

DEPARTMENT OF THE INTERIOR**Minerals Management Service****30 CFR Part 211****RIN 1010-AB45****Amendments of Regulations to
Establish Liability for Royalty Due on
Federal and Indian Leases, and To
Establish Responsibility to Pay and
Report Royalty and Other Payments****AGENCY:** Minerals Management Service,
Interior.**ACTION:** Notice of proposed rulemaking.**SUMMARY:** The Minerals Management
Service (MMS), Royalty Management

Program (RMP) proposes to amend its regulations to establish and clarify which persons may be held liable for unpaid or underpaid royalties, compensatory royalties, or other payments on Federal and Indian minerals leases. The proposed rules also would establish who is required to report and pay royalties on production from leases not in approved Federal or Indian agreements or leases in approved Federal or Indian agreements containing 100 percent Federal or Indian Tribal leases with the same lessor, the same royalty rate, and the same fund code for royalty distribution (hereinafter referred to as 100 percent Federal or Indian agreements). In the near future, MMS intends to issue a further notice of proposed rulemaking regarding who is required to report and pay royalties on production from leases in all other approved Federal or Indian Agreements.

DATES: Comments must be submitted on or before August 8, 1995.

ADDRESSES: Mail written comments, suggestions or objections regarding the proposed amendment to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Mail Stop 3101, Denver, Colorado 80225-0165.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231-3432, FAX (303) 231-3194. Minerals Management Service, Royalty Management Program, building 85, P.O. Box 25165, Mail Stop 3101, Denver, Colorado 80225-0165.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are members of a team of Minerals Management Service employees led by Cecelia Williams of the Office of Enforcement, Lakewood, Colorado, and attorneys from the Office of the Solicitor in Washington, D.C.

I. General

Since its formation in 1982, and following the mandate of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.*, MMS improved substantially the process of accounting for and collecting royalties on mineral production from Federal and Indian leases. MMS implemented automated procedures to detect potentially unpaid and underpaid royalties after payors file their monthly royalty reports, and developed an effective audit program in conjunction with states and Indian tribes.

When MMS determines that royalties are underpaid for a Federal or Indian lease, MMS generally bills the person

who filed a Payor Information Form (PIF) (Form MMS—4025 for oil and gas and Form MMS—4030 for solid minerals) for that lease, and that payor usually resolves the matter with MMS. However, sometimes that royalty payor no longer is able to pay (*e.g.*, it is bankrupt or otherwise out of business), or it asserts that someone else is responsible for the royalty payment. In other situations, an interest in the lease is assigned between the time the royalty obligation accrued and the time MMS discovers and orders payment. In such events, the current payor often does not agree to pay the deficiency, requiring MMS to determine who is liable for the royalty or other payment deficiency.

The purpose of these proposed rules is to establish and clarify which persons are liable, either individually or in conjunction with others, if royalties, compensatory royalties, or other payments due for a Federal or Indian lease are unpaid or underpaid. As explained in more detail below, this includes record title owners of a lease and operating rights owners other than record title owners. In addition, MMS would amend the Payor Information Form (PIF) (Form MMS—4025 for oil and gas and MMS—4030 for solid minerals), required under 30 CFR 210.10, to expressly provide that the payor agrees to pay any additional royalties owed on the production for which it reported royalties originally. Operators and other persons could be liable for the underpayments in certain circumstances. The rules further would clarify how liability attaches, and terminates, when a record title interest is assigned or operating rights are transferred. For the most part, these proposed rules are consistent with current MMS practice and procedures.

MMS also proposes to amend its rules to provide who is required to report and pay royalties on production from, or attributable to, leases not in approved Federal or Indian agreements or leases in 100 percent Federal or Indian agreements (all leases in the agreement have the same lessor, the same royalty rate, and the same fund code for distribution, *e.g.* same state or county). MMS is reserving for a further notice of proposed rulemaking rules regarding who is required to report and pay royalties on production from leases in all other approved Federal or Indian agreements.

Commenters must recognize that the standards for who is required to report and pay could be different from the standards for determining liability for underpayments. For example, as explained in more detail below, if you hold half of the record title interest in

a Federal lease (that is not in an approved Federal or Indian agreement), you would be liable ultimately for 50 percent of the royalties due on production from that lease. However, under the proposed rules, the person who actually takes and sells the production from a lease that is not in an approved Federal or Indian agreement is required to report and pay each month, so you may not be the person required initially to report that production and remit the royalties. If that payor underpaid royalties, MMS may seek to collect additional monies from you, and then only for 50 percent the the production.

II. Section-by-Section Analysis

Subpart A—General Provisions

Section 211.10 Purpose

This section would explain that this part of the MMS rule is intended to address two principal issues. The first is to establish which persons are liable for royalty, compensatory royalty, and other payments on a lease by virtue of ownership of a lease interest or other connection to lease production. The second issue addressed in this part concerns which persons would be required to report and pay royalties on lease production each month or as otherwise required. However, as explained above, at this time MMS is proposing new rules addressing reporting and paying requirements only for leases not in approved Federal or Indian agreements or leases in 100 percent Federal or Indian agreements.

Section 211.11 Scope

This section would explain the general content of Subparts A, B, and C. Subpart A explains which leases the rules on liability and reporting and paying would apply to, and the definitions you would need to know. Subpart B establishes who would be liable under the leases set out in Subpart A and the extent of that liability. Subpart C explains who would be responsible for reporting and paying royalties on the leases set out in Subpart A, and would describe the obligations to report and pay properly.

Section 211.12 Leases to Which This Part Applies

This section would explain that the rules on liability contained in this part apply to all Federal and Indian mineral leases. This includes, but is not limited to, Indian oil and gas leases, onshore Federal oil and gas leases (whether on public domain or acquired lands, and regardless of the statute under which the lease was issued), oil and gas leases

on the Outer Continental Shelf (OCS), Federal and Indian coal leases, and Federal geothermal leases. Leases or other agreements under the Indian Mineral Development Act of 1982 also would be included.

As explained in more detail below, there will be situations where Federal or Indian leases are part of an approved Federal or Indian agreement (e.g., a unit or communitization agreement) that includes state or fee leases. When the proposed rules refer to a lease, this includes only the Federal and Indian leases in that a agreement.

Leases issued by private predecessors in interest to the Federal government, under which the Federal government subsequently became the lessor when it acquired land subject to such a lease, would not be included within the scope of these rules.

Section 211.13 Definitions

This section would include definitions of certain terms that are relevant to the regulations in this part.

• *Approved Federal or Indian agreement* would be defined as an agreement for exploration or development of mineral resources as described by 25 CFR Subchapter I, 30 CFR Subchapter B—Offshore, and 43 CFR Part 3000. This definition basically would incorporate existing descriptions of unit agreements and communitization agreements for Federal and Indian leases.

• *Compensatory Royalty* would be defined as the amounts the Bureau of Land Management (BLM) or Offshore Minerals Management assesses to compensate for failure to prevent drainage. This definition would basically summarize the BLM's regulations at 43 CFR 3100.2 (1993) and 43 CFR 3162.2(a) (1993). This term is separate and distinct from "other payments" defined below.

