

DEPARTMENT OF THE INTERIOR**Minerals Management Service****30 CFR Part 204**

RIN 1010-AC30

Accounting Relief for Marginal Properties

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) is proposing new regulations implementing recently enacted legislation for Federal oil and gas leases. The new regulations would explain to lessees and their designees how to obtain royalty prepayment and accounting and auditing relief for Federal marginal properties.

DATES: MMS must receive all comments on or before March 22, 1999. We will begin reviewing comments then and may not fully consider comments we receive after March 22, 1999.

ADDRESSES: Submit your written comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Denver Federal Center, Denver, Colorado 80225. E-mail address is RMP.comments@mms.gov.

MMS will publish a separate notice in the **Federal Register** indicating dates and locations of public hearings regarding this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, telephone (303) 231-3432; fax (303) 231-3385; e-mail David_Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Nick E. Fadely of the Royalty Management Program, MMS, and Sarah L. Inderbitzin of the Office of the Solicitor, Department of the Interior.

I. Introduction

On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA), Pub. L. 104-185, as corrected by Pub. L. 104-200. RSFA amends the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1711 *et seq.*, in many respects. 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]," 30 U.S.C. 1701(31)) to provide royalty prepayment and regulatory relief for marginal properties for Federal onshore and Outer Continental Shelf (OCS) oil and gas leases. 30 U.S.C. 1727. 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. 30 U.S.C. 1727(a).

Under RSFA, the State concerned must consent to any prepayment or auditing relief. 30 U.S.C. 1727(a). In addition, MMS and the State concerned must jointly determine, on a case-by-case basis, the amount of marginal production that may be subject to either a prepayment of royalty or accounting and auditing relief. *Id.* Although RSFA does not define marginal properties for purposes of Section 7, it does define marginal properties under section 6(d)(4), 30 U.S.C. 1726(d)(4), as a "lease that produces on average the combined equivalent of less than 15 barrels of oil equivalents per well per day or 90 thousand cubic feet of gas per well per day, or a combination thereof." In addition, under section 6(d)(4), the production level is calculated "by dividing the average daily production of crude oil and natural gas from producing wells on such leases by the number of such wells, unless the Secretary, together with the State concerned, determine that a different production is more appropriate."

RSFA also requires MMS and the States to "provide accounting, reporting and auditing relief" for marginal properties. 30 U.S.C. 1727(c). However, such relief may only be granted in a State that concurs with this relief. *Id.*

In response to the RSFA section 7 amendments, MMS conducted three workshops to receive input from a wide variety of constituent groups to develop the 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 trade organizations representing both small and large Federal oil and gas lessees. The input received during these workshops was instrumental in developing the proposed rule.

The proposed rule implements sections 7(a) and 7(c) of RSFA. 30 U.S.C. 1727(a) and 1727(c). Although section 7 of RSFA provides two alternatives for marginal properties, one for prepayment of royalty under section 7(b), and

another for accounting and auditing relief under section 7(c), this proposed rule only implements the general provisions for marginal properties and the accounting and auditing relief provisions. MMS will publish a proposed rule covering prepayment of royalty under section 7(b) of RSFA at a later date.

The Department of the Interior's (Department) practice is to give the public an opportunity to participate in the rulemaking process. You may send written comments to the location cited in the **ADDRESSES** section of this preamble. We will post public comments after the comment period closes on the Internet at <http://www.rmp.mms.gov> or you may contact David S. Guzy, Chief, Rules and Publications Staff, MMS, telephone (303) 231-3432; fax (303) 231-3385; e-mail David_Guzy@mms.gov.

II. Section-by-Section Analysis*30 CFR Part 204—Alternatives For Marginal Properties*

MMS proposes to include a new part 204 in its regulations. This part would implement the new requirements of section 7 of RSFA. However, as noted above, the substantive rules for prepayment of royalty are not included in this proposed rule. We would reserve subpart B for a later rulemaking.

Part 204, Subpart A—General Provisions

This subpart would provide general requirements for both prepayment of royalty under section 7(b) of RSFA and accounting and auditing relief under section 7(c) of RSFA. However, as noted above, the substantive rules for prepayment of royalty are not included in this proposed rule. We would reserve subpart B for a later rulemaking.

Section 204.1 What is the Purpose of this Part?

This part would explain how a lessee or its designee, of a Federal onshore or OCS lease may obtain prepayment or accounting and auditing relief for certain marginal properties. The prepayment portions of this rule would be proposed in a later rulemaking. Under RSFA, the lessee's "designee" is a person the lessee designates in writing to MMS to report and pay royalties on its behalf. RSFA section 6(g) (codified as corrected at 30 U.S.C. 1712(a)). MMS has addressed the procedure to designate a designee in another rulemaking. 62 FR 42062 (1997) (Codified at 30 CFR 218.52).

Section 204.2 Definitions

This section would define terms applicable to this part.

“Agreement” would mean a federally approved communitization agreement or unit participating area.

“Barrels of oil equivalents” would mean the “combined equivalent production” of oil and gas stated in barrels of oil. Under this definition, each barrel of oil production would be equal to one barrel of oil equivalents. Each six thousand cubic feet of gas production at standard temperature and pressure also would be equal to one barrel of oil equivalents. This definition also is consistent with the use of this term in the definition of “marginal properties” under section 6(d)(4) of RSFA.

“Base period” would mean the 12-month period from October 1 through September 30 immediately preceding the applicable calendar year in which you take or request marginal property relief. The term “base period” is used throughout the rule to calculate whether a property qualifies for certain relief during the current calendar year. For example, if you want to qualify for relief beginning in calendar year 2000, the base period for that calendar year would be from October 1, 1998, through September 30, 1999.

“Combined equivalent production” would mean the total of all oil and gas production for the marginal property, stated in barrels of oil equivalents. This definition is consistent with the use of that term in the definition of “marginal properties” under section 6(d)(4) of RSFA discussed in the introduction.

“Designee” would mean the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee’s behalf. This definition is essentially the same as that under RSFA § 2(1), FOGPMA, 30 U.S.C. 1702(24). Accordingly, the definition would cite the rule implementing the requirements of RSFA § 6(g), FOGPMA § 102(a), 30 U.S.C. 1712(a), which allows lessees to designate another person to pay royalties on their behalf by written notice filed with MMS.

“Producing wells” would mean only those producing oil or gas wells that contribute to the sum of barrels of oil equivalents used in the calculation under § 204.004(c) of this part. This definition would not include injection and water wells.

“State concerned” (State) would mean the State which receives a statutorily prescribed portion of the royalties from a Federal onshore or OCS lease. For example, this includes States that receive revenues from onshore leasing under the Mineral Leasing Act, 30 U.S.C. 191, or from the OCS under 43 U.S.C. 1337(g). This definition is the

same as that under RSFA, 30 U.S.C. 1701(31).

Section 204.3 What Alternatives Are Available for Marginal Properties?

This section would explain what alternatives are available to a lessee or its designee if they have production from a marginal property.

Paragraph (a) would explain the prepayment of royalty alternative. For this alternative, MMS and the State may allow you to make a lump-sum advance payment of royalties instead of monthly royalty payments for the remainder of the lease term. Although MMS is not including the RSFA section 7(b) prepayment of royalty requirements in this proposed rulemaking, it will do so at a later date under subpart B. However, the general requirements in subpart A would apply to the prepayment of royalty alternative under subpart B when that subpart is published.

Paragraph (b) would explain the accounting and auditing relief alternative. For this alternative, MMS and the State may allow various accounting and auditing relief options intended to encourage you to continue to produce and develop your marginal property. The requirements for taking accounting and auditing relief would be under subpart C.

Section 204.4 What Is a Marginal Property Under This Part?

This section would explain what properties qualify as “marginal” under this part. As explained further below, property does not just mean a lease for purposes of this rule.

Only properties that qualify under this section could obtain royalty prepayment or accounting and auditing relief under this part. However, you must meet additional qualifications under §§ 204.203, 204.204, and 204.205 to obtain some of the accounting and auditing relief options.

Paragraph (a) would explain what kinds of properties may qualify as “marginal” under this part. To qualify as a marginal property eligible for royalty prepayment or accounting and auditing relief under this part, your production must be from, or attributable to, a Federal onshore or OCS lease. Indian leases would not be eligible for the marginal property alternatives under this part even though production from a qualifying marginal property may be attributable to an Indian lease.

Under paragraph (a)(1), if your lease is not in an Agreement, then your entire lease is a property that must qualify as a marginal property under paragraph (b) of this section. In other words, these are

“stand alone” Federal leases and the entire lease would have to qualify under this part.

Under paragraph (a)(2), if all or a portion of your lease is in one Agreement, then the entire Agreement must qualify as a marginal property under paragraph (b) of this section. For example, even if other leases in the participating area are not Federal leases, you must use the production attributable to those leases, as well as your lease, in order to make the calculation under paragraphs (b) and (c) of this section to determine whether the Agreement meets the production level limits under paragraph (b) of this section. If your Agreement does qualify, then only the production attributable to your lease may be separately eligible for relief under this part. However, any production from your lease that is not in the Agreement also may be eligible for relief under paragraph (a)(4) of this section.

Under paragraph (a)(3), if all or a portion of your lease is in more than one Agreement, then each Agreement must qualify separately as a marginal property under paragraph (b) of this section. In addition, for each Agreement that qualifies, only the production attributable to your lease would be eligible for relief under this part. For example, if 50 percent of your lease is included in Agreement “A”, and 50 percent of your lease is included in Agreement “B”, then Agreement “A” must qualify as marginal in order for the 50 percent of your lease included in Agreement “A” to be eligible for relief. Likewise, in order for the 50 percent of your lease included in Agreement “B” to be eligible for relief, Agreement “B” must qualify as marginal.

Under paragraph (a)(4), if a portion of your lease is in an Agreement and you have production from the portion of the lease that is not in the Agreement, then the portion of the lease that is not in the Agreement must qualify separately as a marginal property under paragraph (b) of this section. For example, if 50 percent of your lease is included in an Agreement and 50 percent is not, if the 50 percent that is not included in the Agreement qualifies as marginal under paragraph (b) of this section, then that 50 percent may be eligible for relief under this part. This would be true even if the 50 percent that is included in the Agreement does not qualify as marginal under this part.

Paragraph (b) would provide that to qualify as a marginal property for a calendar year, the combined equivalent production of the property during the base period must equal an average daily well production of less than 15 barrels

of oil equivalents per well per day calculated under paragraph (c) of this section.

As stated above, section 7 of RSFA provides for two alternatives without specifically defining a marginal property under that section. However, subsection 6(d)(4) of RSFA defines a marginal property as a lease which produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 thousand cubic feet of gas per well per day.

Several participants at the October 31, 1996, workshop for marginal properties stated that MMS should use State incentive program production levels to qualify as a marginal property. However, upon review of the various State incentive programs and the unique nature of each, MMS determined that using State incentive program production levels would require MMS to develop different production levels for each State with incentive programs, for States without incentive programs, and for offshore production if it adopted this approach. Therefore, MMS determined that using State incentive program production levels would be too onerous for use under this part.

