

to all marginal properties and could be anything within MMS authority that the lessee or his/her designee believes would be marginal property relief. The lessee would need to submit a proposal to MMS for approval. After consultation with the State or States concerned, MMS would decide whether to grant the requested relief. Examples of what might be considered are payments made more than annually but less than monthly or an alternative valuation method.

**MMS Response.** We agree with the subcommittee's recommendation. Further, we disagree with one State's comment that such an option is too great a burden relative to any savings. As this second proposed rule states, any relief requested must meet the statutory requirements in RSFA to promote production, increase net receipts, and reduce administrative costs.

#### *Disallowed Relief Options*

**1999 Proposed Rule.** In § 204.209, MMS listed relief items that MMS would not approve if requested by lessees.

**Public Comments.** One State wanted to add three items to the types of relief that MMS would not approve. The items were any relief request that (1) decreases royalty income below true market value, (2) increases allowances, or (3) reduces royalty-bearing volumes.

**RPC Subcommittee Recommendation.** The subcommittee recommended retaining the list of disallowed items with no changes.

**MMS Response.** We believe that § 204.203(a)(1) in this second proposed rule, which provides that any alternative valuation methodology must approximate royalties payable under 30 CFR part 206, addresses the State's concern.

#### *Notification-Based Relief*

**1999 Proposed Rule.** In § 204.210(a), MMS described the information a lessee must submit to MMS before taking any notification-based relief.

**Public Comment.** One industry association supported notification-based relief rather than request-based relief. The other industry association did not want any required notification for taking relief in §§ 204.203, 204.204, and 204.205.

Two States opposed the automatic relief options. One of those States indicated that all relief should be gained through an approval process. One industry association liked the provision that would allow lessees to file a single notification for multiple marginal properties.

**RPC Subcommittee Recommendation.** The subcommittee recommended only one type of notification-based relief—cumulative annual reporting.

**MMS Response.** We agree with the subcommittee recommendation to allow only notification-based relief for annual reporting.

#### *Approval Process*

**1999 Proposed Rule.** In §§ 204.212 and 204.213, MMS described the approval process for request-based relief.

**Public Comments.** All three States thought that the approval process placed too much administrative burden on the States. One State objected to MMS telling the States what the scope, timing or process should be for its review of a request. The same State noted that MMS cannot tell a State who in the State will make determinations on relief or how long they have to make the determinations. One industry association suggested that authority to approve alternative valuation should be delegated to someone below the Assistant Secretary for Land and Minerals Management (ASLM). The other industry association wanted approval authority for all properties to be with the ASLM. The law firm, one State, and one industry association commented that they did not agree with the fact that the regulation required States to do things within specified time periods but not MMS. One State did not agree with the provision that if the State did not notify MMS of its decision within 30 days then the State is deemed to agree with MMS's determination. One industry association was concerned that States might be given more than 30 days to review and decide relief options. The same industry association supported publication of States' decisions to allow or disallow certain types of relief and wanted MMS and the States to develop criteria for analyzing relief requests.

**RPC Subcommittee Recommendation.** The subcommittee recommended that MMS consult with the State concerned about a request for relief rather than requiring a decision from the State in a specific period of time.

**MMS Response.** The State's concerns regarding timing are no longer an issue because this proposed rule now requires consultation with the State concerned, rather than specific timing requirements. See discussion on proposed § 204.207(b) under the topic "State Liability" above.

#### *Length of Relief*

**1999 Proposed Rule.** In § 204.217, MMS proposed that any approved relief

would remain in effect for as long as the property qualified as marginal.

**Public Comments.** One State opposed continuous relief throughout the life of a lease and thought the marginal properties should be monitored periodically. One industry association supported relief for the life of the lease.

**RPC Subcommittee Recommendation.** The subcommittee did not recommend any changes in § 204.217 (redesignated as § 205.209).

**MMS Response.** We agree that properties should have relief for the life of the lease only if they continue to qualify as marginal. Moreover, nothing in this proposed rulemaking precludes MMS from monitoring and auditing leases for compliance with other MMS regulations and lease terms.

#### *Relationship to Other Incentive Programs*

**1999 Proposed Rule.** In § 204.218, MMS proposed that a lessee could obtain accounting and auditing relief for a marginal property even if the property benefited from other Federal or State production incentive programs.

**Public Comments.** One State commented that lessees should be required to disclose other types of relief they are receiving. One industry association supported the provision allowing lessees to get marginal property relief even if they benefit from other incentive programs.

**RPC Subcommittee Recommendation.** The subcommittee did not recommend any changes in this provision.

**MMS Response.** We agree that lessees should get marginal property accounting and auditing relief even if they benefit from other relief programs. Nothing in RSFA precludes obtaining marginal property relief if a lessee obtains other relief.

#### *Fees*

**1999 Proposed Rule.** In § 210.210(b), MMS listed the information that lessees must submit in their requests for accounting and auditing relief and the requirement to submit a \$50 fee with each request.

**Public Comments.** One State stated that the items to be included in the written request for relief were inadequate. Two States said the \$50 fee is too low compared to the cost incurred by States and MMS to process requests. Two States thought the fees should be shared with the States. Both industry associations opposed the fee. One industry association said that small independent producers could not afford it and did not like the fact that MMS would not refund the fee for any reason.