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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: Supplementary proposed rule.

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

EFFECTIVE DATE: Comments must be submitted on or before May 30, 2003.

ADDRESSES: Address your comments, suggestions, or objections regarding this proposed rule to:

By regular U.S. mail. Minerals Management Service, Minerals Revenue Management, Regulations and FOIA Team, P.O. Box 25165, MS 320B2, Denver, Colorado 80225-0165; or

By overnight mail or courier. Minerals Management Service, Minerals Revenue Management, Building 85, Room A-614, Denver Federal Center, Denver, Colorado 80225; or

By e-mail. MRM.comments@mms.gov. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include "Attn: RIN 1010-AC30" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Paul A. Knueven, Chief, Regulation and FOIA Team, Minerals Revenue Management, MMS, telephone (303) 231-3316, fax (303) 231-3385, or e-mail Paul.Knueven@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are Sarah L. Inderbitzin of the Office of the Solicitor and David A. Hubbard of

Minerals Revenue Management, MMS, Department of the Interior.

I. Background

On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA).¹ RSFA amends the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA).² 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]")³ to provide royalty prepayment and regulatory relief for marginal properties for Federal onshore and Outer Continental Shelf (OCS) oil and gas leases.⁴ The stated purpose of granting relief to marginal properties under RSFA is to promote production, reduce administrative costs, and increase net receipts to the United States and the States.⁵ Specifically, paragraph (c) of the new 30 U.S.C. 1726 enacted by RSFA section 7 directed the Secretary (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, "provided that such relief will only be available to lessees in a State that allows." (There is an exception to the requirement for State allowance if royalty payments from a lease are not shared with a State under applicable law.)

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).

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 Royalty Policy Committee (RPC) of the Department of the Interior's Minerals Management Advisory Board 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 that was submitted to the RPC on March 27, 2001. The RPC accepted the subcommittee's recommendations. On August 2, 2001, the Acting MMS Director—on behalf of the Secretary of the Interior—approved the report and advised MMS to proceed with a second proposed rule incorporating the subcommittee's recommendations. This second proposed rule includes the RPC subcommittee's recommendations with one exception described below.

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 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

¹ Pub. L. 104-185, as corrected by Pub. L. 104-200.

² 30 U.S.C. 1711 *et seq.*

³ 30 U.S.C. 1701(31).

⁴ 30 U.S.C. 1726.

⁵ 30 U.S.C. 1726(a).