At the January 23, 1997, workshop for marginal properties, several participants stated that MMS should consider using the RSFA production levels for marginal properties under section 6(d)(4) to determine marginal properties under this part. Other participants stated that using RSFA section 6(d)(4) production levels would qualify too many properties as marginal, and result in an unmanageable workload for MMS and States. However, MMS considers using the production levels set forth in RSFA less onerous than varying production levels based on where a lease is located as would result if MMS used State incentive program production for qualification purposes. Moreover, the States and industry participated in the legislative process which culminated in the production levels under section 6(d)(4) of RSFA.

Thus, in order to be consistent with other sections of RSFA, as well as to apply a consistent standard nationwide, MMS proposes to use the production levels in the definition of "marginal properties" in section 6(d)(4), together with other requirements, as a basis for what amount of marginal production qualifies a property as "marginal" under this part. MMS shares the concerns expressed in the workshop about the administrative burden for it and States under these proposed production levels and invites specific comments concerning those levels. Because RSFA section 7(a) requires that MMS and the

State "jointly determine, on a case-by-case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof" may obtain royalty prepayment or accounting and auditing relief, MMS specifically requests that States comment on these production levels. Any State that does not concur with the production levels MMS ultimately adopts under a final rule may decline to offer alternatives under § 204.214 of this part. MMS also invites comments on whether separate levels should be established for offshore leases.

Paragraph (c) would explain how to calculate the production levels for your property to determine whether it qualifies as "marginal" under paragraph (b). This calculation would also be based, in part, on the definition of marginal properties under RSFA section 6(d)(4). To determine the average daily well production for a property, you would divide the sum of the barrels of oil equivalents for all producing wells on the property by the sum of the number of days each of those wells actually produced during the base period. If the result obtained is less than 15 barrels of oil equivalents per well per day, your property would qualify as a marginal property under this part. Paragraph (c) also would provide that if the property is an Agreement, this calculation would have to include all wells in the Agreement even if they are not on a Federal onshore or OCS lease.

Only producing oil and/or gas wells that contribute to the sum of barrels of oil equivalents are used in the calculation. Injection and water wells are not used in the calculation. For example, assume the marginal property has 5 wells. Well #1 produced 250 days in the base period, Well #2 produced 300 days, Well #3 produced 275 days, Well #4 produced 325 days, and Well #5 produced 350 days in the base period. This equals 1,500 production days. Assume also that 15,000 barrels of oil equivalents were produced from these five wells in the base period. This equals 10 barrels per well per day (15,000 barrels/1,500 days), and the property would qualify as a marginal property.

Section 204.5 What Statutory Requirements Must I Meet To Obtain Royalty Prepayment or Accounting and Auditing Relief?

Paragraph (a) would state the three statutory conditions under RSFA that MMS and the State concerned will consider prior to approving any marginal property alternative under this part. Thus, the rule would provide that MMS and the State may allow royalty

prepayment or accounting and auditing relief for your marginal property under this part if MMS and the State jointly determine that the prepayment or relief is in the best interests of the Federal Government and the State to: (1) promote production; (2) reduce administrative costs; and (3) increase net receipts to the United States and the State. 30 U.S.C. 1726(a).

Paragraph (b) would state that MMS and the State may discontinue any royalty prepayment or accounting and auditing relief options granted for your marginal property under this part if MMS and the State jointly determine that the prepayment or relief option is no longer in the best interests of the Federal Government and the State to accomplish the objectives identified in paragraph (a).

Section 204.6 May I Appeal if MMS Denies My Request for Prepayment or Accounting and Auditing Relief?

This section would explain how you may appeal if MMS denies your request for prepayment or accounting and auditing relief. If MMS denies your request for prepayment or accounting and auditing relief under this part because the State denied your request, you could not appeal MMS's decision under 30 CFR part 290 or 43 CFR part 4, subpart J. This is because RSFA section 7(a) provides the State with unconditional veto authority over such requests. Accordingly, MMS believes that it does not have authority, and Congress did not intend for it, to change a State's decision through the administrative appeal process. Thus, you only could challenge a State's denial of your request directly in Federal district court. However, under paragraph (b), you could appeal any other MMS action on your request under 30 CFR part 290 or 43 CFR part 4, subpart J.

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

Section 204.200 What Is the Purpose of This Subpart?

This subpart would explain how a lessee or its designee may obtain the accounting and auditing relief required under section 117(c) of FOGDRA for production from a marginal property.

Section 204.201 Who May Obtain Accounting and Auditing Relief Under This Subpart?

Paragraph (a) would explain that you may obtain accounting and auditing relief under this subpart if you are a

lessee or its designee for a Federal lease with production from a property that qualifies as a marginal property under § 204.4 of this part.

For some relief options, greater forms of relief would be available for marginal properties that produce less than other marginal properties. Therefore, paragraph (b) would explain that you also must meet any additional requirements for specific types of relief under this subpart. In addition, all options would be subject to a State disallowing that relief option under § 204.214 of this subpart.

Under paragraph (c), you could only request and obtain accounting and auditing relief for your individual fractional interest in a marginal property. However, the rule would not require all lessees or designees in a marginal property to seek relief. It also would not require all lessees or designees in a marginal property to seek the same form of relief.

MMS believes that this approach implements Congress' intent under

RSFA section 7(c) of providing accounting and auditing relief for marginal properties to encourage lessees or their designees to produce and develop properties. Moreover, requiring all interest owners of a marginal property to unanimously seek one agreed-upon form of relief would be an unnecessary burden.

Section 204.202 What Accounting and Auditing Relief Options Are Available to Me?

This section would show you the six accounting and auditing relief options you may take for properties that qualify as marginal under § 204.4 and where in this subpart you can obtain more information.

Section 204.203 What Is the Cumulative Royalty Reports and Payments Relief Option?

This section would explain the "cumulative royalty reports and payments relief option." Under this relief option, you would be allowed to submit royalty reports and payments

less often than monthly. This relief option would reduce administrative costs by decreasing the total number of reports and payments you must submit and MMS must process.

Paragraph (a) would explain how to determine whether you may submit royalty reports and payments less often than monthly based on the production levels from your lease during the base period. Less production would allow you to report and pay your royalties to MMS less often. Thus, for a qualifying marginal property, you could submit your royalty reports and payments as follows:

- (1) First, you would multiply the current royalty rate for each Federal lease in the marginal property by the combined equivalent production of oil and gas from or allocable to each lease during the base period;
- (2) You would total the volumes calculated under subparagraph (a)(1) of this section; and
- (3) You would determine your level of relief according to the following table:

If the total volume calculated under paragraph (a)(2) of this section is	Then you may report and pay your royalties
(i) 125 or fewer barrels of oil equivalents	Annually, Semi-annually, or Quarterly.
(ii) More than 125, but not more than 250 barrels of oil equivalents	Semi-annually or Quarterly.
(iii) More than 250, but not more than 500 barrels of oil equivalents	Quarterly.

For example, assume the qualifying marginal property was an Agreement consisting of three leases each with combined equivalent production of 1,000 barrels of oil during the base period, and your lease "A" was Federal with a 1/8 royalty rate, and lease "B" was Federal with a 1/8 royalty rate, and lease "C" was a fee lease. Under paragraph (a)(1), if you wanted relief under this option, you would multiply 1,000 times 1/8 for leases "A" and "B", which equals 125 barrels each. Under paragraph (a)(2), you would add 125 plus 125 for a total of 250 barrels of oil. The 250 barrels is the number you would then use to determine what level of relief you could take under paragraph (a)(3). In this example, you would be eligible to report and pay your royalties semi-annually or quarterly.

Paragraph (b) would explain that you must notify MMS under § 204.210(a) before taking relief under this option. However, you would not be required to submit a processing fee under this option.

Paragraph (c) would explain that you must submit your report and payment by the end of the month following the end of the applicable quarterly, semi-annual, or annual reporting period. This paragraph would also explain that you

must report one line of cumulative royalty information on the Report of Sales and Royalty Remittance, Form MMS-2014, for the reporting period, the same as you would on a monthly basis. In addition, you would be required to use the last sales month of the reporting period to report the royalty information for that entire period.

Paragraph (d) would explain that if you do not pay your royalty by the date due in paragraph (c)(1) of this section, you would owe late payment interest determined under part 218 of this title from the date your payment was due under this section until the date MMS receives it. For example, if you notify MMS under § 204.210(a) that you qualify to report and pay royalties quarterly, and MMS receives your payment on May 15 for the first calendar quarter, instead of April 30, as required under paragraph (c) of this section, you will owe late payment interest from May 1 through May 15 on that late payment.

Under paragraph (e), if you qualify for relief under paragraph (a) of this section, but you take more relief than you are entitled to under that paragraph, you would owe late payment interest determined under part 218 of this title from the date your payment was due

under this section until the date MMS receives it. For example, if you qualify to report and pay royalties quarterly, and, instead you report and pay semi-annually, you would owe late payment interest from the date your quarterly payment was due until MMS receives your semi-annual payment. MMS also will require you to amend your Form MMS-2014 to reflect the proper reporting frequency. MMS will then assess you for any resulting late payment interest.

Paragraph (f) would provide that you must report allowances on the same quarterly, semi-annual, or annual basis as the royalties for your marginal property on Form MMS-2014. This is necessary for MMS to properly associate the allowances you are deducting on Form MMS-2014 with the royalties that you pay.

Paragraph (g) would explain when during the calendar year you must report and pay royalties. Thus, under this relief option:

- (1) Quarterly reporting periods would begin on the first day of January, April, July, or October;
- (2) Semi-annual reporting periods would begin on the first day of January or July;

(3) Annual reporting periods would begin on the first day of January.

Paragraph (h) would refer you to MMS's Marginal Property Guidelines for additional reporting instructions for this relief option. These guidelines are being developed.

Section 204.204 What is the Net Adjustment Reporting Relief Option?

This section would explain the "net adjustment reporting relief option." Under this relief option, you could adjust previously reported royalty lines to MMS as a one-line net entry on the Form MMS-2014, instead of the required two-line adjustment process. Under the two-line adjustment process, you must reverse the original report line and report a corrected line on Form MMS-2014. MMS proposes to allow this relief option based on the volume of production from the marginal property. This relief option would reduce administrative costs by decreasing the total number of lines you must report and MMS must process.

Paragraph (a) would explain how to determine whether your qualifying marginal property is eligible for relief under this option as follows:

(1) First, you would multiply the current royalty rate for each Federal lease in the marginal property by the combined equivalent production of oil and gas from or attributable to each lease during the base period;

(2) You would total the volumes calculated under subparagraph (a)(1) of this section;

(3) If the total volume you calculated under paragraph (a)(2) is equal to or less than 2,500 barrels of oil equivalents, then your property would be eligible for relief under this option. Using the same example as that under § 204.203(a), where the total volume calculated for the qualifying marginal property was 250 barrels of oil equivalents, your property would be eligible for this relief option.