• *Operator* would be defined by referencing several existing definitions in 30 CFR and 43 CFR to maintain consistency between the proposed definition and existing definitions in departmental rules.

• *Operating rights owner (working interest owner)* would be defined as a person who owns or has been transferred operating rights in a lease subject to the regulations in this proposed new part. The operating rights owner could be the record title owner. However, the record title owner may transfer some or all of its operating rights to another person who may further transfer those rights. The operating rights owner has the right to take and sell production from a Federal or Indian lease, and is often referred to

as the working interest owner. (See BLM rules at 43 CFR 3100.0—5(d)).

• *Other payments* would be defined to include, but not be limited to, rentals minimum royalties, bonuses, net profit share payments, gas storage agreement payments, late and erroneous reporting assessments, and late payment interest charges. The term is intended to include all payments due to MMS's Royalty Management Program (including payments directly to Indian lessors and other royalty recipients), except for compensatory royalty payments assessed for drainage. It would not include the cost of plugging and abandonment of wells, or other lease reclamation obligations.

• *Payor* would be defined by referencing several existing sections in 30 CFR to maintain consistency between the proposed definition and existing departmental rules. MMS proposes to combine the definition of payor at 30 CFR 208.2 with the payor rule at 30 CFR 210.51 which further defines payor. By combining the existent regulations, it is MMS' intent to make clear that a payor is the person who is responsible for reporting and paying royalties consistent with the liability provisions of this proposed rule in sections 211.14, 211.15, 211.16, 211.17, and 211.18.

• *Payor code* would be defined as the five-character code that MMS assigns to the persons required to report and pay royalties. The payor code uniquely identifies the persons responsible for reporting and paying royalties and other payments. The payor code is used on royalty reports, payments, and correspondence to MMS. Persons required to report and pay must obtain a payor code from MMS.

• *Payor Information Form (PIF)* would be defined as the Form MMS—4025 for oil and gas and geothermal resources, and Form MMS—4030 for solid minerals, as described in 30 CFR 210.10(c)(3) and (4). The PIF is a document that informs MMS who will report and pay royalties and other payments to the Federal or Indian mineral lessor. As explained below, the present PIF would be revised to provide expressly that the payor agrees to pay any additional royalties and other payments owed on production for which it reported, or should have reported, originally.

• *Person* would be defined basically the same as in FOGRMA at 30 U.S.C. § 1702(12). It would include, but not be limited to, any and all entities that report and make royalty and other payments to MMS or the Indian lessor.

• *Record title owner* would be defined as the person who has entered into a lease subject to this part or a

person to whom the responsible leasing agency has approved assignment of all or part of the record title interest. This term also means the same as record title holder, record title interest owner, or lessee of record. The record title owner may transfer all or a part of the operating rights to another person and in fact may have no involvement in lease operations or the sale of production. After the record title owner transfers its operating rights, it usually maintains an overriding royalty interest, but the record title owner has no right to the production from or allocated to the operating rights it transferred.

• *Royalty* would be defined as any payment based on the volume or value of production from a lease subject to this part. This is basically the same definition as in FOGRMA, expanded to include other minerals.

• *Take* would be defined as occurring when the operating rights owner sells or removes production from or allocated to a lease, or when such sale occurs for the benefit of an operating rights owner. Production would be "taken" when it is removed from the lease or agreement. Production would not be "taken" if it is used on or for the benefit of the lease or agreement (and not subject to royalty under MMS rules), except for lease use gas for leases issued under section 6 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1335 (because that gas is subject to royalty under the lease terms). Also, for purposes of these rules, a purchaser who receives production would not be considered to have "taken" the production.

Subpart B—Liability

Section 211.14 Who is Liable for Royalties and Other Payments Due on a Lease?

The purpose of this section is to provide a comprehensive explanation regarding which persons are liable to the MMS for royalties or other payments due on a lease. It does not apply to compensatory royalties which are addressed in the next section. It also does not apply to, or affect, other lease obligations such as plugging and abandonment.

Unless you are subject to one of the paragraphs in this part of the rule, you would have no liability. However, you may be liable under more than one paragraph. For example, as explained further below, you may be liable for royalty on half the production on the lease under paragraph (a) of this section because you own 50 percent of the record title. In addition, you could be liable for all the royalty on production under paragraph (b) of this section if

you own operating rights in that lease and "take" 100 percent of that production.

a. *Record title owners.* Paragraph (a) of this section applies to record title owners. As explained in the definitions section, the record title owner is the person to whom the lease originally was issued, or the assignee of that person. You may be the record title owner for a whole lease or a portion of a lease. As a record title owner, you would be liable for royalties on the percentage of production from the lease that equals the percentage of your record title ownership in the lease. Therefore, if you are a 50 percent record title owner, and the MMS determines that the person who reported and paid royalties on the total production from the lease for a particular month undervalued that production, then you are responsible to MMS for 50 percent of the resulting underpayment plus any interest owed thereon. The amount of underpaid royalties or other payments would be determined through application of statutes, regulations (*e.g.*, royalty valuation rules in 30 CFR Part 206), lease terms and orders.

It also is possible that you may be liable for royalties on production for a month that exceeds your percentage ownership of the lease. (Some leases may prescribe a royalty reporting period other than monthly. Because most leases are monthly, we will refer to the reporting "month" in this preamble. However, for your lease, a different period may be applicable). If you also own operating rights in the lease and for a month take production in an amount that exceeds your percentage of record title ownership, you are liable for the royalties due on that additional amount. Thus, if you are a 50 percent record title interest owner, but for a month you take 75 percent of the production, you are liable for the royalties due on 75 percent of the production. If MMS determines that the royalties on that production should be higher than what was paid, you are liable for those additional royalties plus interest.

When a lease is issued, the holders of record title also own operating rights in the lease. The liability of operating rights owners for royalties is addressed in the next section. It is important to understand, however, that under these proposed rules, even if you transfer a portion or all of your operating rights, you still are liable for royalties as the record title owner.

It also is important to remember that Subpart B of the proposed rules addresses only liability for royalty and other payments. It is Subpart C that establishes who must report and pay the

royalties to MMS each month. Thus, even though you may have liability for unpaid or underpaid royalties for a production month, you may not be the person who is required initially to report and pay the royalties to MMS. For example, if you own 50 percent of the record title for the lease, but transferred all your operating rights to another person, you have no right to take production from the lease. However, if the person required to report and pay the royalties on the total lease production fails to pay, or underpays, MMS still would hold you liable for 50 percent of what was owed for that production.

As will be explained below, the record title owner is not the only person who is liable for royalty. In fact, several different persons may be liable, and the extent of each such person's responsibility is addressed in later sections of the rule. Section 211.14(a) would clearly provide that as a record title owner you are jointly and severally liable for the royalty and other payments (to the extent of your liability described above) with these other responsible persons including:

(1) Any person transferred some or all of the operating rights severed from your record title interest. This would include the original transferee and subsequent transferees. Note, however, the responsibility is limited to the extent of the transfer. Therefore, if you are the 100 percent record title owner, but transfer only 30 percent of your operating rights to another person, you and that person have joint and several liability for the 30 percent interest.

