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April 22, 1999

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Mr. David S. Guzy
 Chief, Rules and Publications Staff
 Minerals Management Service
 Royalty Management Program
 P. O. Box 25165, M.S. 3021
 Denver, CO 80225

RE: Accounting Relief for Marginal Properties
 64 F.R. 3360, January 21, 1999

Dear Mr. Guzy:

On behalf of the Independent Petroleum Association of Mountain States (IPAMS), I am writing to offer our comments on the above-referenced proposed rule. IPAMS is a non-profit, non-partisan association representing nearly 1,000 independent oil and natural gas producers, service and supply companies, and industry consultants in thirteen Rocky Mountain and Western States.

In general, IPAMS is supportive of the proposed rule. As you know, we participated in the development and passage of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (FOGRSFA) which provides the basis for the relief. IPAMS strongly supports the establishment of relief measures for lessees of marginal properties. We believe these measures promote the conservation of valuable resources and enhance the production of domestic oil and natural gas. While we believe the proposed rule is a step in the right direction, we do have several questions and comments regarding the proposed rule.

In the preamble to the regulations, at page 3362, MMS requests comments on the administrative burden on States and MMS relative to the proposed production levels required to qualify for marginal property relief. Obviously, IPAMS strongly favors a program that would qualify as many marginal properties as possible so that relief is available to as many lessees as possible. We believe that the reduced workload resulting from

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processing fewer reports and payments and conducting fewer audits will, in all likelihood, offset any increased workload involved in processing notices of or requests for relief.

MMS also requests comments on whether separate production levels should be established for offshore leases. IPAMS believes this would be appropriate because OCS leases are typically more expensive to develop; therefore, these leases become marginal at higher levels than onshore leases. The return on investment diminishes much more quickly, particularly at low prices.

In Section 204.201 the regulations provide that MMS will not require all lessees or designees in a marginal property to seek relief, nor will it require all lessees or designees in a marginal property to seek the same form of relief. IPAMS supports this provision as it indicates flexibility and MMS' recognition that each individual lessee is unique in what he requires to maintain marginal production.

Section 204.203 discusses the cumulative royalty reports and payments relief option. IPAMS is concerned that these proposed calculations will seriously restrict a lessee's ability to obtain marginal property relief. We believe that to accomplish the proposed rule's intended purpose, that is, providing relief to operators of marginal properties, production threshold levels must be set at a higher rate. Even 500 barrels of oil equivalent amounts to production equal to only 1.37 barrels per day, based on a calendar year of 365 days. As stated above, IPAMS favors a program that would qualify as many marginal properties as possible. We do not think the proposed production levels do that. We support a significantly higher production threshold level.

Section 204.204 discusses the "net adjustment reporting relief" option. IPAMS wonders whether this provision will be applied to all leases, regardless of whether they are marginal or not, upon finalization of these regulations. We understand that net adjustment reporting is a feature of MMS's reengineered program. Moreover, net adjustment reporting comports with the recommendations of the Reengineering Team as well as the Interior Department's Royalty Policy Committee. IPAMS encourages MMS to implement net adjustment reporting as soon as possible for all leases – not just marginal properties.

MMS indicates in the proposed rule that it is in the process of developing Marginal Property Guidelines. While it appears the guidelines will *primarily* give direction on how to report, i.e., appropriate transaction codes, notice and application filing addresses, and so forth, it would have been helpful to be able to review those guidelines along with the proposed rule. Does MMS intend to publish the guidelines concurrently with the final rule? Will industry be given an opportunity to review and comment on the guidelines before they are finalized?

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Section 204.207 provides for auditing relief. IPAMS strongly supports each of the options proposed. We believe they will ensure a reduced administrative burden and increased cost savings for both industry and the government.

In the preamble, on page 3365, in the discussion of Section 204.210, MMS indicates it will work with the States to develop the eligibility requirements in the final rule. We question why MMS did not work with the States in developing the eligibility requirements before publishing the proposed rule. IPAMS requests that, should the eligibility requirements be modified, the comment period be reopened so that affected lessees will have the opportunity to analyze and comment further on these requirements.

In that same section, on page 3366, MMS requests comments on whether the relief options should be automatic and not require prior approval based on production levels. IPAMS would strongly support a notification-based system for all marginal property relief, with the possible exception of a proposed alternative valuation method. We believe that if a lessee's notification is in order, relief options should be automatic.

Also on page 3366, MMS indicates it will work with the States to develop the request requirements in the final rule. IPAMS reiterates its comment above regarding why MMS has not already worked with the States to develop the proposed request requirements. IPAMS also requests that any modifications to the request requirements in the final rule be opened to further analysis and comment by industry.