Paragraph (b) would explain that you must notify MMS under § 204.210(a) before taking relief under this option. However, you would not be required to submit a processing fee under this option.

Under paragraph (c), you could not net adjustments for royalties due with adjustments for allowances on Form MMS-2014. Thus, you would have to report an adjustment to a previously reported royalty due line as a one-line net entry and report any corresponding adjustment to your previously reported allowance line as a separate one-line net entry. For example, if you originally reported \$1,000 royalty due with an allowance of \$100 and needed to adjust

them to \$1,200 and \$120, respectively, you would report two separate adjustment lines—one line reporting additional royalty due of \$200 and another line claiming an additional allowance of \$20.

Paragraph (d) would refer you to MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

Section 204.205 What Is the Rolled-up Reporting Relief Option?

This section would explain the "rolled-up reporting relief option." Under this relief option, you could report all selling arrangements for a revenue source to MMS under a single selling arrangement line on Form MMS-2014. MMS proposes to allow this relief option based on the volume of production from the marginal property. This relief option would reduce administrative costs by decreasing the total number of lines you must report and MMS must process. For example, if you currently report royalties under 3 separate selling arrangement lines for a lease and revenue source, you could combine them into a single report line under any one of your existing selling arrangements.

Paragraph (a) would explain how to determine whether your qualifying marginal property is eligible for relief under this option as follows:

(1) First, you would multiply the current royalty rate for each Federal lease in the marginal property by the combined equivalent production of oil and gas from or attributable to each lease during the base period;

(2) You would total the volumes calculated under paragraph (a)(1) of this section;

(3) If the total volume you calculated under paragraph (a)(2) is equal to or less than 1,000 barrels of oil equivalents, then your property would be eligible for relief under this option. Using the same example as that under § 204.203(a), where the total volume calculated for the qualifying marginal property was 250 barrels of oil equivalents, your property would be eligible for this relief option.

Paragraph (b) would explain that you must notify MMS under § 204.210(a) before taking relief under this option. However, you would not be required to submit a processing fee under this option.

Paragraph (c) would refer you to MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

Section 204.206 What Is the Alternate Valuation Relief Option?

This section would explain the "alternate valuation relief option." Under this relief option, you could request to report and pay royalties using a valuation method other than that required under 30 CFR part 206. MMS anticipates that you would propose a simplified valuation method because it would reduce administrative costs.

Paragraph (a) would state that any alternate valuation method that you propose:

(1) Must be readily determinable and certain; and

(2) Must approximate royalties payable under the valuation regulations in 30 CFR part 206.

An example that MMS and the State might find acceptable is when the marginal property is located in an area with an active spot market that has reliable, published index prices. The use of the index price along with a reasonably based location differential could be acceptable based on the particular circumstances of the property if MMS's economic analysis showed that royalties paid using the location-adjusted index price would remain relatively unchanged from those paid under 30 CFR part 206.

Paragraph (b) would explain that you must obtain approval from MMS and the State under § 204.210(b) before taking alternate valuation relief. Thus, unlike relief options provided in §§ 204.203, 204.204, and 204.205 above, you may not merely notify MMS that you are taking this relief option. This paragraph would also explain that you must submit a processing fee under this option as provided for in § 204.210(b)(3).

Paragraph (c) would explain that if MMS and the State approve your request, the valuation method you requested would be the value for royalty purposes for production from or attributable to your lease interest in the marginal property. Thus, you would no longer value your production under 30 CFR part 206 and any underpayment would be determined based on the approved alternative valuation method.

Paragraph (d) would refer you to MMS's Marginal Property Guidelines for reporting instructions for this relief option.

Section 204.207 What Is the Audit Relief Option?

This section would explain the "audit relief option." Under this relief option, you could request a reduced royalty audit burden. However, MMS would not consider any request that eliminates

MMS's or the State's right to audit. The reduced audit burden would reduce the administrative costs associated with audits.

(a) Audit relief may include:

(1) Audits of limited scope. For example, MMS and the State may accept, under certain conditions, that an audit of a particular marginal property would not occur more frequently than once in every 6-year period unless previous audits have resulted in royalty underpayments;

(2) Coordinated royalty and severance tax audits. For example, MMS and the State may accept, under certain conditions, that the State will perform audits of royalty records for a marginal property at the same time as the State's audit of severance taxes;

(3) Reliance by MMS on independent certified audits. For example, the MMS and the State, under certain conditions may accept an affirmative statement in the audit report of the company's independent certified auditors that they have reviewed the company's royalty accounting practices with respect to marginal properties and found them to be in compliance with Federal lease terms, laws, and regulations. MMS may retain the right to review the support for such certification;

(4) Any other audit relief which may be appropriate. MMS and the State will determine on a case by case basis whether the audit relief you request is appropriate.

Paragraph (b) would explain that you must obtain prior approval from MMS and the State under § 204.210(b) before receiving audit relief. Thus, unlike relief options provided in §§ 204.203, 204.204, and 204.205 above, you could not merely notify MMS that you are taking this relief option. This paragraph would also explain that you must submit a processing fee under this option as provided for in § 204.210(b)(3).

Paragraph (c) would refer you to MMS's Marginal Property Guidelines for reporting instructions for this relief option.

Section 204.208 What Is the Other Relief Option?

This section would explain the "other relief option." Under this relief option, you could request any type of accounting and auditing relief that is appropriate for your marginal property, provided it is not specifically prohibited under § 204.209 of this subpart. MMS proposes this "other relief option" because it recognizes that no one kind of relief is appropriate for every marginal property. MMS and the State would determine on a case by case basis

whether the other relief option you request is appropriate.

Paragraph (a) would explain that you must obtain prior approval from MMS and the State under § 204.210(b) before taking relief under this option. Thus, unlike relief options provided in §§ 204.203, 204.204, and 204.205 above, you could not merely notify MMS that you are taking this relief option. This paragraph would also explain that you must submit a processing fee under this option as provided for in § 204.210(b)(3).

Paragraph (b) would refer you to MMS's Marginal Property Guidelines for reporting instructions for this relief option.

Section 204.209 What Accounting and Auditing Relief Will MMS Not Allow?

This section would explain that MMS will not approve your request for accounting and auditing relief under this subpart if your request:

(a) Prohibits MMS or the State from conducting any form of audit. MMS developed an audit strategy to assure compliance with laws, regulations, and lease terms. To administer this strategy, MMS and the States must audit a sample of leases consisting of a wide range of conditions. Therefore, MMS proposes to deny any relief requested under this subpart that prevents it or a State from conducting an audit of a marginal property. However, as provided in § 204.207, we would consider applications that provide for reduced or streamlined audit coverage under appropriate circumstances;

(b) Permanently relieves you from making future royalty reports or payments. MMS believes that RSFA's requirement that any relief option must increase net receipts to the United States and the States prohibits this as a relief option. Applicants who wish to alter their monthly royalty payments should explore the cumulative royalty report and payment relief option under § 204.203 or the prepayment of royalty alternative under subpart B of this part;

(c) Provides for less frequent royalty reports and payments than annually. Annual royalty information is necessary to monitor the continuing eligibility of marginal properties;

(d) Provides for you to submit royalty reports and payments at separate times. MMS must disburse the royalty revenues it receives on a timely basis. Therefore, the royalty payment and the royalty report must be submitted together under any relief proposal;

(e) Impairs MMS's ability to properly or efficiently account for or disburse royalties. MMS must have sufficient royalty information to effect

disbursement to the States and other revenue recipients. Thus, it would reject any proposal that lacks that information;

(f) Requests relief for a lease under which the Federal Government takes its royalties in-kind. Because the royalty obligation is satisfied by the Federal Government taking its royalty in-kind, accounting or auditing relief to the lessee or its designee is not necessary;

(g) Alters production reporting requirements. Although MMS proposes to allow fractional interest owners of qualifying marginal properties to seek individual relief under this subpart, we believe production information must be submitted on a monthly basis for the entire marginal property. This is necessary so that MMS and other agencies can continue to monitor production from the property;

(h) Alters lease operation or safety requirements. MMS does not believe RSFA contemplated relief of this nature;

(i) Conflicts with rent, minimum royalty, or lease requirements. The lessee or its designee must satisfy the rent, minimum royalty, and other lease obligations regardless of any marginal property relief. Therefore, any relief option which would reduce or eliminate the lease obligations will not be allowed;

(j) Requests relief for a marginal property located in a State that has determined in advance that it will not allow such relief under § 204.214 of this subpart.

Section 204.210 How Do I Obtain Accounting and Auditing Relief?

This section would explain how to notify MMS that you are taking, or request from MMS authorization to take, the relief options under this subpart.

Paragraph (a) would explain that to take accounting relief under §§ 204.203, 204.204, and 204.205, you must notify MMS in writing prior to the first day of the sales month for which you begin taking your relief. MMS believes that the notification required under paragraph (a) of this section allows MMS and the State to jointly determine whether to grant relief on a "case-by-case" basis, as required under RSFA section 7(a), for three reasons.

First, the rule itself would set forth which "cases" are eligible for relief under §§ 204.203, 204.204, and 204.205. Second, States have the opportunity to comment on the proposed eligibility requirements in this proposed rulemaking, and MMS will work with the States to develop the eligibility requirements in the final rule. Finally, States who disagree with the eligibility requirements may decide not to grant

any relief under § 204.214 of this subpart.

MMS requires notification prior to taking relief under paragraph (a) of this section in order to enter the information into MMS's accounting system. This will prevent MMS's automated systems from generating spurious exceptions on marginal properties for which relief is being taken.

MMS would like comments on whether the relief options under §§ 204.203, 204.204, and 204.205 should be automatic, *i.e.* not require prior approval based on production levels, as proposed in the notification requirement under paragraph (a) of this section.

Paragraph (a)(1) would list the information that must be supplied in the notification.

Paragraph (a)(2) would explain that you may file a single notification for multiple marginal properties if you are taking the same relief option with the same effective date for all the properties. As an example, assume that a lessee or its designee's marginal property "A" qualifies under the § 204.203 "cumulative royalty reports and payments option" for semi-annual reporting and payment, and its marginal property "B" qualifies under the § 204.203 "cumulative royalty reports and payments option" for annual reporting and payment as well as the "net adjustment reporting relief option" under § 204.204. The lessee or its designee could submit a single notice to MMS that it is taking the "cumulative royalty reports and payments option" for both properties "A" and "B" if the effective date for the relief were the same for both properties. However, the lessee or its designee would have to submit a separate notice to MMS that it is taking the "net adjustment reporting relief option" for property "B".

Paragraph (b) would explain that if you wish to obtain accounting or auditing relief under §§ 204.206, 204.207, and 204.208, you must file a written request for relief with MMS. Accordingly, you must obtain MMS's prior approval before taking relief under these sections. MMS believes that the requests required under § 204.210(b) allow MMS and the State to jointly determine whether to grant relief on a "case-by-case" basis, as required under RSFA, for four reasons.