The transferee has no liability for the remaining 70 percent interest by virtue of holding operating rights—there may be liability for other reasons, discussed further below, such as a situation where that holder of 30 percent of the operating rights actually takes a greater percentage of the production.

(2) Any other person assigned or who has assumed the obligation to pay royalty due. By way of illustration, if the purchaser of production from your lease agrees in the sales contract to be responsible for the payment of all royalties, and if MMS determines royalties were underpaid, that purchaser would be liable for the royalties. However, you too would be liable up to the percentage of your record title interest or your takes if they are greater.

(3) Any person who filed a PIF with MMS for the production for which you are liable. As explained later in this preamble, if a person files a PIF for a lease and reports royalties for that lease, that person is liable for proper payment of royalties due on the production.

Thus, if MMS determines that royalties were underpaid on that production, the filer of the PIF is responsible for the additional royalties. As a record title owner, you would be jointly and severally liable for those additional royalties up to the percentage of your record title interest or your takes if they are greater.

(4) Any other person liable under Part 211 for the royalty due for which you are responsible. This would be a general provision to cover an operator (but only in certain limited circumstances, discussed below), a person who takes production from your lease (under the limited circumstances discussed below), or any other person that is liable for royalty under the regulations in this subpart.

It is important to note that the joint and several liability described above is vertical, not horizontal. Therefore, if you are a 50 percent record title owner, you are not automatically liable for the debts of the other record title owners for the same lease (although liability may accrue by operation of other provisions of these regulations). However, if you are a 50 percent record title owner and transfer half of your operating rights, you would be jointly and severally liable with the transferee for the royalties and other payments due for the transferred operating rights interest.

Although this preamble has referred primarily to liability, including joint and several liability, for royalties, the rules also would apply to other payment obligations on the lease, including late payment charges, reporting assessment, and rentals. The proposed liability rules addressed above are intended to apply only to such payment obligations payable to MMS's Royalty Management Program or royalty recipients.

In these rules, MMS proposes that the record title owner's liability for payment of royalty and other payments be proportionate to its interest in a lease, because royalty and other payment obligations are divisible according to that interest. There are, however, other lease obligations of the several record title owners of a lease that are not divisible, including plugging and abandonment of wells, and other reclamation obligations. BLM enforces these and other lease obligations for onshore leases and MMS's Offshore Minerals Management program enforces lease obligations for offshore leases. These lease obligations are not subject to this rulemaking.

Liability for compensatory royalty payments, addressed in § 211.15, is also a lease obligation that is not divisible. Compensatory royalties are amounts assessed to compensate the Federal

Government when a lessee breaches its operational obligation to diligently protect the lease from drainage. *See Benson-Montin-Greer*, 123 IBLA 341 (1992); *See* 43 CFR 3100.2 and 3162.2(a). Just as the other means of satisfying the requirement to protect from drainage (drilling of an offset well or communitization) are indivisible, and thus joint and several, so is the alternative of compensatory royalty payments. It is proposed that the liability of a record title owner or operating rights owner for payment of compensatory royalty would not be proportionate to the share owned. In other words, each record title owner and operating rights owner would be jointly and severally liable for the total amount of compensatory royalty due.

As explained above, it is MMS's principal proposal in this rule that the liability of a record title owner for royalties and other payments is limited to its proportionate ownership interest in the lease, or takes if greater. However, MMS would like comment on whether MMS should hold each record title owner liable for the royalties and other payments due on all the production from the lease. In other words, under this alternative, all record title owners would be jointly and severally liable for all the royalties and other payments, like they are proposed to be for compensatory royalties. Commenters are requested to provide legal authority and citations to support their comments either in support of, or opposed to, this alternative proposal.

b. Operating rights owners. When a lease is issued, the record title owner owns operating rights for the lease equal to its percentage of record title. The operating rights owner is the person who has the right to take production from the lease equal to its percentage of operating rights ownership. The record title owner may sever some or all of its operating rights and transfer them to another person. In such event, under § 211.14(b), if you are the transferee of the operating rights, you would incur liability for royalty due on production from, or allocated to, the lease, and for other payments, in the amount MMS determines to be owed. The liability would be determined essentially the same as for record title owners. Therefore, at a minimum, you would be liable for royalty and other payments based on a percentage equal to your percentage of operation rights ownership in the lease. To illustrate, assume a Lease is issued to Record Title Owner A and Record Title Owner B, each owning 50 percent. Record Title Owner A then transfers half of its operating rights to you. In this example,

you would be liable for royalty due on 25 percent of the lease production. However, under proposed § 211.14(b)(1)(ii), if you actually take 40 percent of the production from the Lease and sell it, your liability extends to 40 percent of the production. Like record title owners, your liability exists even if you assigned the obligation to make the royalty payments to another person, such as the purchaser of the production.

Under proposed § 211.14(b)(2), if you own operating rights that were not transferred from your record title interest, paragraph (a) determines your liability. This is because your record title interest would be equal to or greater than your operating rights interest and would govern your liability. If you own operating rights that were transferred from the record title interest, you are jointly and severally liable for royalty and other payments with the person who holds the record title interest from which your operating rights were transferred. However, you are still only liable for your percentage interest. You are not jointly and severally liable for the percentage of the operating rights interest that the record title owner either retained or transferred to another person. But, if you take more than your percentage entitlement, then you expand your joint and several liability. Thus, if in the above-described example you take 40 percent of the production, Record Title Owner A takes 10 percent and Record Title Owner B takes 50 percent, you and Record Title Owner A are jointly and severally liable for 40 percent of the production. If the example is changed and you take 10 percent of the production and Record Title Owner A takes 40 percent, then you are jointly and severally liable with Record Title Owner A for royalty on 25 percent of the production (equal to your percentage of operating rights ownership). (Remember: this section addresses liability only. The responsibility to report and pay may be different and is addressed later.)

As an operating rights owner, you also would be jointly and severally liable with the same other persons as the record title owner described under proposed § 211.14(a), including:

- any other person assigned or who has assumed the obligation to pay royalty or make other payments,
- any person who filed a PIF for the production or other payments for which you are liable, and
- any other person who is liable for the payments under this part.

For operating rights owners, like for record title owners, MMS's principal proposal in these rules is to determine

liability based on percentage of ownership, or takes if greater. MMS would like commenters to address whether it should provide instead that all operating rights owners are jointly and severally liable for all royalties and other payments due from the lease. Comments should include legal authority and citations in support of the comment.

c. Persons who file PIFs with MMS. Under MMS's current royalty accounting and collection procedures, any person may report and pay the royalties and other payments owed on lease production. It may be the record title owner, an operating rights owner, an operator or even a purchaser. However, the MMS's Automated Financial System (AFS) requires that a royalty payor file a Payor Information Form (PIF) (Form MMS—4025 for oil and gas and Form MMS—4030 for solid minerals) and be assigned a payor code before the system will accept the monthly Report of Sales and Royalty Remittance (Form MMS—2014). *See* the MMS "Oil and Gas Payor Handbook," Volume 1, at Chapter 2; and the MMS "Solid Minerals Payor Handbook" at Chapter 2.

