMS-assigned payor code, address, phone number, and contact name; and

(ii) The specific MMS lease number and agreement number, if applicable.

(2) You may file a single notification for multiple marginal properties.

(b) To obtain other relief under § 204.203, you must file a written request for relief with MMS.

(1) Your request must contain:

(i) Your company name, MMS-assigned payor code, address, phone number, and contact name;

(ii) The MMS lease number and agreement number, if applicable; and

(iii) A complete and detailed description of the specific accounting or auditing relief you seek.

(2) You may file a single request for multiple marginal properties if you are requesting the same relief for all properties.

#### **§ 204.206 What will MMS do when it receives my request for other relief?**

When MMS receives your request for other relief under § 204.205(b), it will notify you in writing as follows:

(a) If your request for relief is complete, MMS may either approve, deny, or modify your request in writing after consultation with any State required under § 204.207(b).

(1) If MMS approves your request for relief, MMS will notify you of the effective date of your accounting or auditing relief and other specifics of the relief approved.

(2) If MMS denies your relief request, MMS will notify you of the reasons for denial and your appeal rights under § 204.6.

(3) If MMS modifies your relief request, MMS will notify you of the modifications.

(i) You have 60 days from your receipt of MMS's notice to either accept or reject any modification(s) in writing.

(ii) If you reject the modification(s) or fail to respond to MMS's notice, MMS will deny your relief request. MMS will notify you in writing of the reasons for denial and your appeal rights under § 204.6.

(b) If your request for relief is not complete, MMS will notify you in writing that your request is incomplete and identify any missing information.

(1) You must submit the missing information within 60 days of your receipt of MMS's notice that your request is incomplete.

(2) After you submit all required information, MMS may approve, deny, or modify your request for relief under paragraph (a) of this section.

(3) If you do not submit all required information within 60 days of your receipt of MMS's notice that your request is incomplete, MMS will deny your relief request. MMS will notify you in writing of the reasons for denial and your appeal rights under § 204.6.

(4) You may submit a new request for relief under this subpart at any time after MMS returns your incomplete request.

#### **§ 204.207 Who will approve, deny, or modify my request for accounting and auditing relief?**

(a) If there is not a State concerned for your marginal property, only MMS will decide whether to approve, deny, or modify your relief request.

(b) If there is a State concerned for your marginal property that has

determined in advance under § 204.208 that it will allow either or both of the relief options under this subpart, MMS will decide whether to approve, deny, or modify your relief request after consulting with the State concerned.

**§ 204.208 May a State decide that it will or will not allow one or both of the relief options under this subpart?**

(a) A State may decide in advance that it will or will not allow one or both of the relief options specified in this subpart for a particular calendar year. If a State decides that it will not consent to one or both of the relief options, MMS will not grant that type of marginal property relief.

(b) To help States decide whether to allow one or both of the relief options specified in this subpart, for each calendar year MMS will send States a Report of Marginal Properties by October 1 preceding the calendar year.

(c) If a State decides under paragraph (a) of this section that it will or will not allow one or both of the relief options in this subpart during the next calendar year, within 30 days of the State's receipt of the Report of Marginal Properties under paragraph (b) of this section, the State must:

(1) Notify the Associate Director for Minerals Revenue Management, MMS, in writing, of its intent to allow or not allow one or both of the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow or not allow.

(d) If a State decides in advance under paragraph (a) of this section that it will not allow one or both of the relief options specified in this subpart, it may decide for subsequent calendar years that it will allow one or both of the relief options in this subpart. If it so decides, within 30 days of the State's receipt of the Report of Marginal Properties under paragraph (b) of this section, the State must:

(1) Notify the Associate Director for Minerals Revenue Management, MMS, in writing, of its intent to allow one or both of the relief options allowed under this subpart during the next calendar year; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow.

(e) If a State does not notify MMS under paragraph (c) or (d) of this section, the State will be deemed to have decided not to allow either of the relief options under this subpart for the next calendar year.

(f) MMS will publish a notice of the State's intent to allow or not allow certain relief options under this section

in the **Federal Register** no later than 30 days before the beginning of the applicable calendar year.