First, MMS and the State, if applicable, would consider each request to determine whether you are eligible for the relief options under §§ 204.206, 204.207, and 204.208. Second, States have the opportunity to comment on the proposed request requirements in this proposed rulemaking, and MMS will

work with the States to develop the request requirements in the final rule. Third, under the proposed rulemaking, MMS and the State, if applicable, would jointly determine whether a property is eligible for the relief options under §§ 204.206, 204.207, and 204.208. Finally, States who disagree with the request requirements or relief option(s) may decide not to grant any relief under § 204.214 of this subpart.

Paragraph (b)(1) would list the information that must be supplied in your request.

Under paragraph (b)(2) you could file a single request for multiple marginal properties if you are requesting the same relief for all properties. As an example, assume that a lessee or its designee's marginal property "A" qualifies for the "alternate valuation relief option" under § 204.206, and marginal property "B" qualifies for the "alternate valuation relief option" under § 204.206 as well as the "audit relief option" under § 204.207. The lessee or its designee could submit a single request to MMS asking to take the "alternate valuation relief option" for both properties "A" and "B". However, the lessee or its designee would have to submit a separate request to MMS to ask to take the "audit relief option" for property "B".

Paragraph (b)(3) would explain that you must remit a processing fee in the amount of \$50 for requests for accounting or auditing relief under §§ 204.206, 204.207, and 204.208. MMS is recovering its costs under the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701 *et seq.* (IOAA), for Federal offshore leases, and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 (FLPMA), for Federal onshore leases. Thus, as part of this proposed rulemaking, we analyzed the proposed marginal property relief's cost recovery fees for reasonableness according to the factors in FLPMA Section 304(b). Although the IOAA does not contain the same "reasonableness factors" as FLPMA Section 304(b), the factors MMS considered under the IOAA to determine reasonable fees led it to conclude that the fees for offshore leases should be the same as that for onshore leases.

The "reasonableness factors" which FLPMA requires to be considered are: (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 is twofold. First, actual costs are estimated and each of the remaining FLPMA reasonableness factors (b) through (f) is evaluated individually to decide whether the factor might reasonably lead to an adjustment in actual costs. If so, that factor is then weighed against the remaining factors to determine whether another factor might reasonably increase, decrease, or eliminate the contemplated reduction. On the basis of this twofold analysis, MMS determined what final fee is reasonable for the marginal property relief sought. MMS cannot recover an amount greater than its actual costs, so any final adjustment cannot result in a fee greater than actual costs.

For processing a notice that a lessee or its designee is taking marginal property relief under § 204.210(a), we concluded that we would not charge fees because it is exempted from cost recovery under the Department of the Interior Manual (DM). Under the Departmental Manual, agencies may exempt activities from cost recovery if "[t]he incremental cost of collecting the charges would be an unduly large part of the receipts from the activity." 346 DM 1.2 C (2). Based on our analysis, we estimated that our actual costs for processing these notices would be less than \$5.00. However, the increased cost to MMS for billing and collecting a processing fee would be \$8.00 (estimated by the Department of the Interior Director of Financial Management in 1991). Therefore, for processing a lessee's or its designee's notice to take marginal property relief under § 204.210(a), we concluded that this is an activity exempt from cost recovery under the Departmental Manual. 346 DM 1.2 C(2). Because we do not propose to recover costs to process notifications under § 204.210(a), the balance of the discussion on cost recovery will focus on processing fees for requests under § 204.210(b).

Factor (a)—Actual Costs. Actual costs means the financial measure of resources expended or used by MMS in processing a notice that a lessee or its designee is requesting to take marginal property relief under § 204.210(b), including, but not limited to, the costs of special studies, monitoring compliance with this part, termination of relief authorized under this part, or any other relevant action. Actual costs include both direct and indirect costs,

exclusive of management overhead. Management overhead costs means costs associated with the MMS directorate, which means the entire Washington office staff, except where a member of such staff is required to perform work on a specific case. Section 304(b) of FLPMA requires that we exclude management overhead from chargeable costs.

Direct costs include agency expenditures for labor, material, stores, and equipment usage connected with the performance of processing responsibilities. MMS's indirect costs include program support such as systems, appeals, enforcement, and rulemaking. Indirect costs are allocated to specific projects on a pro rata basis. MMS calculated its indirect cost rate of 18.5 percent by dividing the support costs described above by the total program costs. This method of calculating costs is a generally accepted practice in both the private and public sectors.

MMS's method of establishing actual costs involved measuring the cost of an individual transaction within a relief category. MMS concluded that measuring the cost of an individual transaction within a relief category is reasonable because the actual costs will not vary substantially from one individual transaction to another within the same relief category, making the average cost of an individual transaction a reliable measure. In this proposed rulemaking, MMS determined that the above characteristic is exhibited by all relief categories. Each of these is discussed below.

The costs to process a lessee or its designee's request to take the "alternative valuation relief option," the "audit relief option," and the "other relief option," under § 204.210(b), would include the cost to process the request. This consists of several phases. The first phase is the review and analysis of the proposed relief by MMS personnel and our preliminary approval, modification, or denial of the proposed relief. The second phase involves the coordination with the affected State. The third phase consists of communicating the decision to the lessee or its designee. MMS has determined that the average burden hour estimate to the Federal Government for these phases is 40 hours per request. This estimate is based on current MMS time requirements for completing similar tasks. Using an estimate of \$50 per hour based on an average of MMS's personnel costs, we estimate the average direct cost burden for these requests is \$2,000 (\$50/hour x 40 hours). MMS's indirect costs for the

requests is \$370 per request (18.5 percent indirect cost rate x \$2,000) resulting in total estimated actual costs of \$2,370 per average request.

If a request is approved, additional phases are necessary. In the data entry phase, MMS personnel enter the approval information the lessee or its designee submits with its request into MMS's automated systems. MMS personnel then file the original request for future reference. In the monitoring phase, MMS would monitor the marginal property annually to ensure that it continues to qualify for the relief granted. MMS estimates that the time necessary to complete both of these phases is negligible. Therefore, we have not included any additional costs from these phases into our actual cost estimate.

Factor (b)—Monetary Value of the Rights and Privileges Sought. The monetary value of rights and privileges sought means the objective worth of the marginal property relief sought or taken, in financial terms, to the lessee or its designee. MMS rejected the idea of trying to calculate monetary value on a case-by-case basis as too time-consuming, wasteful of resources, and subject to endless disputes. Instead, MMS has attempted to calculate an actual figure to represent the monetary value of rights for transactions in this rulemaking. In addition, MMS took into account equitable considerations involving the costs to process relative to the monetary value of the relief sought.

MMS determined that the "alternative valuation relief option" and "audit relief option" would benefit lessees and their designees by decreasing the total number of hours they must devote to calculating royalty payments and responding to MMS audits. MMS estimated the maximum average monetary benefit of these relief options could be as high as \$1,200 annually (2 hours per month savings x 12 months x \$50/hour labor cost). However, MMS did not upwardly adjust its actual costs for this factor. As discussed under factor (f) below, if MMS increased its costs due to this factor, it would frustrate Congress' intent under RSFA to promote continued production. This is because lessees and their designees would not request relief if MMS's recovery costs are excessive.

Second, the lessee or its designee receives the value of continued production and the resultant continued income from the property. However, any MMS estimate of the average life of a marginal property and the average monetary benefit from continued production to the lessee or its designee would be purely speculative. In

addition, this equitable factor would be offset by the increased royalties the public would receive as discussed under factor (e) below. Therefore, MMS did not upwardly adjust its actual costs based on this factor.

MMS has reviewed the request-based relief options proposed in this rulemaking and found them to have significantly higher processing costs/fees than the monetary value of the right being provided to the customer. MMS has determined that consideration of this factor should also include an examination of equitable considerations related to monetary value, rather than precise figures, which would be very difficult or impossible to calculate. A major equitable consideration is whether the level of cost reimbursement could, as a result of the expense required to process the fee itself for example, burden the applicant to such an extent that the proposed relief would actually grant no relief at all. Relief with a small value to the applicant, but which triggers higher processing costs, would be an example of an instance where the fee might reasonably be set at a figure less than the actual cost of processing due to this factor.

Factor (c)—Efficiency to the Government Processing Involved. Efficiency to the Government processing means the ability of the United States to process a request to take marginal property relief under § 204.210(b) with a minimum of waste, expense, and effort. Implicit in this factor is the establishment of a cost recovery process that does not cost more to operate than MMS would collect and does not unduly increase the costs to be recovered. As noted in the above section on actual costs, MMS has determined that for the relief options proposed in this rulemaking, it would be inefficient to determine actual cost data on a case-by-case basis. Estimates based on MMS experience indicate that the cost of maintaining actual cost data on specific cases is unreasonably high where the amount potentially collectible is relatively small. This is principally because MMS's automated accounting system would have to be extensively reprogrammed to add a relatively few items of information. MMS has thus used cost estimates derived from collected data.

Because RSFA requires that any relief granted be in the best interests of the United States and the State concerned, MMS must perform sufficient review of the unique circumstances involving each individual marginal property for which relief is being requested. MMS believes the 40-hour actual cost estimate from factor (a) above anticipates an

efficient process that provides for the necessary technical review and State coordination functions. The procedures that MMS will use in processing the data would be based on standardized steps for similar MMS transactions in order to eliminate duplication and extraneous procedures. Therefore, MMS believes this would be the most efficient processing method. Accordingly, because this is an efficient processing method, MMS has made no adjustment to actual costs as a result of this factor.

Factor (d)—Cost Incurred for the Benefit of the General Public Interest. The cost incurred for the benefit of the general public interest (public benefit) means funds the United States expends in connection with the processing of a request to take marginal property relief under § 204.210(b), for studies and/or data collection determined to have value or utility to the United States or the general public separate and apart from the document processing. It is important to note that this definition addresses funds expended in connection with a request. There is another level of public benefit that includes studies which MMS is required, by statute or regulation, to perform regardless of whether a request is received. The costs of such studies are excluded from any cost recovery calculations from the outset. Therefore, no additional reduction from costs recovered is necessary in relation to these studies.

MMS analysts concluded that the processing of requests for relief included in this proposed rulemaking did not as a rule produce studies or data collection that might benefit the public to any appreciable degree. Therefore, any possible benefits of such studies to the public are balanced by their possible benefits to the applicant. Accordingly, MMS made no adjustment to the fee recovered based on this factor.

Factor (e)—Public Service Provided. Public service provided means tangible improvements or other direct benefits, such as increased royalty and prolonged production, and reduced administrative costs, with significant public value that are expected in connection with the granting of marginal property relief. Data collection that MMS needs to monitor marginal property relief granted or taken does not constitute a public service. The definition specifically notes that negative factors, such as an adverse impact on royalty or MMS's audit ability, may preclude considering an improvement as a public service and that data collection MMS needs to monitor a relief option does not constitute a public service. This definition distinguishes the factor of

“public service provided” (a benefit resulting from activities associated with the underlying relief) from the factor of “costs incurred for the benefit of the general public interest” (which relates to benefits of the document processing itself). MMS has determined that the relief options under this rule provide several public services.