Paragraph (b)(3) of Section 204.210 requires submittal of a processing fee in the amount of \$50.00 for requests for accounting or auditing relief. IPAMS has serious reservations about the requirement for a filing fee. After all, we are talking about marginal properties! Marginal properties are typically operated by small independent producers whose profit margins are relatively slim to begin with. It flies in the face of the concept of marginal property *relief* to require a processing fee. Moreover, as stated above, IPAMS believes that the reduced workload resulting from processing fewer reports and payments and conducting fewer audits will more than likely offset the cost of any increased workload MMS might incur.

It is even more egregious that MMS states it will never refund a processing fee for any reason. If no processing (that is, analysis of a notification of or request for relief) is required or performed, for example, such as in the case of an incomplete request or submittal of a partial payment, any processing fee – if MMS insists on one – must be refunded. In addition, in instances where the States have indicated that they would approve no marginal property relief and a lessee inadvertently submits a request for relief, the processing fee must be refunded. After all, MMS surely does not expect to receive a plethora of incomplete requests, partial payments, or requests for relief where the State has already said it would not grant relief. The costs involved in returning those requests does not justify retaining a \$50.00 processing fee.

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MMS requests comments (page 3369) on the value to marginal property lessees and designees of the relief options. When one considers the unseemly low production levels required to meet eligibility, along with the requirement to submit a processing fee for many types of relief, any purported value becomes pretty dubious.

Section 204.212, paragraph (c) provides that MMS will not approve a request to use an alternative valuation method until the Assistant Secretary for Land and Minerals Management approves the request. Again, we are talking about marginal properties. IPAMS views this process as inefficient and time-consuming, and a waste of government resources. Authority to approve an alternative valuation method for a marginal property should be delegated to a lower level.

Section 204.213, paragraph (b) indicates that a State must notify MMS within 30 days, *or such longer period as MMS may allow*, of its recommendation to approve, deny or modify MMS's preliminary determination on a request for relief. First, IPAMS reiterates its recommendation that most relief options be automatic. Nonetheless, we are concerned that there are no time limits placed on MMS to make its preliminary determination, nor on a State when it has requested an extension of time to respond to MMS's preliminary determination.

In order to provide timely relief and to avoid protracted delays in approving requests, extensions of time should be granted to a State only when good cause can be shown for such an extension. Further, in no event should a State be given more than 90 days in which to respond. Moreover, if a lessee qualifies for relief, applies for relief, and relief is ultimately granted, the relief should be retroactive to the date the lessee notified MMS. It would be unfair for lessees to be penalized for undue delays caused by MMS or the States.

MMS has incorporated into the regulations an option to reverse its preliminary determination if it would deny the relief but the State would grant it. However, what if MMS refuses to reverse its preliminary determination? Can a State override a determination by MMS not to grant relief? We believe such a mechanism should be incorporated in the final rule.

IPAMS supports the publication of a State's notice of intent to disallow or to allow certain types of relief options prior to the beginning of the calendar year. This will preclude the filing of erroneous notifications or requests for relief. IPAMS does question how MMS and the States will make a determination that relief is (or is not) in the best interest of the State and the Federal Government. IPAMS recommends the government establish published criteria for analyzing a relief option and not just be given carte blanche to reject a relief option without a reasonable explanation.

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IPAMS also supports the provision in Section 204.217, paragraph (a) that permits a lessee to continue taking relief for which he remains qualified without the need to submit a new notice or request for the following year. This will reduce paperwork and administrative burdens for both industry and government.

IPAMS also strongly supports the provisions of Section 204.218 whereby a lessee may obtain accounting and auditing relief even if his property benefits from other Federal or State production incentive programs. We agree that Congress did not intend for the marginal property relief provisions of FOGRMA Section 117(c) to subrogate other relief programs such as those already in existence.

IPAMS also commends MMS for the tables and charts it has included in recent rulemakings. These tables provide a quick reference and in some instances obviate the need to search back and forth through the regulations for cross-references.

IPAMS supports the provision in Section 204.210(a)(2) that permits a lessee to file a single notification for multiple marginal properties for the same type of relief and same effective date. Again, this will cut down on paperwork and administrative burden and save money for all concerned.

In closing, IPAMS supports the marginal properties relief proposed rule, with reservations as noted. We appreciate the opportunity to provide you with our comments. Please do not hesitate to contact me if you have any questions or if you would like further clarification or information concerning our comments.

Sincerely,



Carla J. Wilson
Director of Tax and Royalty