

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