When MMS determines either through its automated compliance procedures or an audit that royalties are underpaid, MMS will bill or order payment from the payor for that deficiency. The payor is billed because that is the person on whom MMS has information in its system regarding that production; MMS's Royalty Management Program does not maintain data on record title owners or operating rights owners. Therefore, while there are other persons who may be liable for some or all of the royalty deficiency (such as the record title owner or an operating rights owner), it is essential that MMS be able to look first to the payor for the underpayment. It would be the payor's responsibility to then seek appropriate contribution from other parties.

Under existing procedures, MMS has always considered that the person who filed the PIF would be liable for underpaid royalties. However, in *Mesa Operating Limited Partnership*, 125 IBLA 29 (Dec. 31, 1992), Mesa filed Payor Information Forms and paid MMS royalties on production it purchased from several Indian oil and gas leases. Mesa did not own any interest in these leases. MMS ordered Mesa to pay additional royalties found to be owed on these leases. Mesa administratively appealed MMS's order and the Interior Board of Land Appeals (IBLA) held that when Mesa filed the Payor Information Forms and made royalty payments, that

did not demonstrate that Mesa had been assigned and accepted the royalty payment responsibility.

Although the IBLA held Mesa to be liable for other reasons, MMS is proposing § 211.14(c) to clarify the liability for the person who files the PIF. Under this subsection, if you file a PIF, you would be liable in the amount MMS determines for any unpaid or underpaid royalties on the volumes for which you reported or should have reported. Thus, if you are a purchaser of lease production and file a PIF for that lease, you would be liable for the royalties and other payments owed on the volume of production you received in a month. If you file a PIF and arrange a sale or other disposition of lease production for the benefit of an operating rights owner on the lease, you would be liable for that volume. This would occur in situations where you are the lease operator or a marketer. Finally, under § 211.14(c)(1)(iii), you would be liable for the amounts due on the volume reported to MMS on the Report of Sales and Royalty Remittance (Form MMS-2014) with your payor code. You would be allowed to correct reporting errors and adjust those volumes accordingly.

Concurrently with this proposed rulemaking, MMS proposes to modify the PIF. The new PIF would include a statement that the person executing the PIF agrees to be liable for all the royalties owed on the production for which it reports, or should report, each month. The new PIF would provide for the payor to include its Taxpayer Identification Number. A draft of the new PIF is attached to this notice of proposed rulemaking as Appendix A (oil and gas, page 1) and Appendix B (solid minerals). Commenters are requested to provide comments on the draft PIF.

Under proposed § 211.14(c)(2), if you are liable for royalties and other payments because you filed a PIF, you would be jointly and severally liable with:

- All record title owners who are liable for that production;
- All operating rights owners who are liable for that production; and
- Any other person liable under the proposed rules for the royalties and other payments due on that production.

The MMS is aware that companies have been set up to perform the service of reporting and paying royalty to MMS. These companies complete and submit monthly reports and payments to MMS using their clients' MMS-assigned payor code. If you use one of these service companies to report and pay royalties, under the proposed rules, the service company does not incur any additional

liability by virtue of submitting a Form MMS-2014 and payments on your behalf. You would be liable for any unpaid or underpaid royalties and other payments because the service company acted as an agent on your behalf.

d. *Operators.* Under proposed § 211.14(d), if you are a lease operator, you would not be liable for royalty or other payments due on a lease simply because you are the operator. You only would be liable to the extent that you also may be a record title owner or an operating rights owner under § 211.14(a) or (b).

Also, you assume liability if you file a PIF under § 211.14(c), or if you otherwise agree to be liable for royalty and other payments, as discussed in the next paragraph. You also may be liable if a regulation of the Department of the Interior provides that the operator is liable for royalty or other payment. See 30 CFR 250.8 (1993); 43 CFR 3162.1 (1993).

e. *Other liable persons.* Proposed § 211.14(e) is intended to be a general provision to establish the liability of any person who agrees to be liable. For example, a purchaser or a marketer may agree by contract to pay royalties on behalf of an operating rights owner. In that event, that purchaser or marketer would be liable to the same extent as the person on whose behalf it agreed to pay.

While this rule proposes generally to hold co-tenants responsible only for their entitled share of the production from a Federal or Indian lease, or their takes if they are greater, the rule recognizes that co-tenants or working interest owners may have other contractual relationships which may increase their liability. For example, co-tenants may decide to develop a property as partners or joint venturers. In addition, a less formal organizational structure, known as a "mining partnership," also may result in expanded liability. The general rule of liability for all such joint venturers or partners is that each member is personally liable for all partnership obligations arising out of contract or tort. *Misco-United Supply, Inc. v. Petroleum Corp.*, 462 F.2d 75 (5th Cir. 1972).

f. *Operating rights owners of a lease in an approved Federal Indian agreement.* The proposed liability rules in § 211.14(a)-(e) addressed thus far apply to all Federal or Indian leases, whether an individual lease or a lease that is included in an approved Federal or Indian agreement. However, for those Federal or Indian leases that are included in an approved Federal or Indian agreement, there are additional rules that would apply. Under proposed

§ 211.14(f), if you own operating rights in any Federal or Indian lease in the agreement, and you take production that is allocable to a Federal or Indian lease in that agreement, then you are liable for the royalties or other payments due on the production. What this means is that if you take production allocable to a Federal or Indian lease in your agreement, and you own operating rights in that lease or any other Federal or Indian lease in the agreement, MMS would hold you liable for royalties and other payments for that production. This would be the only section of the liability portion of these rules that could involve an interest owner with an interest in a lease other than the lease the production was from or attributable to.

For example, assume there is a unit that consists of four leases of equal acreage, two Federal leases (Federal A and Federal B), one state lease and one fee lease. Each lease is entitled to one-fourth of the unit production and each lease has only one operating rights owner. Assume that for the month of January 1994, the operating rights owner for the Federal A lease actually takes no production. Assume further that the operating rights owners for the Federal B and the state lease each take half of the production that was allocable to the Federal A lease. Under the proposed rule, the operating rights owner of the Federal B lease would be liable to MMS for royalty and other payments on the one-fourth of unit production allocable to the Federal B lease plus the portion of production it took that was allocable to the Federal A lease. The operating rights owner of the state lease would not be liable to MMS for royalty and other payments for the volume of production that it took that was allocable to the Federal A lease.

Under proposed § 211.14(f)(2), liability would be joint and several with the persons liable under the other subsections of the rule. Thus, in the above example, for the volumes allocable to the Federal A lease they took, the operating rights owners for the Federal B lease would be jointly and severally liable with the operating rights owners and record title owners for the Federal A lease (and, if applicable, any other liable party such as an operator or the filer of the PIF).