First, for the “alternative valuation relief option” and “audit relief option,” MMS receives the benefit of reducing its costs by decreasing the total number of hours it must devote to auditing. MMS anticipates approving simpler valuation and audit methods under this rule. Therefore, MMS has determined that the Government would benefit under this factor to some extent.

Most audits of marginal properties performed by MMS or State auditors are conducted in conjunction with audits of larger producing leases that the lessee or designee reports and pays royalties on. MMS and State auditors do not spend significant resources on conducting audits of the marginal properties, instead concentrating the audit effort on the larger leases. Therefore, MMS has determined that the audit savings would be relatively minor along with the resulting public benefit. Because the following reasonableness factor already reduces the fee charged well below MMS's actual costs, MMS has not further reduced actual costs as a result of these minor audit savings.

Second, it is possible that the granting of marginal property relief may extend the life of a lease, and thereby extend the United States' receipt of royalties from those properties. As discussed below, that was one of Congress' goals when enacting RSFA. However, any increased receipts are purely speculative. Moreover, any such continued royalty payments from such a property would most likely be nominal, and thus outweighed by the costs of processing and auditing such payments. Therefore, MMS concluded that the benefit to the Government would be too remote and speculative to warrant any reduction in the fee charged.

Factor (f)—Other Factors. The final reasonableness factor is other factors relevant to determining the reasonableness of the costs. MMS examined the relief options to determine whether other factors warranted a reduction in the proposed fee.

MMS's primary consideration under this factor was RSFA's purpose with respect to marginal properties. Congress enacted RSFA to “promote production,” RSFA section 7(a), by “encourag[ing] lessees to continue to produce and develop marginal properties.” S. Rep.

260, 104th Cong., 2d Sess. 20 (1996); H.R. 667, 104th Cong., 2d Sess. 20 (1996). 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.” H.R. 667, 104th Cong., 2d Sess. 20 (1996). However, RSFA also mandated that any relief should “reduce administrative costs, and increase net receipts to the United States and the States.” RSFA section 7(a). 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.” *Id.* at 20–21. Thus, as part of its FLPMA reasonableness analysis, MMS was required to consider 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.

The relief options proposed in this rulemaking were therefore reviewed by MMS personnel with expertise and program management responsibilities in the particular area of the transaction, who weighed the proposed processing fee against their knowledge of the value of similar transactions. In the case of the relief options proposed in this rulemaking, the MMS analysts concluded that the value of the rights was clearly so far below the expected processing cost that a fee set at actual costs would preclude lessees or their designees from seeking those relief options. In fact, at MMS's marginal property workshops, industry representatives indicated that significant processing fees would likely result in requests for relief not being submitted. Representatives of independent oil and gas producers stated that processing fees would likely discriminate against the small producers because larger oil and gas producers often sell properties that approach marginal status to the smaller producers. Thus, setting a fee at actual costs would frustrate Congress' stated purpose under RSFA to promote continued production and increase administrative efficiency because lessees and their designees would decline to request such relief. Accordingly, MMS placed the greatest weight on this factor when considering the reasonableness of charging actual costs. As a result, MMS has determined

that a processing cost of \$50 would meet the reasonableness factors of FLPMA for onshore leases and further Congressional intent to provide marginal property relief for requests under §§ 204.206, 204.207, and 204.208.

MMS invites specific comments concerning the proposed processing fees. MMS further requests input concerning the value to marginal property lessees and designees of the relief options under §§ 204.206, 204.207, and 204.208 of this subpart.

Paragraph (b)(3) would require you to remit a processing fee in the amount of \$50 for each request for marginal property relief. If you file a single request for multiple marginal properties as provided in paragraph (b)(2), your processing fee is \$50 for the entire request. Thus, under the example in paragraph (b)(2) of this section, for the single request filed to request the "alternate valuation relief option" for both properties "A" and "B", you must remit a total of \$50.

Paragraph (b)(3)(i) would explain that if you do not remit the processing fee with your request for relief, MMS will return your request for relief unprocessed. If MMS returns your request unprocessed it is not considered an appealable denial of your request.

Paragraph (b)(3)(ii) would explain that if you remit a partial processing fee, your request for relief will not be processed until you pay the processing fee in full. Thus, under the example in paragraph (b)(3) of this section, if you remit \$30 with your request for both properties "A" and "B", rather than the \$50 required under that section, MMS will not process your request until you remit the additional \$20. This paragraph would also provide that MMS will notify you in writing that your processing fee is insufficient. You would have 30 days from your receipt of MMS's notice to remit the balance. If you did not remit the balance within the 30-day period, MMS would return your request for relief unprocessed. If MMS returned your request unprocessed, it would not be considered an appealable denial of your request.

Paragraph (b)(3)(iii) would provide that processing fees, including partial processing fees, are not refundable for any reason. Accordingly, under the example in paragraph (b)(3)(ii), if you did not remit the additional \$20 within the 30-day period, MMS would not refund the \$30 partial payment you remitted.

Paragraph (b)(3)(iv) would refer you to MMS's Marginal Property Guidelines for additional instructions on submitting processing fees.

Paragraph (c) would provide that you must submit notifications, requests, or processing fees required under this section to the address specified in MMS's Marginal Properties Guidelines.

Section 204.211 What Will MMS Do When It Receives My Request for Accounting and Auditing Relief?

The section would explain that when MMS receives your request for accounting and auditing relief under § 204.210(b), it will notify you as follows:

Paragraph (a) would provide that if your request for relief is complete, MMS and the State may either approve, deny, or modify your request. MMS would notify you of the decision in writing under § 204.215 of this subpart.

Paragraph (b) would provide that if your request for relief is not complete, MMS would notify you in writing that your request is incomplete and identify any missing information. You would have to submit the missing information within 30 days of your receipt of MMS's notice that your request is incomplete.

Under paragraph (1), if you submit the missing information within 30 days of MMS's notification, MMS and the State could either approve, deny, or modify your request for relief under § 204.213 of this subpart.

Under paragraph (2), if you do not submit the missing information within 30 days, MMS would return your request for relief as incomplete. If MMS returns your request because it is incomplete, MMS would not return any processing fee you submitted with your request. You could submit a new request for relief under this subpart, including another processing fee, at any time following MMS return of your incomplete request. If MMS returns your request unprocessed, it would not be considered an appealable denial of your request.

Section 204.212 Who Will Decide Whether To Approve, Deny, or Modify My Request for Accounting and Auditing Relief?

Because RSFA requires MMS to determine whether to approve relief for marginal properties jointly with a State concerned, the section would explain who will decide your request for relief depending on whether there is a State concerned.

Paragraph (a) would provide that if there is not a State concerned for your marginal property, only MMS would decide whether to approve, deny, or modify your relief request.

Paragraph (b) would provide that if there is a State concerned for your marginal property, the highest State

official having ultimate authority over the collection of royalties or the State official to whom that authority has been delegated would have to jointly determine with MMS whether to approve, deny, or modify your relief request. Also, the State would be required to provide MMS with the identity of the State official with this authority.

Paragraph (c) would provide that MMS will not approve your request to use an alternate valuation method until the Assistant Secretary for Land and Minerals Management approves the request.

Section 204.213 How Will MMS and the State Jointly Determine Whether To Approve, Deny, or Modify My Request for Accounting and Auditing Relief?

This section would explain the process MMS and the State will use to jointly decide whether to approve, deny, or modify your request for relief under § 204.210(b).

If a State determines in advance that it may grant one or more of your relief options under this subpart:

Paragraph (a) would provide that MMS will preliminarily determine whether to approve, deny, or modify your relief request and send its preliminary determination to the State. RSFA provides that the State must consent to accounting and auditing relief granted under section 117(c) of FOGPMA. Thus, RSFA requires the involvement of the State in the approval process for a marginal property relief alternative under this subpart. Accordingly, MMS proposes that after its preliminary approval, denial, or modification(s) of a relief request, it would forward the request and its preliminary determination to the appropriate State for concurrence;

Paragraph (b) would provide that after the State receives MMS's preliminary determination, it must notify MMS in writing within 30 days, or such longer period as MMS may allow, of its recommendation to approve, deny, or modify your relief request under § 204.210(b);

Under paragraph (1), if the State approved your relief request:

(i) MMS would approve your relief request if its preliminary determination was to approve your request;

(ii) MMS could either approve or deny your relief request if its preliminary determination was to deny your request. This would give MMS the flexibility to revise its preliminary determination to deny your request if, after consultation with the State, it agreed with the State that your request should be approved;

Under paragraph (2), if the State denied your relief request, then MMS would deny your relief request because RSFA provides that States must consent to any relief;

Under paragraph (3), if the State approved MMS's modification(s) to your relief request, MMS would modify your relief request;

Under paragraph (4), if the State denied MMS's modification(s) to your relief request, MMS would deny your relief request, because RSFA provides that States must consent to any relief;

Under paragraph (5), if the State modified your relief request, MMS would consider the modification(s) and would:

(i) Modify your request if it approves the State's modification(s); or

(ii) Deny your request if it disagrees with the State's modification(s);

Paragraph (c) would provide that if the State does not notify MMS of its decision within the time period allowed under paragraph (b) of this section, then the State would be deemed to have agreed with MMS's preliminary determination. Because MMS could allow States additional time to decide whether to approve, deny, or modify your request under paragraph (b) of this section, MMS believes that this provision is reasonable and necessary in order to assure timely processing of requests.

Section 204.214 May a State Decide in Advance That It Will Not Allow Certain Relief Options Under This Subpart?

Paragraph (a) would provide that a State may decide in advance that it will not allow any one or more of the relief options specified in this subpart. MMS proposes to allow States to deny some or all of the relief options under this subpart in advance because RSFA provides that States must consent to any relief requested. MMS is also allowing States to deny relief in advance because some State government organizations who participated in the meetings of October 31, 1996, and January 23, 1997, regarding this proposed rule expressed concerns about granting relief for marginal properties. Finally, MMS believes this is the most efficient means to prevent you from submitting requests, and MMS and the State from processing requests, which States will automatically deny.

If a State decides it wants to deny relief in advance, the highest State official having royalty collection authority would be required to:

(1) Notify MMS in writing no later than 90 days prior to the beginning of the applicable calendar year of the State's intent to disallow one or more of

the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will not allow.

Paragraph (b) would provide that a State that had previously decided to not allow some or all relief under this subpart, may later allow such relief. The State would have to:

(1) Notify MMS in writing no later than 90 days prior to the beginning of the applicable calendar year of its intent to allow one or more of the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow.

Paragraph (c) would provide that MMS would publish the State's notice of intent to disallow or to allow certain relief options under this section in the **Federal Register** no later than 60 days prior to the beginning of the applicable calendar year. This would notify lessees or their designees whether or not they should submit the notices or requests required under § 204.210 for relief the State has denied in advance.

Section 204.215 How Will MMS Notify Me of the Decision To Approve, Deny, or Modify My Request for Accounting and Auditing Relief?

