

2014, rather than using MMS's traditional two-line adjustment process.

Public Comments. One State objected to allowing net adjustments. One industry association thought 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 FOGSMA 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 from the proposed rule.

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 from the proposed rule. 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.

Alternate 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. 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 alternate valuation method would "approximate" royalties in the future. The State further added that alternate valuation relief was not accounting, reporting or auditing relief but really royalty relief.

RPC Subcommittee Recommendation. The subcommittee recommended dropping this option from the proposed rule.

MMS Response. We agree with removal of this option for the reasons stated by the commenters. Moreover, alternative valuation is still an option a lessee may request under the other relief option in § 204.203 of this second proposed rule.

1999 Proposed Rule. In § 204.211, MMS proposed how it would review requests for alternative relief. MMS did not propose time frames 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. MMS has not determined whether to adopt the RPC subcommittee's recommendations. We are concerned about deeming a request "approved" based solely on the length of time elapsed after receipt of the request without any Department review. One alternative is to deem the request denied if MMS does not approve or disapprove a lessee's request within 120 days after MMS received the request. Because denial of a request may be appealed, that would give the Department the opportunity to review the request and make an informed decision. The other alternative is to have no timing requirements by not including any provision at all.

Because of these concerns we are specifically requesting 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.

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 stated that it did not believe that 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 not much relief because under the current strategy marginal properties are seldom audited. One industry association agreed that audit relief was not much relief 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 from the proposed rule.

MMS Response. We agree with removal of this option for the reasons stated by the State commenters. Moreover, audit relief is still an option a lessee may request under the "other" relief option in § 204.203 of this second proposed rule.

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 the sensitivities surrounding what was in the original proposal, the subcommittee decided to recommend an approval-based relief option called "other" relief. Other relief would apply