

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 be appealed administratively within the Department of the Interior.

MMS Response. We agree with the subcommittee's recommendation. We also believe that modifying the proposed rule at § 204.207(b) to read as follows would eliminate the States' concerns:

If, for your marginal property, there is a State concerned that has determined in advance 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.

Thus, the approval process under this proposed rule is like the current process for issuance of orders where the State has performed the audit. Although the State is 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 of a Federal property could obtain relief if the property qualified 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 allows" such 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 that it is reasonable and consistent with RSFA to authorize designees to request relief under this rulemaking.

Cumulative Reporting and Payment Relief

1999 Proposed Rule. In § 204.203, MMS proposed to allow lessees to report quarterly, semi-annually, 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 annual. 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. She 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 waive an obligation under the lease terms if doing so does not change the lessee's position to its detriment.

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 pointed out that 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 Report of Sales and Royalty Remittance, Form MMS-