This section would explain that MMS will notify you in writing of the decision on your request for accounting and auditing relief under § 204.210(b).

Under paragraph (a), if MMS and the State approve your request for relief, MMS would notify you of the effective date of your accounting or auditing relief and other specifics of the relief approved.

Under paragraph (b), if MMS and the State deny your relief request, MMS would state the reasons for denial in its notice informing you of its decision and explain your appeal rights under § 204.6.

Under paragraph (c), if MMS and the State modify your relief request, you would have 30 days from your receipt of MMS's modification notice to either accept or reject any modification(s) in writing. If you reject the modification(s) or fail to respond to MMS's notice, MMS and the State would deny your relief request. MMS would state the reasons for denial in its notice informing you of its decision and explain your appeal rights under § 204.6.

Section 204.216 What Other Guidance Is Available for Accounting and Auditing Relief Obtained Under This Subpart?

This section would explain that MMS will provide additional guidance for accounting and auditing relief in MMS's Marginal Property Guidelines. MMS anticipates using these Marginal Property Guidelines to provide detailed reporting instructions, such as unique adjustment reason codes and transaction codes, for marginal property reporting on Form MMS-2014. The Marginal Property Guidelines would also provide addresses for submitting notifications, requests, processing fees, reports, and payments for marginal properties.

Section 204.217 What If My Property Ceases To Qualify for Relief Obtained Under This Subpart?

This section would explain what happens if your property no longer qualifies for relief under this subpart because your production increased during the base period.

Paragraph (a) would provide that you must qualify for relief under this subpart for each calendar year based on production during the base period. The notice or request you provided to MMS under § 204.210 for the first calendar year that you qualified for relief will remain effective for successive calendar years if you continue to qualify. For example, if you qualified for relief beginning in calendar year 2000, and if you continue to qualify in calendar year 2001, based on the period from October 1, 1999, through September 30, 2000, you need not submit a new notice or request for calendar year 2001.

Paragraph (b) would provide that if you find you are no longer eligible for relief because your production increased in the most recent base period, your relief terminates as of December 31 of that calendar year. By December 31, you would have to notify MMS in writing at the address provided in MMS's Marginal Property Guidelines that your relief has terminated. For example, if you qualified for relief beginning in calendar year 2000, but no longer continue to qualify in calendar year 2001 because your production increased during the base period, you must notify MMS by December 31, 2000, that your relief has terminated.

Paragraph (c) would provide that MMS may retroactively rescind your relief, if MMS determines that your lease was not eligible for the relief you obtained under this subpart because:

- (1) You did not submit a notice or request for relief under § 204.210;
- (2) You submitted erroneous information in the notice or request for

relief you provided to MMS under § 204.210 or in your royalty or production reports; or

(3) Your property is no longer eligible for relief because production increased, but you failed to provide the notice required under paragraph (b) of this section.

Paragraph (d) would provide that you may owe additional royalties and will owe late payment interest determined under part 218 of this title from the date your payment was due until the date MMS receives it.

Section 204.218 May I Obtain Accounting and Auditing Relief for a Marginal Property That Benefits From Other Federal or State Incentive Programs?

This section would provide that you may obtain accounting and auditing relief for your marginal property under this subpart even if the property benefits from other Federal or State production incentive programs. There is no evidence in RSFA or the legislative history that Congress intended for the marginal property relief provisions of FOGRMA section 117(c) to subrogate other relief programs.

III. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this proposed rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule implements the alternatives for marginal properties as required under sections 117(a) and 117(c) of the Federal Oil and Gas Royalty Management Act of 1982, as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

This proposed rule provides significant potential savings to all Federal oil and gas lessees and designees, regardless of size, by providing optional accounting and auditing relief. If a small entity does not wish to avail itself of the optional relief, it will incur no expense or burden under the proposed rule. If a small entity does seek to avail itself of accounting or auditing relief provided for in the proposed rule, it will incur nominal expenses. The benefit that would be obtained by the small entity would outweigh these nominal expenses. The analysis of both savings and expenses is provided in the Paperwork Reduction Act section below.

Small entities are encouraged to comment on this proposed rule.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of \$100 million or more in any given year on local, Tribal, or State governments, or the private sector. MMS has determined that first year impacts to all States under this proposed rule would be \$52,600 with subsequent year impacts of \$2,800 per year. MMS anticipates that these impacts will be at least partially offset by administrative savings and/or increased revenues realized by the relief granted under this proposed rule.

Executive Order 12630

The Department certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights."

Executive Order 12988

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of this Executive Order.

Executive Order 12866

The Office of Management and Budget has determined this proposed rule is not a significant rule under this Executive Order 12866. The Department's analysis indicates this proposed regulation will result in a net benefit for industry, the Federal government, and the State and local royalty recipients through reduced administrative burden and enhanced revenues.

Paperwork Reduction Act

This proposed rule contains new information collection requirements and revises information collection requirements that are approved by the Office of Management and Budget (OMB) for Form MMS-2014 (OMB Control Number 1010-0022). Therefore, we have submitted information collection requests to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs,

OMB, Attention Desk Officer for the Department of the Interior (OMB Control Number 1010-NEW), Washington, D.C. 20503. Send copies of your comments to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado, 80225-0165; courier address is Building 85, Denver Federal Center, Denver, Colorado 80225; e-Mail address is RMP.comments@mms.gov. We will consider all comments received during the comment period for this notice of proposed rulemaking.

OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

RSFA requires that MMS provide accounting and auditing relief for marginal properties on a case-by-case basis when in the best interests of the Federal Government and the State concerned.

We require that a lessee or designee submit either a notification or a request to obtain marginal property relief. This will allow us to determine what relief is being taken or is being sought.

Notifications or requests are only required of lessees or designees who wish to obtain accounting or auditing relief under RSFA. Therefore, your submission is strictly voluntary. RSFA provides that both MMS and the State concerned must consent to the relief before it can be taken.

Industry applicants, the States concerned, and the Federal Government will have information collection costs. An applicant must submit its company name, address, phone number, contact name, MMS-assigned Payor Code Number, Accounting Identification Number for the marginal property, and a detailed description of the specific accounting or auditing relief sought. In addition, depending on the relief sought, the lessee or designee must provide the single selling arrangement it will report royalties under or the new reporting frequency. The information is readily available to the lessee or designee taking the specific relief option being sought.

We anticipate that applicants may file as many as 10,500 notifications under § 204.210(a) and 143 requests under § 204.210(b) in the first year of implementation. We estimate that each request on average may contain about

five qualifying marginal properties. Because the relief for a marginal property is for the life of the property, as long as the property remains marginal, a lessee or designee need only file an application one time. Thereafter, we expect approximately 1,050 notifications and 14 requests filed each year. Each notification is expected to take approximately one-half hour to complete, and each request is expected to take 4 hours to complete.

We determined that the burden hour estimate to industry in the first year for preparing and filing the marginal property applications is 5,822 burden hours (10,500 notifications \times $\frac{1}{2}$ hour per notification) + (143 requests \times 4 hours per request). Using an estimate of \$50 per hour for industry cost, we estimate the cost burden is \$291,100 (5,822 burden hours \times \$50 per hour). This burden is offset by 514,000 fewer royalty lines of information per year that are no longer required. We project that the total hour burden reduction for manual and electronic reporting is 25,700 hours, resulting in an estimated dollar savings to industry of \$1,285,000 (25,700 hours \times \$50 per hour). In subsequent years, the annual burden hour estimate is 581 burden hours ((1,050 notifications \times $\frac{1}{2}$ hour per notification) + (14 requests \times 4 hours per request), and the annual cost burden estimate is \$29,050 (581 burden hours \times \$50 per hour). This annual cost burden is offset by \$1,285,000. This is the dollar amount in cost savings to industry associated with a reduction of 514,000 fewer royalty lines of data that are no longer required.

In addition, lessees and designees must submit a processing fee of \$50 per request for marginal property relief. This fee is required under the Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701. The fee is not required for notifications because the cost of collection of the fee is a significant portion of the total costs of processing. Therefore, the additional cost burden to industry is \$7,150 (\$50 fee \times 143 requests) in the first year and \$700 (\$50 fee \times 14 requests) for subsequent years.

We determined that the burden hour estimate to the Federal Government in the first year, for processing, input, review, approval, and handling is 5,720 burden hours (143 requests \times 40 hours per request). Using an estimate of \$50 per hour for direct labor cost, we estimate the cost burden is \$286,000 (5,720 burden hours \times \$50 per hour). This burden is partially offset by \$7,150 (\$50 fee \times 143 requests) in processing

fee collections. In addition, we estimate that annually 514,000 fewer lines of royalty information will be processed for an administrative savings of \$303,260 (514,000 \times \$.59 per line). In subsequent years, the annual burden hour estimate is 560 burden hours (14 requests \times 40 hours per request). The annual cost burden estimate is \$28,000 (560 burden hours \times \$50 per hour). This burden is offset by \$700 (\$50 fee \times 14 requests) in processing fees and \$303,260 in administrative savings from processing fewer royalty lines.

The State concerned will also have information collection and processing costs. We estimate that the first year burden is 1,052 hours. RSFA requires State approval for all marginal property relief granted under RSFA. Therefore, State burden is unavoidable. First year burden hour estimates for review and development of a State-blanket acceptance policy for the three notification-based relief options under § 204.210 (a) is 40 hours per relief option \times 3 relief options \times 4 primary States = 480 hours. In addition, first year burden hour estimates for property-by-property review and determination for the three request-based relief options is 4 hours per individual property relief request \times 143 first year requests = 572 hours. We anticipate that the State's review is significantly more limited than MMS's review of each request and that, in most cases, the State will rely on the review effort and recommendation by MMS. Therefore, the total estimate for first year State burden is 480 hours + 572 hours = 1,052 hours \times \$50 cost per hour = \$52,600.

We estimate that the combined annual burden to all States is 56 hours after the first year. The burden to the States for the review and development of a State-blanket acceptance policy for the three notification-based relief options is a one-time effort accomplished during the first year. Subsequent year burden hours for property-by-property review and determination for the three request-based relief options is estimated at no more than 10 percent of the first year's request level. Relief approval for a property is granted for as long as the property qualifies as marginal. By nature, production from a marginal property will tend to decline over time. Therefore, most marginal properties will continue to qualify as marginal. We estimate an additional 10 percent of requests for subsequent years based on newly-qualifying marginal properties—properties which previously qualified but for which no relief had been sought and resubmitted requests which had been previously denied. Therefore, the subsequent years' burden to the States is

estimated as 4 hours per individual property relief request \times 14 annual requests \times \$50 per hour = \$2,800.

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA) of 1995, we are providing notice and consulting with members of the public and affected agencies to solicit comment to (a) evaluate whether this expanded collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this proposed rule, call 1-888-734-3247.

National Environmental Policy Act of 1969

We have determined that this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 204

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: January 6, 1999.