**§ 204.209 What if a property ceases to qualify for relief obtained under this subpart?**

(a) A marginal property must qualify for relief under this subpart for each calendar year based on production during the base period for that calendar year. The notice or request you provided to MMS under § 204.205 for the first calendar year that the property qualified for relief remains effective for successive calendar years if the property continues to qualify.

(b) If a property is no longer eligible for relief for any reason during a calendar year other than the reason under § 204.210 or paragraph (c) of this section, the relief for the property terminates as of December 31 of that calendar year. You must notify MMS in writing by December 31 that the relief for the property has terminated.

(c) If you dispose of your interest in a marginal property during the calendar year, your relief terminates as of the end of the sales month in which you disposed of the property. Report and pay royalties for your production using the procedures in § 204.202(e).

**§ 204.210 What if a property is approved as part of a nonqualifying agreement?**

If the Bureau of Land Management (BLM) or MMS's Offshore Minerals Management (OMM) retroactively approves a marginal property that qualified for relief for inclusion as part of an agreement that does not qualify for relief under this subpart, the property no longer qualifies for relief under this subpart then:

(a) MMS will not retroactively rescind the marginal property relief for production from your property under § 204.211;

(b) Your marginal property relief terminates as of December 31 of the calendar year that you receive the BLM or OMM approval of your marginal property as part of a nonqualifying agreement; and

(c) For the calendar year in which you receive the BLM or OMM approval, and for any previous period affected by the approval, the volumes on which you report and pay royalty for your lease must be amended to reflect all volumes produced on or allocated to your lease under the nonqualifying agreement as modified by BLM or OMM. Report and pay royalties for your production using the procedures in § 204.202(b).

(d) If you owe additional royalties based on the retroactive agreement approval and do not pay your royalty by

the date due in § 204.202(b), you will owe late payment interest determined under 30 CFR 218.54 from the date your payment was due under § 204.202 (b)(2) until the date MMS receives it.

**§ 204.211 When may MMS rescind relief for a property?**

(a) MMS may retroactively rescind the relief for your property if MMS determines that your property was not eligible for the relief obtained under this subpart because:

(1) You did not submit a notice or request for relief under § 204.205;

(2) You submitted erroneous information in the notice or request for relief you provided to MMS under § 204.205 or in your royalty or production reports; or

(3) Your property is no longer eligible for relief because production increased, but you failed to provide the notice required under § 204.209(b).

(b) MMS may rescind relief for your property if MMS decides to take royalty in kind.

**§ 204.212 What if I took relief for which I was ineligible?**

If you took relief under this subpart for a period for which you were not eligible, you:

(a) May owe additional royalties and late payment interest determined under 30 CFR 218.54 from the date your additional payments were due until the date MMS receives them; and

(b) May be subject to civil penalties.

**§ 204.213 May I obtain relief for a property that benefits from other Federal or State incentive programs?**

You may obtain accounting and auditing relief for production from a marginal property under this subpart even if the property benefits from other Federal or State production incentive programs.

**§ 204.214 Is minimum royalty due on a property for which I took relief?**

(a) If you took cumulative royalty reports and payment relief on a property under this subpart, minimum royalty is still due for that property by the date prescribed in your lease and in the amount prescribed therein.

(b) If you pay minimum royalty on production from a marginal property during a calendar year for which you are taking cumulative royalty reports and payment relief, and:

(1) The annual payment you owe under this subpart is greater than the minimum royalty you paid, you must pay the difference between the minimum royalty you paid and your annual payment due under this subpart; or



(2) The annual payment you owe under this subpart is less than the minimum royalty you paid, you are not entitled to a credit because you must pay at least the minimum royalty amount on your lease each year.

**§ 204.215 Are the information collection requirements in this subpart approved by the Office of Management and Budget?**

OMB has approved the information collection requirements contained in this subpart under 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 1010-0155. See 30 CFR part 210 for details concerning your estimated reporting burden and how you may comment on the accuracy of the burden estimate.

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**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 292**

RIN 0596-AC00

**Sawtooth National Recreation Area—Private Lands; Increasing Residential Outbuilding Size**

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department is adopting, as final, regulations that revise the building standard for residential outbuildings within the Sawtooth National Recreation Area in Idaho. This final rule provides that not more than two outbuildings could be constructed with each residence for an aggregate square foot area of the outbuildings not to exceed 850 square feet from the current 400-square-foot standard, and limits such outbuildings to one story. This regulation also allows residents to construct two-car garages and increase indoor storage areas to protect personal property and equipment, thereby reducing the need for unprotected and unsightly outdoor storage.