For this section MMS specifically would like comment on whether a Federal or Indian lessee, in an agreement should be held liable if it takes production from a Federal or Indian lease other than its own in an agreement situation. Commenters are requested to provide legal authority and citations in support of their comments.

g. Other liability issues. As explained earlier, the purpose of these rules is to address the legal issue of who is liable to MMS for royalty or other payments due on a lease. These rules do not address against whom MMS will take enforcement action if MMS discovers underpaid royalties. MMS is retaining the discretion to determine which person to pursue. However, since the liability of the person who files the PIF would be clearly established under these rules and the amended Forms, MMS—4025 and MMS—4030, in most cases MMS would issue a payment order to that person. That person could then seek contribution from other liable persons. While these proposed rules should make it easier to determine who all the liable parties are, it is not MMS's intention that these rules govern the relationship or liabilities between and among the affected parties other than MMS.

Section 211.15 Who is Liable for Payment of Compensatory Royalty?

The purpose of this section is to provide an explanation regarding which persons are liable to MMS for compensatory royalties due on a lease. If you are not subject to one of the paragraphs in this section, you would not be liable.

This section applies to record title owners. As explained in the definitions section, the record title owner is the person to whom the lease originally was issued, or the assignee of that person. You may be the record title owner for a whole lease or a portion of a lease. As a record title owner, no matter what your percentage interest, you are jointly and severally liable for the full amount of compensatory royalty owned with all other record title owners on that lease, all operating rights owners on that lease, and any other persons obligated to pay compensatory royalties under departmental rules.

This section also applies to operating rights owners. As explained in the definitions section, the operating rights owner is the person who has the right to take production from the lease equal to its percentage of operating rights ownership in the lease, or the transferee of that person. You may be the operating rights owner for a whole lease or a portion of a lease. As an operating rights owner, you are jointly and severally liable with all other operating rights owners on that lease, all record title owners on that lease, and any other person obligated to pay compensatory royalty under the regulations of the Department of the Interior, for payment of all compensatory royalty due on that lease, regardless of the percentage of

your operating rights ownership interest in the lease. For example, if you are a 50 percent operating rights owner, and MMS determines compensatory royalties due on the lease equals \$100,000, you are liable for the entire \$100,000, not 50 percent of the \$100,000.

It is important to note that, unlike liability for payment of royalties, liability for compensatory royalty is not proportionate to the ownership interest. In addition, unlike liability for payment of royalties, liability for compensatory royalty is joint and several among each liable group, *i.e.* horizontally as well as vertically. Therefore, if you are a 50 percent record title owner you are liable for payment of compensatory royalties with all other record title owners as well persons to whom you or another record title owner transferred operating rights

Section 211.15 How Does Assignment of Record Title Interests or Transfer of Operating Rights Interests Affect Liability?

One of the other principal purposes of these proposed rules is to clarify how assignment of record title or transfer of operating rights affects the liability established in proposed § 211.14 or § 211.15. It is important to state at the outset that the rules proposed in this section, like the rules in the previous sections, relate only to liability for royalties and other payments, such as interest or assessments, or compensatory royalties, that are the responsibility of MMS's Royalty Management Program. They do not address responsibility for plugging and abandonment of wells, or other lease reclamation requirements. Under applicable law, a record title owner's responsibility for these other types of obligations may be different than what would be prescribed in these rules for royalty, compensatory royalty, or other payments.

Under paragraph (a) of this section of the proposed rule, if you are a record title owner and you assign some or all of your record title interest to another person, you would not be liable for royalties and other payments for the interest you assigned that accrue on or after the date of the assignment (unless you agree with the assignee to remain liable for those payments). However, under § 211.15 all record title owners are jointly and severally liable for compensatory royalties. Therefore, you would continue to be liable for compensatory royalties that accrue after the effective date of the assignment unless you assigned all of your record title interest in the lease.

Thus, for example, if you assign your record title and the effective date is January 1, you are liable for all obligations through December 31. If you assign only a part of your record title, your liability for royalties and other payments would extinguish only for the percentage assigned, but your liability for compensatory royalties would not end. Note, however, that the termination provision in this example relates only to liability under § 211.14(a) by virtue of record title ownership. You may continue to be liable for royalties or other payments if you retain operating rights, if you file a PIF for the production, or if you meet any of the other liability criteria in § 211.14 other than record title ownership. Your liability also may not end on the assignment date if a departmental regulation provides that your liability continues. In such event, that regulation would control.

Under § 211.16(a)(2), the person to whom you assign some or all of your record title interest would not be liable for royalties, compensatory royalties, or other payments for the percentage of the interest assigned that accrued prior to the effective date of the assignment (unless the assignee agrees to be liable for those payments). Therefore, if the effective date of the assignment is January 1, 1994, and in March 1994 MMS were to issue a payment demand for underpaid royalties that occurred for production in July 1993, the assignee would not be liable. This liability that accrued prior to the assignment would be the responsibility of the assignor. You should be aware, however, that a regulation of the leasing bureau could expand this liability to an earlier date.

The concepts embodied in the proposed rules for assignor/assignee liability are consistent with MMS administrative decisions. See *Branch Oil and Gas, MMS-88-0079-O&G (June 29, 1989)*.

The limitations on liability just described apply only to royalty, compensatory royalty, and other payments. It may not apply to other lease obligations such as plugging and abandonment of wells under statutes, lease terms, or the regulations in Title 25, Title 30, or Title 43.

Under section 211.16(b), which is applicable to transfer of operating rights, the effects of that transfer are exactly the same as those described for assignment of record title. This section would apply to both a record title owner's transfer of operating rights and an operating rights owner's (who is not a record title owner) transfer of operating rights.

Section 211.17 How Does Liability Affect the Requirement to Report and Pay Royalties?

As stated earlier in this preamble, Subpart B of the proposed rules relates to liability, not to the requirement to report and pay royalties. Liability for royalties does not automatically mean that you are required to report and pay—it means that if the person required to report underpays, and if MMS does not resolve the underpayment with that person, then you are responsible for some or all of the deficiency.

The proposed rules on liability in § 211.14 rely in part on a person's "entitled share" of production, determined by its percentage of owned interest of record title or operating rights, to establish liability. However, as will be explained below regarding Subpart C, this would not mean that MMS is requiring reporting on what has been called an "entitlement" basis. In fact, it should be clear from these proposed rules that in actual situations where the lease is committed to an agreement in an approved Federal/Indian agreement, MMS proposes to rely on a "takes" system to establish who is obligated to report and pay royalties each month.

Subpart C—Reporting and Paying Royalties.

Subpart C would establish requirements for who is required to report and pay royalties each month on lease production. As explained above, all persons who are liable for royalties under Subpart B would not be required to report and pay. They would be responsible only if the person required to report and pay fails to pay or underpays.

Section 211.18 Who Is Required to Report and Pay Royalties?

Persons Who Take Production From Leases not in an Approved Federal or Indian Agreement

The basic requirement under the proposed rules is that if you are an operating rights owner who takes production from an individual lease that is not part of an approved Federal or Indian agreement, you must report and pay royalties for that production. If you own 40 percent of the operating rights for a lease, but you actually take 70 percent of the production for a month, you are required to report and pay on the 70 percent of the production you take.

As explained earlier, only the operating rights owners may take production from a lease. An operator or

purchaser who is not an operating rights owner may be involved in the sales transaction, but they do not take production for purposes of these rules.