Sylvia V. Baca,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, MMS proposes to add part

204 to title 30 of the Code of Federal Regulations, as follows:

PART 204—ALTERNATIVES FOR MARGINAL PROPERTIES

Subpart A—General Provisions

- Sec.
- 204.1 What is the purpose of this part?
- 204.2 Definitions.
- 204.3 What alternatives are available for marginal properties?
- 204.4 What is a marginal property under this part?
- 204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?
- 204.6 May I appeal if MMS denies my request for prepayment or accounting and auditing relief?

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

- 204.200 What is the purpose of this subpart?
- 204.201 Who may obtain accounting and auditing relief under this subpart?
- 204.202 What accounting and auditing relief options are available to me?
- 204.203 What is the cumulative royalty reports and payments relief option?
- 204.204 What is the net adjustment reporting relief option?
- 204.205 What is the rolled-up reporting relief option?
- 204.206 What is the alternate valuation relief option?
- 204.207 What is the audit relief option?
- 204.208 What is the other relief option?
- 204.209 What accounting and auditing relief will MMS not allow?
- 204.210 How do I obtain accounting and auditing relief?
- 204.211 What will MMS do when it receives my request for accounting and auditing relief?
- 204.212 Who will decide whether to approve, deny, or modify my request for accounting and auditing relief?
- 204.213 How will MMS and the State jointly determine whether to approve, deny, or modify my request for accounting and auditing relief?

- 204.214 May a State decide in advance that it will not allow certain relief options under this subpart?
- 204.215 How will MMS notify me of the decision to approve, deny, or modify my request for accounting and auditing relief?
- 204.216 What other guidance is available for accounting and auditing relief obtained under this subpart?
- 204.217 What if my property ceases to qualify for relief obtained under this subpart?
- 204.218 May I obtain accounting and auditing relief for a marginal property that benefits from other Federal or State incentive programs?

Authority: 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*, 1721 *et seq.*, 1726 *et seq.*; 31 U.S.C. 9701 *et seq.*; 43 U.S.C. 1701 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart A—General Provisions

§ 204.1 What is the purpose of this part?

This part explains how a lessee or its designee of a Federal onshore or Outer Continental Shelf (OCS) oil and gas lease may obtain prepayment or accounting and auditing relief for certain marginal properties.

§ 204.2 Definitions.

Agreement means a federally approved communitization agreement or unit participating area.

Barrels of oil equivalents means the combined equivalent production of oil and gas stated in barrels of oil. Each barrel of oil production is equal to one barrel of oil equivalents. Also, each six thousand cubic feet of gas production is equal to one barrel of oil equivalents.

Base period means the 12-month period from October 1 through September 30 immediately preceding the calendar year in which you take or request marginal property relief.

Combined equivalent production means the total of all oil and gas production for the marginal property, stated in barrels of oil equivalents.

Designee means the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

Producing wells means only those producing oil or gas wells that contribute to the sum of barrels of oil equivalents used in the calculation under § 204.4(c). Producing wells do not include injection and water wells.

State concerned (State) means the State which receives a statutorily prescribed portion of the royalties from a Federal onshore or OCS lease.

§ 204.3 What alternatives are available for marginal properties?

If you have production from a marginal property you may:

(a) *Prepay royalty.* MMS and the State may allow you to make a lump-sum advance payment of royalties instead of monthly royalty payments for the remainder of the lease term.

(b) *Take accounting and auditing relief.* MMS and the State may allow various accounting and auditing relief options to encourage you to continue to produce and develop your marginal property. See subpart C for accounting and auditing relief requirements.

§ 204.4 What is a marginal property under this part?

To qualify as a marginal property eligible for royalty prepayment or accounting and auditing relief under this part, your property must meet the following requirements:

(a) Production must be from, or attributable to, a Federal onshore or OCS lease. Indian leases are not eligible for the marginal property alternatives under this part, even though production from a qualifying marginal property may be attributable to an Indian lease. You must also meet the criteria shown in the following table:

If your lease is . . .	Then . . .	And . . .
(1) Not in an Agreement	The entire lease must qualify as a marginal property under paragraph (b) of this section.	
(2) Entirely or partly in one Agreement	The entire Agreement must qualify as a marginal property under paragraph (b) of this section.	Agreement production allocable to your lease may be eligible for relief under this part. Any production from your lease that is not in the Agreement also separately may be eligible for relief under (a)(4) of this table.
(3) Entirely or partly in more than one Agreement.	Each Agreement must qualify separately as a marginal property under paragraph (b) of this section.	Only the qualifying Agreement's production allocable to your lease may be eligible for separate relief under this part.
(4) Partly in an Agreement and you have production from the part of the lease that is not in the Agreement.	The part of the lease that is not in the Agreement must qualify separately as a marginal property under paragraph (b) of this section.	

(b) To qualify as a marginal property for a calendar year, the combined equivalent production of the property during the base period must equal an average daily well production of less than 15 barrels of oil equivalents per well per day calculated under paragraph (c) of this section.

(c) To determine the average daily well production on or attributable to your property, divide the sum of the barrels of oil equivalents for all producing wells on the property by the sum of the number of days each of those wells actually produced during the base period. If your property is in an Agreement, your calculation under this section must include all wells included in the Agreement, even if they are not on a Federal onshore or OCS lease.

§ 204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?

(a) MMS and the State may allow royalty prepayment or accounting and auditing relief for your marginal property under this part if MMS and the State jointly determine that the prepayment or relief is in the best interests of the Federal Government and the State to:

- (1) Promote production;
- (2) Reduce the administrative costs of MMS and the State; and
- (3) Increase net receipts to the Federal Government and the State.

(b) MMS and the State may discontinue to allow any royalty prepayment or accounting and auditing relief options granted for your marginal property if MMS and the State jointly determine that the prepayment or relief

option is no longer in the best interests of the Federal Government and the State under the standards in paragraph (a) of this section.

§ 204.6 May I appeal if MMS denies my request for prepayment or accounting and auditing relief?

(a) If MMS denies your request for prepayment or accounting and auditing relief under this part because the State denied your request, MMS's decision is the final decision for the Department of the Interior and is not subject to administrative appeal.

(b) You may appeal any other MMS action on your request under 30 CFR parts 243 or 290.

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

§ 204.200 What is the purpose of this subpart?

This subpart explains how a lessee or its designee may obtain accounting and auditing relief for production from a marginal property.

§ 204.201 Who may obtain accounting and auditing relief under this subpart?

You may obtain accounting and auditing relief under this subpart:

- (a) If you are a lessee or its designee for a Federal lease with production from a property that qualifies as a marginal property under § 204.4;
- (b) If you meet any additional requirements for specific types of relief under this subpart; and

(c) Only for your fractional interest in the marginal property.

§ 204.202 What accounting and auditing relief options are available to me?

The following table shows the six relief options that you may take for properties that qualify as marginal under § 202.4 and tells you where in this subpart you can obtain more information:

For . . .	See . . .
Cumulative royalty reports and payments relief	§ 204.203
Net adjustment reporting relief ...	204.204
Rolled-up reporting relief	204.205
Alternate valuation relief	204.206
Audit relief	204.207
Other relief	204.208

§ 204.203 What is the cumulative royalty reports and payments relief option?

Under this relief option, you may submit royalty reports and payments less frequently than monthly.

(a) To determine whether your marginal property is eligible for relief under this relief option, you must:

- (1) Multiply the current royalty rate for each Federal lease (your leases as well as others' leases) in the marginal property by the combined equivalent production of oil and gas from or allocable to that lease during the base period;
- (2) Total the volumes calculated under paragraph (a)(1) of this section; and
- (3) Report your royalties as shown in the following table:

If the total volume calculated for the marginal property under paragraph (a)(2) of this section is	Then you may report and pay royalties for your lease
(i) 125 or fewer barrels of oil equivalents	Annually, semi-annually, or quarterly.
(ii) More than 125, but not more than 250 barrels of oil equivalents	Semi-annually or quarterly.
(iii) More than 250, but not more than 500 barrels of oil equivalents	Quarterly.

(b) You must notify MMS under § 204.210(a) before taking relief under this option. You are not required to remit a processing fee for this option.

(c) You must:

(1) Submit your royalty report and payment in accordance with § 218.51(g) of this chapter by the end of the month following the end of the applicable quarterly, semi-annual, or annual reporting period;

(2) Report one line of cumulative royalty information on the Report of Sales and Royalty Remittance, Form MMS-2014, for the reporting period, the same as if it were a monthly report; and

(3) Use the last sales month of the reporting period to report the royalty information for the entire period.

(d) If you do not pay your royalty by the date due in paragraph (c)(1) of this section, you will owe late payment interest determined under part 218 of this chapter from the date your payment was due under this section until the date MMS receives it.

(e) If you qualify for relief under paragraph (a) of this section, but you take more relief than you are entitled to under that paragraph, you will owe late payment interest determined under part 218 of this title from the date your payment was due under this section until the date MMS receives it. You

must also amend your Form MMS-2014 to reflect the allowable reporting frequency.

(f) You must report allowances on Form MMS-2014 on the same quarterly, semi-annual, or annual basis as the royalties for your marginal property.

(g) Under this relief option:

- (1) Quarterly reporting periods begin on the first day of January, April, July, or October;
- (2) Semi-annual reporting periods begin on the first day of January or July; and
- (3) Annual reporting periods begin on the first day of January.

(h) See MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

§ 204.204 What is the net adjustment reporting relief option?

Under this relief option, you may adjust previously reported royalty lines to MMS as a one-line net entry on Form MMS-2014, instead of the two-line adjustment process.

(a) To determine your eligibility for relief under this option, you must:

(1) First, multiply the current royalty rate for each Federal lease (your leases as well as others' leases) in the marginal property by the combined equivalent production of oil and gas from or attributable to that lease during the base period;

(2) Total the volumes that you calculated under paragraph (a)(1) of this section;

(3) If the total volume calculated under paragraph (a)(2) of this section is less than or equal to 2,500 barrels of oil equivalents, then your property is eligible for relief under this option.

(b) You must notify MMS under § 204.210(a) before taking relief under this option. You are not required to remit a processing fee for this option.

(c) You may not net your adjustments for royalties due with adjustments for allowances on Form MMS-2014.

(1) You must report your adjustment to a previously reported royalty due line as a one-line net entry; and

(2) You must report any corresponding adjustment to your previously reported allowance line as a separate one-line net entry.

(d) See MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

§ 204.205 What is the rolled-up reporting relief option?

Under this relief option, you may report all selling arrangements for a revenue source to MMS under a single selling arrangement on Form MMS-2014.

(a) To determine your eligibility for relief under this option, you must:

(1) First, multiply the current royalty rate for each Federal lease (your leases as well as others' leases) in the marginal property by the combined equivalent production of oil and gas from or attributable to that lease during the base period;

(2) Total the volumes that you calculated under paragraph (a)(1) of this section;

(3) If the total volume calculated under paragraph (a)(2) of this section is less than or equal to 1,000 barrels of oil equivalents, then your property is eligible for relief under this option.