**DATES:** *Effective Date:* This final rule is effective October 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Stephens, Recreation, and Heritage Resources Staff, Forest Service, USDA, (202) 205-1701; or Ed Waldapfel, Public Affairs Officer, Sawtooth National Forest (208) 737-3219.

**SUPPLEMENTARY INFORMATION:** The Sawtooth National Recreation Area (SNRA) in Idaho on the Sawtooth National Forest was created when

Congress passed Public Law 92-400 in 1972 to assure the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and the enhancement of recreational values. The act directed the Secretary of Agriculture to develop regulations setting standards for the use, subdivision, and development of privately owned property within the boundaries of the recreation area. The current regulations at Title 36 of the Code of Federal Regulations, part 292, subpart C (36 CFR part 292, subpart C), were adopted in 1974 (39 FR 11544) and were amended in 1976 and 1989 (41 FR 29379, 54 FR 3368). Section 292.16(e)(2)(ii) sets out a residential building standard providing that each residence on private land within the SNRA may have not more than two outbuildings at an aggregate area not to exceed 400 square feet.

The act establishing the SNRA recognizes that the Secretary may from time to time amend these regulations. The SNRA regulations at section 292.14(b) require that any amendment to the regulations shall include publication of a notice of a proposed rulemaking in the **Federal Register** to provide interested persons the opportunity to comment before adoption of a final rule. The Forest Service promulgated a proposed rule and requested public comment on April 22, 2004 (69 FR 21796).

The Forest Service proposed to increase the residential building standard for the two allowable outbuildings to 850 square feet and to limit such outbuildings to one story. The agency previously received numerous comments from the public indicating that the current residential outbuilding size standard is inadequate and supporting the need to increase this size standard. These comments were received in response to the environmental assessment prepared in 2000 for proposed revision of the Sawtooth National Forest land and resource management plan.

This increase in the standard for the maximum square footage of the two allowable residential outbuildings allows the private landowners to construct two-car garages and increase indoor storage areas to protect personal property and equipment, thereby reducing the need for unprotected and unsightly outdoor storage.

**Summary of Public Comments and the Department's Responses**

*General Comments:* The proposed rule was published in the **Federal Register** on April 22, 2004, for a 60-day public comment period (69 FR 21796).

In addition, to the **Federal Register** notice, a news release was distributed to 39 local and regional media outlets, organizations and elected officials. A personal postcard was mailed to more than 450 private landowners within the Sawtooth National Recreation Area. The Forest Service received 9 comments on the proposed rule. Comments were received by the following: 5 individuals, 2 organizations, 1 agency and 1 business. In general, all respondents were supportive of the proposed rule. Respondents recognized the need for a limited increase in the size of outbuildings within the Sawtooth National Recreation Area.

*Response:* The Department does not intend to make any revisions to the proposed rule. Therefore, the rule, as proposed, is being adopted as final.

*Comment on Enforcement of Outbuilding Standards:* One respondent expressed concern that the current regulation for outbuildings was not adequately enforced over the last 20 years.

*Response:* The Forest Service is responsible for enforcement of the new regulation. The Forest Service remains committed to enforce the new regulation to protect the scenic integrity of the Sawtooth NRA.

*Comment on working with local counties:* One respondent stated that there is a need to work with the local counties for enforcement of the new regulation.

*Response:* The Forest Service recognizes the need to work with the local communities in enforcement of the new regulation. The Forest Service will be working with the local county assessors office to inform landowners about the new regulations.

*Comment on outdoor storage for equipment:* One respondent expressed concern about storage of outdoor recreation equipment. The respondent is concerned that the new regulation will not address some additional outdoor storage needs.

*Response:* The Department believes that this new regulation will address the respondent's concern about storage of outdoor recreation equipment by providing additional space for private landowners.

*Comment on property with current scenic easements:* One respondent expressed concern about whether or not property owners with existing scenic easements will be covered under the new regulation.

*Response:* The Department believes that language used in the property owners existing scenic easement will determine whether or not these property owners with existing scenic