Under § 211.18(a)(1) of the proposed rule, if you take production and are required to report and pay, you must:

1. File a PIF with MMS as specified in 30 CFR Part 210 and the MMS Payor Handbook.
2. Report the volume and value of production and royalties owed on a Form MMS—2014.
3. Pay the royalties owed as specified in 30 CFR Part 218 and the MMS Payor Handbook.

However, as described below, under section 211.18(d), another person may agree to report and pay on your behalf.

Persons who Take Production Allocable to Leases in Approved Federal or Indian Agreements Containing 100 Percent Federal or Indian Tribal Leases

If all of the leases in an agreement have the same lessor, the same royalty rate, and the same fund code for royalty distribution (*e.g.*, all the leases are on the OCS and not subject to 43 U.S.C. 1337(g), all the leases are public domain leases in the same state, or all the leases have the identical Tribal Indian lessor), it would appear to not be necessary to specifically identify the individual leases in the agreement to which the production is attributable. Royalties would be reported and paid to the lessor on 100 percent of agreement production each month. Therefore, MMS is considering a simplified reporting procedure.

The current reporting requirements mandate that production be treated and reported for the lease to which it is attributable. *See* 30 CFR 202.100(e). MMS is considering allowing the taking party to report and pay royalties on the total volume taken on one or more of its AID numbers associated with the agreement without concern about which lease in the agreement the production actually is attributable to. However, for those payors whose production is committed to a royalty-in-kind contract, it would be necessary for them to continue to report volumes for the specific AID number for the leases committed to that contract. MMS proposes this option because specific lease identification is not necessary in these circumstances since all leases have the same lessor, royalty rate, and royalty distribution.

If this proposed rule is adopted, MMS would modify the Payor Handbook to reflect this simplified reporting. In addition to this method of simplified reporting, MMS also is considering simplified reporting at the agreement

level, similar to how production is now reported. Under this option, MMS would establish a single AID number for each participating area in the agreement. Each party taking production from the agreement would report to MMS on this AID number.

MMS would report this information to the royalty recipient (States or Bureau of Indian Affairs) and they would then make further distribution to the actual owners or royalty recipients.

Each expansion or contraction of an existing unit would be reviewed to determine if the new participating area qualifies to be reported in this manner. If it does not meet the criteria for this type of reporting, MMS would assign a new agreement AID number to the property. (This option could be applied to all agreements, not just those that meet the criteria).

Again, as discussed below, another person may agree to report and pay royalties on your behalf.

Persons Who Take Production Allocable to Federal or Indian Leases in all Other Approved Federal or Indian Agreements

For leases in agreements containing a mixture of Federal, Indian, State, and/or fee leases or containing leases with varying royalty rates or funds distributions (called mixed agreements), MMS is not proposing any reporting or payment requirements under this rulemaking. At this time, MMS has chartered a Federal negotiated rulemaking committee **Federal Register**, 59 FR 32943, June 27, 1994) comprised of Federal, industry, and State representatives to develop a negotiated rulemaking that would address, among other matters, how to report and pay royalties for these mixed agreements. Therefore, until this committee completes its chartered task, MMS is not proposing rules for this section. Once the committee is finished, MMS will issue a further notice of proposed rulemaking with a recommendation for reporting and paying royalties for these mixed agreements.

What if Another Person Agrees To Report and Pay for You?

You may be relieved of the requirement to report and pay royalties under §§ 211.18(a)–(c) if another person files a PIF under its name and reports and pays the royalties for the production for which you are required to report and pay under §§ 211.18(a)–(c). For example, this could be an operator or a purchaser who would follow the requirements specified above. However this relief relates only to the reporting and payment obligation, therefore, you

still would be liable for any unpaid or underpaid royalties under § 211.14.

Liable Persons Who MMS Requires To Report and Pay

Under proposed § 211.18(e), MMS may require any person liable for royalty payments under subpart B to report and pay. This could be necessary where the person principally required to report and pay under § 211.18 fails to do so.

Section 211.19 What Are the Obligations for Proper Reporting and Paying?

How to report and pay. This paragraph would state that if you are required to report and pay under § 211.18, then you must do so timely, accurately, and in the manner MMS specifies. This requires following instructions in the MMS Payor Handbook and the valuation regulations in 30 CFR Parts 202 and 206.

What you must do if you report or pay royalties incorrectly. Under this proposed paragraph, if you do not report and pay royalties properly, MMS may require you to submit amended reports and pay additional royalties.

III. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 611 *et seq.*). The proposed rule will establish and clarify which persons are liable for unpaid or underpaid royalties, compensatory royalties, or other payments on Federal and Indian mineral leases. The proposed rule also clarifies who is required to report and pay royalties on production from those leases.

Executive Order 12630

The Department certifies that the 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, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action requiring Office of Management and Budget review.

Paperwork Reduction Act of 1980

The rule contains revised Payor Information Forms, therefore this rule will be submitted to the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

We have determined that this 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 211

Coal, Continental shelf, Geothermal energy, Indians-lands, Mineral resources, Mineral royalties, Natural gas, Oil, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: March 21, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set up in the preamble, 30 CFR Part 211 is proposed to be added as follows:

PART 211—LIABILITY FOR ROYALTY DUE ON FEDERAL AND INDIAN LEASES AND RESPONSIBILITY TO REPORT ROYALTY AND OTHER PAYMENTS

Subpart A—General Provisions

Sec.

211.10 Purpose.

211.11 Scope.

211.12 Leases to which this part applies.

211.13 Definitions.

Subpart B—Liability

211.14 Who is liable for royalties and other payments due on a lease.

211.15 Who is liable for payment of compensatory royalty?

211.16 How does assignment of record title interests or transfer of operating rights interests affect liability?

211.17 How does liability affect the requirement to report and pay royalties?

Subpart C—Reporting and Paying Royalties

211.18 Who is required to report and pay royalties?

211.19 What are the obligations for proper reporting and paying?

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30

U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*; 1801 *et seq.*

Subpart A—General Provisions

§ 211.10 Purpose.

Part 211 establishes who is liable for royalty, compensatory royalty, and other payments due on Federal and Indian leases. This part also establishes who must report and pay those royalties.

§ 211.11 Scope.

(a) Subpart A explains which leases are subject to this part and what definitions you need to know.

(b) Subpart B explains whether you are liable for royalties, compensatory royalties, or other payments under those leases and the extent of your liability. Nothing in this subpart applies to, or affects, liability for other lease obligations.

(c) Subpart C explains whether you must report and pay royalties on those leases and what your obligations are to report and pay properly.

(d) As explained under Subparts B and C, your liability may be different from your obligation to report and pay royalties.

§ 211.12 Leases to which this part applies.

This part applies to the following leases:

(a) Oil and gas leases subject to 30 U.S.C. § 1701 *et seq.* These leases include Federal onshore leases, Indian leases, and leases on the Outer Continental Shelf.

(b) Coal and other solid mineral leases and agreements that the Secretary of the Interior administers under the mineral leasing laws. These leases include Federal and Indian leases.

(c) Geothermal leases issued under the Geothermal Steam Act of 1970, 30 U.S.C. 1001 *et seq.*

(d) Leases or other agreements under the Indian Mineral Development Act of 1982.