(b) You must notify MMS under § 204.210(a) before taking relief under this option. You are not required to remit a processing fee for this option.

(c) See MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

§ 204.206 What is the alternate valuation relief option?

Under this relief option, you may request to report and pay royalties using a valuation method other than that required under part 206 of this chapter.

(a) Any alternate valuation method that you propose:

(1) Must be readily determinable and certain; and

(2) Must approximate royalties payable under the valuation regulations in part 206 of this chapter.

(b) You must obtain approval from MMS and the State under § 204.210(b) before taking alternate valuation relief. You must also submit a processing fee under § 204.210(b)(3).

(c) If MMS and the State approve your request, the valuation method you requested will be the value for royalty purposes for production from or attributable to your lease interest in the marginal property.

(d) See MMS's Marginal Property Guidelines for reporting instructions for this relief option.

§ 204.207 What is the audit relief option?

Under this relief option, you may request a reduced royalty audit burden. However, MMS will not consider any request that eliminates MMS's or the State's right to audit.

(a) Audit relief may include:

(1) Audits of limited scope, including audits based on a statistical sampling of leases;

(2) Coordinated royalty and severance tax audits;

(3) Reliance by MMS on independent certified audits; and

(4) Any other audit relief that may be appropriate.

(b) You must obtain approval from MMS and the State under § 204.210(b) before receiving audit relief. You must also submit a processing fee under § 204.210(b)(3).

(c) See MMS's Marginal Property Guidelines for reporting instructions for this relief option.

§ 204.208 What is the other relief option?

Under this relief option, you may request any type of accounting and auditing relief that is appropriate for your marginal property, provided it is not specifically prohibited under § 204.209.

(a) You must obtain approval from MMS and the State under § 204.210(b)

before taking relief under this option. You must also submit a processing fee under § 204.210(b)(3).

(b) See MMS's Marginal Property Guidelines for reporting instructions for this relief option.

§ 204.209 What accounting and auditing relief will MMS not allow?

MMS will not approve your request for accounting and auditing relief under this subpart if your request:

(a) Prohibits MMS or the State from conducting any form of audit;

(b) Permanently relieves you from making future royalty reports or payments;

(c) Provides for less frequent royalty reports and payments than annually;

(d) Provides for you to submit royalty reports and payments at separate times;

(e) Impairs MMS's ability to properly or efficiently account for or distribute royalties;

(f) Requests relief for a lease under which the Federal Government takes its royalties in-kind;

(g) Alters production reporting requirements;

(h) Alters lease operation or safety requirements;

(i) Conflicts with rent, minimum royalty, or lease requirements; or

(j) Requests relief for a marginal property located in a State that has determined in advance that it will not allow such relief under § 204.214.

§ 204.210 How do I obtain accounting and auditing relief?

(a) To take accounting relief under §§ 204.203, 204.204, and 204.205, you must notify MMS in writing before the first day of the sales month for which you begin taking your relief.

(1) Your notification must contain:

(i) Your company name, MMS-assigned Payor Code, address, phone number, and contact name;

(ii) The specific Accounting Identification Number(s) (MMS lease number and revenue source);

(iii) The specific relief option under §§ 204.203, 204.204, and 204.205 that you are taking;

(iv) The first sales month that your relief is effective for;

(v) The frequency of your cumulative reports and payments if you are taking relief under § 204.203; and

(vi) The single selling arrangement you will use to report royalties and allowances for your marginal property if you are taking relief under § 204.205.

(2) You may file a single notification for multiple marginal properties if you are taking the same relief with the same effective date for all the properties.

(3) You do not need to remit a processing fee with your notification.

(b) To obtain accounting or auditing relief under §§ 204.206, 204.207, and 204.208, you must file a written request for relief with MMS.

(1) Your request must contain:

(i) Your company name, MMS-assigned Payor Code, address, phone number, and contact name;

(ii) The specific Accounting Identification Number(s) (MMS lease number and Revenue Source); and

(iii) A complete and detailed description of the specific accounting or auditing relief you seek under §§ 204.206, 204.207, and 204.208.

(2) You may file a single request for multiple marginal properties if you are requesting the same relief for all properties.

(3) You must remit a processing fee in the amount of \$50 for each request for marginal property relief under §§ 204.206, 204.207, and 204.208. If you file a single request for multiple marginal properties as provided in paragraph (b)(2) of this section, your processing fee is \$50 for the entire request.

(i) If you do not remit the processing fee with your request for relief, MMS will return your request for relief unprocessed.

(ii) If you remit a partial processing fee, your request for relief will not be processed until you pay the processing fee in full. MMS will notify you in writing that your processing fee is insufficient. You will have 30 days to remit the balance. If you do not remit the balance within the 30-day period, MMS will return your request for relief unprocessed.

(iii) Processing fees, including partial processing fees, are not refundable for any reason.

(iv) See MMS's Marginal Property Guidelines for additional instructions on submitting processing fees.

(c) You must submit notifications, requests, or processing fees required under this section to the address specified in MMS's Marginal Properties Guidelines.

§ 204.211 What will MMS do when it receives my request for accounting and auditing relief?

When MMS receives your request for accounting and auditing relief under § 204.210(b), it will notify you as follows:

(a) If your request for relief is complete, MMS and the State may either approve, deny, or modify your request in writing.

(b) If your request for relief is not complete, MMS will notify you in writing that your request is incomplete and identify any missing information.

You must submit the missing information within 30 days of your receipt of MMS's notice that your request is incomplete.

(1) If you submit all required information, MMS and the State may approve, deny, or modify your request for relief;

(2) If you do not submit the missing information within 30 days, MMS will return your request for relief as incomplete.

(i) If MMS returns your request because it is incomplete, MMS will not return any processing fee you submitted with your request.

(ii) You may submit a new request for relief under this subpart at any time after MMS returns your incomplete request. You must also submit another processing fee.

§ 204.212 Who will decide whether to approve, deny, or modify my request for accounting and auditing relief?

(a) If there is not a State concerned for your marginal property, only MMS will decide whether to approve, deny, or modify your relief request.

(b) If there is a State concerned for your marginal property, the highest State official having ultimate authority over the collection of royalties or the State official to whom that authority has been delegated must jointly determine with MMS whether to approve, deny, or modify your relief request. States must submit the following minimum information to MMS in writing within 30 days of the effective date of this rule:

(1) The name and title of the State official authorized to jointly determine with MMS whether to approve, deny, or modify relief requests; and

(2) The name, address, and telephone number of the State contact for processing relief requests.

(c) MMS will not approve your request to use an alternate valuation method until the Assistant Secretary for Land and Minerals Management approves the request.

§ 204.213 How will MMS and the State jointly determine whether to approve, deny, or modify my request for accounting and auditing relief?

If a State determines in advance that it may grant one or more of the relief options under this subpart:

(a) MMS will preliminarily determine whether to approve, deny, or modify your relief request and send its preliminary determination to the State;

(b) After the State receives MMS's preliminary determination, it must notify MMS in writing within 30 days, or such longer period as MMS may allow, of its recommendation to

approve, deny, or modify your relief request.

(1) If the State approves your relief request:

(i) MMS will approve your relief request if MMS's preliminary determination was to approve your request;

(ii) MMS may either approve or deny your relief request if MMS's preliminary determination was to deny your request.

(2) If the State denies your relief request, then MMS will deny your relief request.

(3) If the State approves MMS's modification(s) to your relief request, MMS will modify your relief request.

(4) If the State denies MMS's modification(s) to your relief request, MMS will deny your relief request.

(5) If the State modifies your relief request, MMS will consider the modification(s) and will either:

(i) Modify your request if it approves the State's modification(s); or

(ii) Deny your request if it denies the State's modification(s).

(c) If the State does not notify MMS of its decision within the time period allowed under paragraph (b) of this section, then the State is deemed to have agreed with MMS's preliminary determination.

§ 204.214 May a State decide in advance that it will not allow certain relief options under this subpart?

(a) A State may decide in advance that it will not allow some or all of the relief options specified in this subpart. If it so decides, the State must:

(1) Notify the Associate Director for Royalty Management, MMS, in writing, no later than 90 days before the beginning of the applicable calendar year, of its intent to disallow one or more of the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will not allow.

(b) If a State decides in advance under paragraph (a) of this section that it will not allow some or all of the relief options specified in this subpart, it may later decide that it will allow some or all of the relief options in this subpart. If it so decides, the State must:

(1) Notify the Associate Director for Royalty Management, MMS, in writing, no later than 90 days before the beginning of the applicable calendar year, of its intent to allow one or more of the relief options under § 204.202; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow.

(c) MMS will publish a notice of the State's intent to disallow or to allow

certain relief options under this section in the **Federal Register** no later than 60 days before the beginning of the applicable calendar year.

§ 204.215 How will MMS notify me of the decision to approve, deny, or modify my request for accounting and auditing relief?

MMS will notify you in writing of the decision on your request for accounting and auditing relief.

(a) If MMS and the State approve your request for relief, MMS will notify you of the effective date of your accounting or auditing relief and other specifics of the relief approved.

(b) If MMS and the State deny your relief request, MMS will notify you of the reasons for denial and your appeal rights under § 204.6.

(c) If MMS and the State modify your relief request, MMS will notify you of the modifications.

(1) You have 30 days from your receipt of MMS's notice to either accept or reject any modification(s) in writing.

(2) If you reject the modification(s) or fail to respond to MMS's notice, MMS and the State will deny your relief request. MMS will notify you in writing of the reasons for denial and your appeal rights under § 204.6.

§ 204.216 What other guidance is available for accounting and auditing relief obtained under this subpart?

MMS will provide additional guidance for accounting and auditing relief in MMS's Marginal Property Guidelines.

§ 204.217 What if my property ceases to qualify for relief obtained under this subpart?

(a) Your property must qualify for relief under this subpart for each calendar year based on production during the base period. The notice or request you provided to MMS under § 204.210 for the first calendar year that your property qualified for relief remains effective for successive calendar years if you continue to qualify.

(b) If you find your property is no longer eligible for relief because production increased in the most recent Base Period, the relief for your property terminates as of December 31 of that calendar year. By December 31, you must notify MMS in writing at the address provided in MMS's Marginal Property Guidelines that the relief for your property has terminated.

(c) MMS may retroactively rescind the relief for your property if MMS determines that your property was not

eligible for the relief obtained under this subpart because:

(1) You did not submit a notice or request for relief under § 204.210;

(2) You submitted erroneous information in the notice or request for relief you provided to MMS under § 204.210 or in your royalty or production reports; or

(3) Your property is no longer eligible for relief because production increased, but you failed to provide the notice required under paragraph (b) of this section.

(d) If you took relief under this subpart for a period for which you were not eligible, you may owe additional royalties and late payment interest determined under part 218 of this title from the date your payment was due until the date MMS receives it.

§ 204.218 May I obtain accounting and auditing relief for a marginal property that benefits from other Federal or State incentive programs?

You may obtain accounting and auditing relief for your marginal property under this subpart even if the property benefits from other Federal or State production incentive programs.

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