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 or 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.