(e) Other mineral leases or agreements for which the Secretary of the Interior collects royalty and other payments.

§ 211.13 Definitions.

In determining if you are liable or if you must report and pay royalties, the following definitions apply:

Approved Federal or Indian agreement —means an agreement for exploration or development of mineral resources as described at 25 CFR Subchapter I, 30 CFR Subchapter B-Offshore, and 43 CFR Part 3000.

Compensatory royalty —means the amount the Bureau of Land Management assesses to compensate for failure to prevent drainage under 43 CFR 3100.2 and 43 CFR 3162.2(a).

Operator— means a person as defined by 30 CFR 208.3—Royalty in kind; 30 CFR 216.6—Production accounting; 30 CFR 250.2—Offshore. Persons defined as operators in the following sections are included within the definition of operator in this section: 43 CFR 3100.0-5—Onshore Leasing: General; 43 CFR 3200.0-5(v)—Geothermal Resources Leasing: General; or 43 CFR 3400.0-5(cc)—Coal Management: General.

Operating rights owner (working interest owner) —means a person who owns operating rights in a lease that is subject to this part. A record title owner is the owner of operating rights under a lease except to the extent that the operating rights or a portion thereof have been transferred from record title.

Other payments —includes, but is not limited to, payments or assessments such as rentals, minimum royalties, bonuses, net profit share lease payments, gas storage agreement payments, late and incorrect reporting assessments, and late payment interest charges.

Payor —means any person responsible for reporting and paying royalties from a Federal or Indian lease or leases on Form MMS—2014, as defined in 30 CFR § 208.2 and as further defined in 30 CFR § 210.51.

Payor code —means the five-character MMS-assigned code that uniquely identifies the company or individual responsible for reporting and paying. It is used on royalty reports, payments, and correspondence to MMS.

Payor Information Form (PIF) —means Form MMS—4025 for oil, gas, and geothermal resources and Form MMS—4030 for solid materials, as described in 30 CFR 210.10(c)(3)(4).

Person —means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity). The term does not include Federal agencies.

Record title owner —means the person who has entered into a lease subject to this Part or the person to whom the leasing agency has approved the assignment of all or a portion of the record title interest. For purposes of this Part, record title owner means the same as record title holder, record title interest owner, and lessee of record.

Royalty —means any payment based on the amount or value of production of oil, gas, or other minerals from the Outer Continental Shelf, Federal, or Indian lands, under any provision of a lease.

Take —occurs when the operating rights owner sells or removes production from or allocated to a lease, or when such sale or removal occurs for the benefit of an operating rights owner.

Subpart B—Liability

§ 211.14 Who is liable for royalties and other payments due on a lease?

This section establishes which persons are liable for royalty or other payments due on a lease. You are not liable for royalty or other payments due on a lease except as provided in this section. However, you may be liable under more than one paragraph of this section. The limitation on liability established in this section applies only to royalty and other payments. This limitation does not apply to compensatory royalty and may not apply to other lease obligations established under statute, lease terms, or regulations in Title 25, Title 30, or Title 43.

(a) Record title owners.

(1) If you are a record title owner of a lease, you are liable for royalty due on production from or allocated to the lease, and for other payments, in the amount MMS determines under applicable statutes, lease terms, regulations, or orders. You remain liable even if you transfer some or all of your operating rights to another person or if you assign to another person the obligation to report and pay royalty on some or all of the production, or to make other payments. You are liable for royalties or other payments owed on:

(i) The percentage of production equal to the percentage of your record title ownership in the lease; and

(ii) The portion of production you take in a month that exceeds the volume in paragraph (a)(1)(i) of this section.

(2) If you are a record title owner, you are jointly and severally liable for the royalty or other payments due as described in paragraph (a)(1) of this section with:

(i) Any person who owns some or all of the operating rights for the lease that were transferred from the record title interest you currently own, but only to the extent of the transfer;

(ii) Any other person assigned or who has assumed the obligation to pay royalty due on the production or to make other payments for which you are liable;

(iii) Any person who filed a PIF with MMS for the production or other payments for which you are liable; and

(iv) Any other person liable under this part for the royalty due on the production, or for the other payments, for which you are liable.

(b) Operating rights owners.

(1) If you own operating rights that were not transferred from the record title interest, paragraph (a) determines your liability for royalty and other payments due on a lease. If you own

operating rights that were transferred from the record title interest for a lease, you are liable for royalty due on production from or allocated to the lease, and for other payments, in the amount MMS determines under applicable statutes, lease terms, regulations, or orders. You are liable even if you assigned the obligation to pay royalty on some or all of the production, or to make other payments, to another person. You are liable for:

(i) The percentage of royalties or other payments owed that equals the percentage of your operating rights ownership in the lease; and

(ii) The portion of production you take that exceeds the volume in paragraph (b)(1)(i) of this section.

(2) If you own operating rights that were transferred from the record title interest, you are jointly and severally liable for the royalty or other payments due as described in paragraph (b)(1) of this section with:

(i) The person who owns the record title interest from which your operating rights were transferred;

(ii) Any other person assigned or who has assumed the obligation to pay royalty due on the production or to make other payments for which you are liable;

(iii) Any person who filed a PIF with MMS for the production or other payments for which you are liable; and

(iv) Any other person liable under this part for the royalty due on production or for the other payments for which you are liable.

(c) Persons who file PIFs with MMS.

(1) If you file a PIF with MMS, you are liable for royalty and other payments due on the production from or allocated to the lease specified on that PIF in the amount MMS determines under applicable statutes, lease terms, regulations, or orders. You are liable under this paragraph whether or not you own a record title interest or an operating rights interest in the lease.

You are liable for royalties and other payments due on that production under one or more of the following paragraphs:

(i) The volume received in a month if you purchase production from or allocated to a lease.

(ii) The volume delivered in a month if you arrange a sale or other disposition of production from or allocated to the lease for the benefit of an operating rights owner on the lease.

(iii) The volume reported to MMS on the Report of Sales and Royalty Remittance (Form MMS—2014) with your payor code.

(2) If you file a PIF with MMS, you are jointly and severally liable for the royalty or other payments due as

described in paragraph (c)(1) of this section with:

(i) All record title owners who are liable for the royalty due on the production and for other payments;

(ii) All operating rights owners who are liable for the royalty due on the production and for other payments; and

(iii) Any other person liable under this part for the royalty due on production or for other payments for which you are liable.

(3) If another person uses your payor code to report royalties on Form MMS-2014, that person is not liable for those royalties solely on the basis of that reporting. However, that person may be liable under paragraphs (a), (b), (d) or (e) of this section.

(d) *Operators.*

(1) If you are an operator, you are liable for royalty or other payments due on a lease only if:

(i) You are subject to paragraph (a) or (b) of this section to the extent you are a record title or operating rights owner; or

(ii) You are subject to paragraph (c) of this section by filing a PIF; or

(iii) You are subject to paragraph (e) of this section by assuming royalty or other payment liability by contract or agreement; or

(iv) You are liable under a regulation of the Department of the Interior.

