

RPC Subcommittee Recommendation. The subcommittee recommended elimination of the fee for request-based relief.

MMS Response. After further legal review, we have decided that it is reasonable not to recover a processing fee for requests or notices under this proposed rule. MMS recovers its costs under the Independent Offices Appropriations Act of 1952 (IOAA),⁶ for Federal offshore leases, and the Federal Land Policy and Management Act of 1976 (FLPMA),⁷ for Federal onshore leases. Thus, as part of the previously-proposed rulemaking, we analyzed the proposed marginal property relief's cost recovery fees for reasonableness according to the factors in FLPMA section 304(b).⁸ In that proposed rulemaking, we examined the "reasonableness factors" which FLPMA requires to be considered: (a) Actual costs (exclusive of management overhead); (b) the monetary value of the rights or privileges sought by the applicant; (c) the efficiency to the Government processing involved; (d) that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant; (e) the public service provided; and (f) other factors relevant to determining the reasonableness of the costs.

For marginal property relief taken or requested under § 204.210, the method used to evaluate the factors under the previously-proposed rulemaking was twofold. First, we estimated actual costs and evaluated each of the remaining FLPMA reasonableness factors (b) through (f) individually to decide whether the factor might reasonably lead to an adjustment in actual costs. If so, that factor was then weighed against the remaining factors to determine whether another factor might reasonably increase, decrease, or eliminate any contemplated reduction. On the basis of that twofold analysis, although MMS's total estimated actual costs were \$2,370 to process an average request, MMS determined that a fee of \$50 to process relief requests was reasonable.

MMS determined a reduced fee was reasonable primarily based on its evaluation of FLPMA factor (f) Other Factors. MMS's primary consideration under this factor was RSFA's purpose with respect to marginal properties. Congress enacted RSFA to "promote production,"⁹ by "encourag[ing] lessees to continue to produce and develop

marginal properties."¹⁰ Congress stated that "certain regulatory * * * obligations should be waived if it can be demonstrated such a waiver could aid in maintaining production that might otherwise be abandoned."¹¹ However, RSFA also mandated that any relief should "reduce administrative costs, and increase net receipts to the United States and the States."¹² Congress stated that granting relief for marginal properties should "result in additional receipts from oil and gas production that would otherwise be abandoned, and would * * * increase oil and gas production on Federal lands by creating economic efficiencies to make Federal leases more competitive with private leases."¹³ Thus, as part of its FLPMA reasonableness analysis, MMS considered (1) whether the benefit from the increase in royalties to be gained from continued production from marginal properties and the decreased administrative burden to MMS from granting such relief merited a reduction in fee charges; and (2) whether recovering the fee would defeat the Congressional intent to provide relief by discouraging companies from requesting relief.

MMS has reexamined the analysis under factor (f) in the previously-proposed rule to determine whether those factors warranted elimination of the proposed fee. We believe they do. We do not believe that the administrative savings to industry that may be afforded if they are granted relief will be significant enough for them to pay to request relief. Moreover, we believe that the companies that most need the relief are small independents who would be discouraged from applying for relief by even the nominal \$50 fee previously proposed. Because the purpose of RSFA is to grant relief to producers so that they will continue to produce, we believe it is counterproductive to include a fee that will discourage many of the smaller marginal producers from requesting relief. Thus, we are not proposing to require payment of a processing fee for relief requests.

III. Procedural Matters

1. Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Internet site at www.mrm.mms.gov.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

2. Summary Cost and Benefit Data

We have summarized below the estimated costs and benefits of this proposed rule to all potentially-affected groups: industry, State and local governments, and the Federal Government. Indian tribes and allottees are not affected by this rule. The cost and benefit information in this Item 2 of Procedural Matters is used as the basis for the Departmental certifications in Items 3 through 11 below.

A. Industry

(1) *Cost—Notification-based relief—Submitting notifications.* Approximately 3,000 Federal oil and gas properties produce 1,000 or less BOE annually. In the first year after this rule becomes effective, we estimate that lessees of 1,000 of these properties will submit notifications that they will take cumulative reporting and payment relief. We do not anticipate that all lessees of qualifying properties will submit notifications because not all States will allow reporting and payment relief, and large corporations may find that modifying their computer systems to report and pay on a few leases annually rather than monthly will not be cost effective.

We further estimate that a lessee will require 2 hours to determine if a property qualifies for cumulative reporting and payment relief and then prepare and submit the notification to MMS. Consequently, the total estimated burden for all notifications in the first year is 2,000 hours (1,000 properties × 2 hours). Using an estimated \$50 per hour cost, the total cost for all lessees to submit these notifications is \$100,000 (2,000 burden hours × \$50).

Because the reporting and payment relief for a qualified property is for the life of the property as long as the property produces less than 1,000 BOE per year, a notification need only be

⁶ 31 U.S.C. 9701 *et seq.*

⁷ 43 U.S.C. 1701.

⁸ 64 FR 3366–69.

⁹ RSFA section 7(a).

¹⁰ S. Rep. 260, 104th Cong., 2d Sess. 20 (1996);

H.R. 667, 104th Cong., 2d Sess. 20 (1996).

¹¹ H.R. 667, 104th Cong., 2d Sess. 20 (1996).

¹² RSFA section 7(a).

¹³ *Id.* at 20–21.