

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