(e) *Other liable persons.*

(1) You are liable for royalty or other payments due in the amount MMS determines under applicable statutes, lease terms, regulations, or orders if:

(i) You have a contract or other agreement to assume that liability on behalf of another person who is liable for those royalties or other payments under this subpart; or

(ii) Liability is established under a regulation of the Department of the Interior.

(f) *Operating rights owners of a lease in an approved Federal or Indian agreement.*

(1) You are liable for the royalty and other payments due on production allocated to a Federal or Indian lease in an approved Federal or Indian agreement in the amount that MMS determines under applicable statutes, lease terms, agreement terms, regulations, or orders if:

(i) You own operating rights in that lease or in another Federal or Indian lease in that agreement and

(ii) You take that production specified under paragraph (f)(1) of this section.

(2) If you own operating rights and take production as provided in paragraph (f)(1) of this section, you are jointly and severally liable for the royalty and other payments with any

other person who is liable for the payments under this subpart.

§ 211.15 Who is liable for payment of compensatory royalty?

If you are a record title owner or operating rights owner of all or a portion of a lease, you are jointly and severally liable for payment of all compensatory royalty owed for that lease with

(a) All other record title owners on that lease;

(b) All other operating rights owners on the lease; and

(c) Any other persons obligated to pay compensatory royalties under regulations of the Department of the Interior.

§ 211.16 How does assignment of record title interests or transfer of operating rights interests affect liability?

(a) If you assign some or all of your record title interest in a lease to another person:

(1) You are not liable for royalties and other payments that accrue on or after the effective date of the assignment for the percentage of the interest you assign, except as provided in a regulation of the Department of the Interior or unless you agree with the assignee to remain liable for those payments. You will continue to be liable for compensatory royalties that accrue for a lease after the effective date of the assignment, unless you assigned all of your record title interest in that lease.

(2) The person to whom you assign some or all of your record title interest is not liable for royalties, compensatory royalties, or other payments for the percentage of the interest assigned that accrued prior to the effective date of the assignment, except as provided in a regulation of the Department of the Interior or unless the assignee agrees to be liable for those payments.

(3) The limitations on liability established in this section apply only to royalty, compensatory royalty, and other payments. This limitation may not apply to other lease obligations established under statutes, lease terms, or regulations in Title 25, Title 30, or Title 43.

(b) If you transfer some or all of your operating rights interest in a lease to another person:

(1) You are not liable for royalties and other payments that accrue on or after the effective date of the transfer for the interest you transfer, except as provided in a regulation of the Department of the Interior or unless you agree with the transferee to remain liable for those payments. You will continue to be liable for compensatory royalties that accrue for a lease after the effective date of the

transfer, unless you transferred all of your operating rights interest in that lease.

(2) The person to whom you transfer some or all of your operating rights interest is not liable for royalties, compensatory royalties, or other payments for the interest transferred that accrued prior to the effective date of the transfer, except as provided in a regulation of the Department of the Interior or unless the transferee agrees to be liable for those payments.

(3) The limitations on liability established in this section apply only to royalty, compensatory royalty, and other payments. This limitation may not apply to other lease obligations established under statutes, lease terms, or regulations in Title 25, Title 30, or Title 43.

§ 211.17 How does liability affect the requirement to report and pay royalties?

Not all persons liable for royalty or other payments due on a lease are required to report and pay those amounts to MMS. Subpart C establishes the requirements for who reports and pays.

Subpart C—Reporting and Paying Royalties

§ 211.18 Who is required to report and pay royalties?

You must report and pay royalties for Federal and Indian leases in accordance with this section. You also must report and pay royalties in accordance with applicable statutes, lease terms, regulations, and orders, and submit corrected reports or payments to MMS.

(a) *Persons who take production from leases not in an approved Federal or Indian agreement.*

Except as provided in paragraph (d) of this section, if you are an operating rights owner who takes production from a Federal or Indian lease that is not included in an approved Federal or Indian agreement, you must report and pay royalties and other payments on the production you take. You must:

(1) File a PIF with MMS as specified in Part 210 of this chapter and the MMS Payor Handbooks (see §§ 210.54 and 210.204 for availability)

(2) Report the royalties owed on a Form MMS-2014 as specified in Part 210 of this chapter and the MMS Payor Handbooks; and

(3) Pay royalties as specified in Part 218 of this chapter and the MMS Payor Handbooks.

(b) *Persons who take production allocable to leases in approved Federal or Indian agreements containing 100 percent Federal or Indian tribal leases.*

(1) This paragraph provides requirements and instructions for reporting and paying royalties and other payments for:

(i) Leases in an approved Federal agreement comprised only of Federal leases that each have the same royalty rate and funds distribution requirement; and

(ii) Approved Indian agreements comprised only of Indian tribal leases that each have the same royalty rate and tribal lessor.

(2) Except as provided in paragraph (d) of this section, if you are an operating rights owner who takes production allocated to a lease in an agreement under this paragraph, you must report and pay royalties on the production you take. You must:

(i) File a PIF with MMS as specified in Part 210 of this title and the MMS Payor Handbooks:

(ii) Report the royalties owed for that production on a Form MMS—2014. You must use one or more of your MMS-assigned lease accounting identification numbers (AID). Also, you must follow the instructions provided in Part 210 of this title and the MMS Payor Handbooks; and

(iii) Pay royalties on that production as specified in Part 218 of this title and the MMS Payor Handbooks.

(c) *Persons who take production allocable to Federal or Indian leases in all other approved Federal or Indian agreements.* [Reserved]

(d) *What if another agrees to report and pay for you?* If another person files a PIF under its own name and reports and pays royalties for the production for which you are required to report and pay under paragraphs (a)-(c) of this section, then you are not required to report and pay under paragraphs (a)-(c) of this section. However, you are not relieved of any underlying liability you may have on the lease and you may be required to report and pay under paragraph (e) of this section. The person filing the PIF under its own name must follow the requirements under paragraphs (a)-(c) of this section for the royalty or other payments due.

(e) *Liable persons who MMS requires to report and pay.* MMS may require any person liable for royalty or other payments under Subpart B of this part to report and pay royalties as provided by this subpart.

§ 211.19 What are the obligations for proper reporting and paying?

(a) *How report and pay.*

If you are required to report and pay royalties under § 211.18, you are obligated to report and pay those

royalties timely, accurately, and in the manner MMS specifies. Instructions for timely and proper reporting are provided under Parts 210 and 218 of this title and in the MMS Payor Handbooks. You also must report accurate volumes and values of production on which royalties are due under applicable statutes, lease terms, regulations, or orders. Parts 202 and 206 of this title provide instructions for proper valuation and volume determinations.

(b) *What you must do if you report or pay royalties incorrectly.*

If you incorrectly report or pay royalties, you must submit corrected reports or payments, or both, to MMS. Also, MMS may require you to:

- (1) Submit adjustments on Form MMS—2014;
- (2) Correct production regarding sales exceptions;
- (3) Comply with audit orders to perform;
- (4) Pay bills;
- (5) Pay applicable late-payment charges; and
- (6) Pay civil penalties.

Note: The Following Appendices A and B will not appear in the Code of Federal Regulations.

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