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November 6, 1997

Via Facsimile: (303) 231-3385
and First Class Mail

Mr. David S. Guzy, Chief
Rules & Publications Staff
Royalty Management Program
Minerals Management Service
Building 85, Denver Federal Center
Denver, Colorado 80225

Re: Designation of Payor Recordkeeping
Interim Final Rulemaking
(62 FR 42062, August 5, 1997)

Dear Mr. Guzy:

Marathon appreciates the opportunity to submit the enclosed comments on the MMS' recently proposed Interim Final Rulemaking on the Designation of Payor Recordkeeping.

This is an important and extremely burdensome Interim Final Rule which should be delayed until the Royalty Policy Committee has had a chance to review, evaluate, and make its recommendations on the issue to the MMS. At that point Marathon requests that a new regulation be proposed and opened up for public comment.

In addition to the comments provided herein, Marathon fully endorses the comments submitted by the Council of Petroleum Accountant's Societies (COPAS) and by Gardere & Wynne, L.L.P., representing industry companies who are lessees and designees.

If you have any questions please contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Dow L. Campbell'.

Dow L. Campbell

Enclosure

183708J

cc: The Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Desk Officer for the Department of the Interior
725 17th Street, N.W.
Washington, D.C. 20503

Marathon Oil Company
Comments on MMS Interim Final Rulemaking
Designation of Payor Recordkeeping
62 FR 42062 - August 5, 1997

Introduction

On August 13, 1996, Congress enacted the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA). RSFA amended portions of the Federal Oil and Gas Royalty Act of 1982 (FOGRMA) to provide that an owner of operating rights is primarily liable for royalty payments owed on its portion of its lease. This applies to Federal oil and gas leases onshore or on the Outer Continental Shelf. RSFA also states that the owners of the record titles for such leases are secondarily liable. Lessees which include both operating rights and record title holders would be allowed to designate another person (designee) to pay royalties on their behalf, provided written notice has been given to the Minerals Management Service (MMS). However, the RSFA states that the persons so designated are not liable for any payment obligations under such leases and the legal responsibility of payment would revert back to the lessee. In order to identify the designee, Dear Payor letters were sent in January. Marathon has voluntarily complied with these Dear Payor letters and has accordingly furnished to the MMS information of those lessees for whom Marathon pays royalty. This information will be entered into the MMS database system.

The interim final rulemaking's purpose is to make MMS' request for information, that has not been supplied in the database from lessees or payors, mandatory. It authorizes the collection of information from lessees and payors concerning designations by lessees of other persons to make royalty and other payments on their behalf.

Specific Comments

Marathon realizes the MMS has met with representatives from several oil and gas trade associations and it was agreed that, initially, the payor was in the best position to supply information to the MMS. This was concluded because many lessees would not be able to identify how they may have assigned royalty payment responsibility. As a result of these meetings, Dear Payor letters were mailed to the payors. Marathon complied with these initial requests and to our knowledge, the MMS has not responded. However, the interim final rulemaking of the MMS is going beyond these reasonable inquiries and is taxing the workload of the payor.

The administrative costs this interim final rule places on the industry are excessive. Marathon would face the same overwhelming costs that were incurred by other companies that have attempted to meet the spiraling demands for information.

In addition to the anticipated costs of complying with future demands, the interim rule would request information that would not always be available to payors. This could happen as a result of several things:

1. The purchaser (payor) would not have the information MMS requests if he is only paying the person he purchased from and that person is making further distributions to the other owners.
2. The working interest owner with a small ownership knows who is paying him his net revenue interest, but does not know who is paying the royalties. He, therefore, would not have a full scope of the information being requested.

3. Whether the payee is a working interest owner or lessee of record would not be known by many royalty payors. When this information, along with taxpayer identification numbers and addresses, is requested by the MMS, it would present a burdensome task to obtain it.
4. In the case of overriding royalty interests that would create farmouts, different situations could arise. The overriding royalty interest owner could have retained title to the lease, assigned title in the lease, or a combination of assignment and retainage could have been done. Unless the royalty payor has the ability to review lease records, the standing of an overriding royalty owner is unknown.

If any of the above information is still required, the accuracy of the data supplied would be questionable.

As stated previously, the maintenance of data is a serious concern of the payors. Because of the constantly changing nature of the data, a request for up-to-date information would become a constant burden. The interim rule leaves the option open for MMS to request more and more information from the payor and is one of the reasons Marathon is opposed to this ruling.

Specifically, Marathon recommends that the following changes be made to the indicated sections of the interim ruling:

Section 210.55 - Special Forms or Reports

Once again, this section allows the MMS to request unlimited information from the payor which may not be available. We have previously addressed the cost and burden this would place on the payor. We recommend this entire section be deleted.

Section 281.52 - How Does a Lessee Designate a Designee

(a)(1) - This should read "either the AID number of the Bureau of Land Management (BLM) number for the lease."

(a)(4)(i&ii) - The percentage of ownership requirement should be removed from this section because as stated before, the data changes too frequently to keep it accurate.

(a)(5) - The request for the TIN and phone numbers should be followed with the words, "if known".

(a)(6) - The words, "if known". should follow the phone number.

(a)(10) - We think requiring tha a copy be submitted is unnecessary and duplicitous, so this section should be deleted.

Marathon believes that there should be a less burdensome, less expensive way for information to be obtained. In light of this, Marathon recommends that data be requested on an exception basis only. The request for information should be done in a methodical, orderly manner so duplication will be avoided. If the lessee information is not in the designee database, then the BLM or MMS records should be reviewed. If the information is still unavailable, a demand should then be issued to the lessee or the payor. At that time, the proposed designation form would be furnished to the MMS.

Marathon believes this succession of requesting information would alleviate excessive extra costs and time burdens and would expedite the collection of the needed data.

Paperwork Reduction Act of 1995 (PRA)

Marathon disagrees with the estimate of burden proposed by the MMS. There has been no consideration of the degree of difficulty in obtaining the requested information. The extensive degree of collection is unnecessary and duplicitous in many cases. As recommended, an exception basis for information would more efficiently allow the job to be accomplished. If all the data being requested was readily available, the MMS estimate of one-half hour per dataline may be fairly accurate, but the number of datalines would be excessive. However, data is not readily available as evidenced by lack of files within the MMS, therefore, cost and time involved would far exceed MMS' estimate. Even if the information collected could be enhanced, Marathon views this as unnecessary and costly without added benefit. Our opinion is "why collect more information than is needed to do the job?" At this time, Marathon is not aware of technology that would facilitate the collection of information so as to lessen the burden involved. Once again, an exception basis is viewed as the most cost and time efficient approach.

Marathon also notes that PRA does not require an entity to submit information which has been previously provided to the government. The MMS and/or BLM have the requested information in their files, but have not reviewed the data. They also appear unable or unwilling to create a database from information existing within the Department of Interior files. These files could include the MMS' payor lease reference number and the BLM's lessee/working interest owner/lease number reference data.

Conclusion

Marathon recommends that the MMS delay any action on this interim rule until the Royalty Policy Committee has been given adequate time to review, evaluate and make recommendations on the issue. Then, before any final action is taken by the MMS, the public should be permitted a chance to comment on any proposal.

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