

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.