

**TO:** David Guzy                   Ph: (303) 231-3432  
  FAX: (303) 231-3385

**From:** David Ault  
                                  Ph: (505) 827-9858  
                                  Fax: (505) 827-9888

**RE:** State of New Mexico comments to the proposal on marginal properties.

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STATE OF NEW MEXICO  
**Taxation and Revenue Department**  
 An Equal Opportunity Employer

**Gary E. Johnson**  
 Governor

**John J. Chavez**  
 Secretary

April 23, 1999

Office of the Secretary  
 (505) 827-0341  
 Administrative Services  
 (505) 827-0369  
 Audit and Compliance  
 (505) 827-0900  
 Motor Transportation  
 (505) 827-0321  
 Motor Vehicle  
 (505) 827-2294  
 Property Tax  
 (505) 827-0870  
 Revenue Processing  
 (505) 827-0800

Mr. Dave Guzy,  
 Chief, Rules and Publications Staff  
 Minerals Management Service, RMP  
 PO Box 25165, MS 3021  
 Denver, Colorado 80225

Re: Notice of proposed rule making-Accounting relief for Marginal Properties

Dear Mr. Guzy:

By Federal Register Notice dated January 21, 1999, the MMS published a proposed rule explaining to lessees and their designees how to obtain royalty accounting and auditing relief. The State of New Mexico Taxation and Revenue Department appreciates the opportunity to comment and hopes the following general and specific comments will lend the MMS to rethink their process and involve the impacted states as the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 warrants.

As general background to the comments, we must emphasize that the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 stated as it relates to "Alternatives For Marginal Properties" that the Secretary and the State concerned, acting in the best interest of the United States and the State concerned to promote production, reduce administrative costs, and increase net receipts to the United States and the States, shall 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, shall be subject to a prepayment under subsection (b) or regulatory relief under subsection (c). If the State concerned does not consent, such prepayments or regulatory relief shall not be made available under this section for such marginal production. -Subsection (c) in summary states that prior to granting such royalty relief, the Secretary and, if appropriate, the State concerned shall agree that the type of marginal wells and relief provided under this paragraph is in the best interest of the United States and, if appropriate, the State concerned.

With the above requirements kept in mind we offer the following:

**Comments to "Definitions": Section 204.2**

**BASE PERIOD:** The base period ending period should track as closely as possible to the beginning of the applicable calendar year to ensure that the intent of deriving a marginal property is met.

**PRODUCING WELLS:** The state of New Mexico fully supports MMS's decision not to include injection and water wells into the calculation.

**Comments to "Production Levels": Sections vary**

Based on the fact the RSFA required that the Secretary and the State concerned, jointly determine, on a case by case basis, the amount of what marginal production may obtain accounting or auditing relief, it is premature for the State of New Mexico to intelligently comment when it is somewhat unclear on how the MMS derived the production levels. We feel, that based on RSFA requirements, that the MMS needs to work jointly with the concerned states to develop reasonable production levels based on facts that will support the intent of promoting production, reducing administrative costs and increase net receipt sharing to the state. Within these proposed regulations we see no discussion where MMS completed studies or had

access to external studies to validate that what they may be proposing would actually meet these requirements. New Mexico is also concerned with the workload that may be required both from a federal and a state personnel point of view. Based on discussions my office has had with MMS, preliminary data has identified that approximately 63% or 3982 leases of New Mexico total federal lease universe of 6330 (producing) qualify as marginal under the base definition. This issue is further expounded when you take into consideration that according to a KPMG report each lease has approximately 2.5 payors and therefore the impact is 9955 lease payor combinations that would require review and approval.

**Comments to "Cumulative Royalty Reports and Payment Relief Options": Section 204.203**

While New Mexico agrees with the MMS concept of deriving the marginal production levels based on royalty quantities, basing the quantities on the marginal properties lease royalty rates will be problematic because a lessee or its designee in some instances will not have the knowledge as it relates to third party royalty rates. This is especially true in today's environment with the reduce royalty rate incentive act in place. With this problem in place, the State hopes that the MMS is not considering development of another database to track specific royalty rates at a lessee level so it may be provided to individuals who need such.

**Comments to "Alternative Valuation Relief": Sections 204.206**

The current oil and gas valuation regulations allow lessees or designees to identify an alternative valuation methodology. With this in place, the State recognizes no basis for this Section.

**Comments to "Audit Relief": Section 204.207**

This type of relief should be coordinated through the efforts of the MMS and concerned state who have current audit programs. New Mexico does not feel this relief is warranted under this proposal and will not recognize such if these regulations are put into effect.

**Comments to "Approval Process"-**

Sections 204.203, 204.204 and 204.205 appear to require only notification and no approval process. The Department feels that because of the various calculations required and because abuse of the process could occur, that notification and an approval must exist. Industry requests certainty and this approval process would support such.

**Comments to "Processing Fee":**

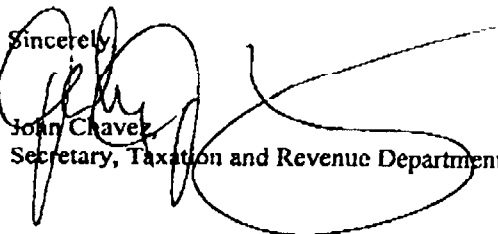
From New Mexico's point of view, the \$50.00 processing fee should be recognized against all requested relief items and should be at property request level. We see no basis for rolling multiple properties into one request and to be charged a one time fee of \$50.00. All parties can be assured that because of incorrect data or incorrect information that a significant amount of time will be spent determining the data and making the decisions. The State also recognizes justification for sharing as part of the net receipts, the \$50.00 collected. Each state should be compensated in some manner to recognize the requirements behind their review process.

**Comments to "Who Will Decide To Approve": Section 204.212**

Various time limits are defined by the proposal that require state action, however we see no place where the MMS is required to act within a certain time frame. Fairness is warranted.

The New Mexico Taxation and Revenue Department appreciates the opportunity to comment on this proposed rule and we look forward to revisiting this process in the near future. If you have any questions, please contact me at the above address or at (505) 827-0341.

Sincerely,

  
Joan Chavez  
Secretary, Taxation and Revenue Department