



Proposed Rule:
Mining of the Osage Mineral Estate for Oil and Gas
25 CFR 226



Department of the Interior
Bureau of Indian Affairs
February 8, 2023


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Background

- The Act of June 28, 1906 reserved the 1.47-million-acre subsurface mineral estate underlying what is now Osage County, Oklahoma (referred to as the Osage Mineral Estate) to the Osage Nation in perpetuity
- The United States holds the Osage Mineral Estate in trust for the benefit of the Osage Nation pursuant to the 1906 Act
- The 1906 Act authorizes the Osage Nation to lease the Osage Mineral Estate for oil and gas mining, subject to the approval of the Secretary of the Interior and under such rules and regulations as the Secretary may prescribe
- The regulations governing oil and gas leasing and development operations within the Osage Mineral Estate are set forth in 25 CFR 226


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Need for Revisions to 25 CFR 226

- Regulations have not been updated in 49 years (last revision in 1974)
- Regulations do not account for advances in technology
- Regulations do not reflect modern oil and gas operations within the Osage Mineral Estate
- Regulations are inconsistent with industry standards
- Regulations are inconsistent with the oil and gas regulations governing the rest of Indian country
- Regulations must be revised to implement certain recommendations in the 2014 Office of Inspector General (OIG) report

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Goals

BIA'S goals for the revision of 25 CFR 226 are to:

- Strengthen BIA's management of the Osage Mineral Estate
- Improve production accountability to ensure the Osage Nation receives the full value of its resources
- Allow the Office of Natural Resources Revenue (ONRR) to take over the Osage Agency's royalty management program
- Modernize the regulations and make them consistent with DOI regulations governing oil and gas mining throughout Indian country
- Clarify obligations
- Promote safe and environmentally sound operations

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Overview of Revisions

- Types of Leases Offered
- Rental Rate
- Bonding
- Settlement Value of Oil and Gas
- Reporting
- Commencement Money and Tank Siting Fees
- Hydrogen Sulfide (H₂S) Operations
- Production Accountability and Site Security
- Oil and Gas Measurement
- Waste Prevention and Drainage
- Venting and Flaring
- Assessments and Civil Penalties
- Appeals

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Current Regulations

Three types of leases:

- Oil Only
- Gas Only
- Combination Oil and Gas

Proposed Rule

One type of lease:

- Combination Oil and Gas
- Lessees will have title to both the oil and gas, but are not required to produce both
- Change only applies to leases issued after the effective date of the Final Rule
- Oil-Only and Gas-Only Leases issued before the effective date of the Final Rule remain valid until they terminate, are surrendered, or cancelled for cause

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Rental Rate

Current Regulations

- \$1.00 per acre, or fractional acre, for Oil-Only and Gas-Only Leases
- \$2.00 per acre, or fractional acre, for Combination Oil and Gas Leases

Proposed Rule

- \$8.00 per acre, or fractional acre, for Combination Oil and Gas Leases issued after effective date of Final Rule
- Rental rates for leases approved before effective date of the Final Rule do not change

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Bonds for Lease Operations

Current Regulations

- Lease Bond = \$5,000 for each quarter-section or fractional quarter-section covered by lease
- Collective Bond = \$50,000 for all oil and/or gas leases to which Lessee is, or may become, a party (total acreage ≤ 10,240 acres)
- Nationwide Bond = \$150,000 for all oil and/or gas leases to which Lessee is, or may become, a party without geographic or acreage limitation

Proposed Rule

- Individual Well Bond = \$6.00 per foot of measured well depth for existing wells or projected well depth for proposed wells
- Countywide Bond = \$75,000 for all oil and gas leases and SWD easements to which Lessee is, or may become, a party within the Osage Mineral Estate (total acreage ≤ 10,240)
- Nationwide Bond = \$150,000 for all oil and gas leases to which Lessee is, or may become, a party within the United States without geographic or acreage limitation and all SWD easements within the Osage Mineral Estate

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Bonds for Lease Operations Cont.

Grandfathering of Existing Bonds Under Proposed Rule:

- \$5,000 Lease Bonds and \$50,000 Collective Bonds filed prior to the effective date of the Final Rule will remain valid, subject to the following limitations:
 - The bonds are acceptable forms of financial security for the Lessee of record on the effective date of the Final Rule only
 - The bonds only cover unplugged wells located on the covered leases that the Lessee drilled and completed, operated, or controlled prior to the effective date of the Final Rule
 - Lessees must file bonds that comply with the new bonding requirements for all wells they drill, reenter, complete, and accept via assignment after the effective date of the Final Rule

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Bonds for Geophysical Exploration

Current Regulations

- No specific bonding requirements
- Superintendent has broad authority to apply regulatory requirements in 25 CFR 226 to parties conducting geophysical exploration operations

Proposed Rule

- Individual Exploration Bond = \$5,000 covering tract identified in geophysical permit application
- Countywide Exploration Bond = \$25,000 covering all geophysical exploration operations within the Osage Mineral Estate
- Nationwide Exploration Bond = \$50,000 covering all geophysical exploration operations within the United States
- Current lessees with valid Countywide or Nationwide Lease Bonds may file Bond Rider to cover geophysical exploration

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Royalty and Production Reporting

Current Regulations

- Lessee must submit monthly report by the 25th day of the month following the production month
- Production reported by lease
- Reports submitted to the Osage Agency
- All paper forms

Proposed Rule

- Lessee must submit monthly **royalty report** on or before last calendar day of the month following the month the oil and gas is produced and removed or sold
- Lessee must submit monthly **production report** on or before the 15th day of the second month following the production month
- Production reported by well
- Reports submitted to ONRR
- Electronic reporting using ONRR's eCommerce Reporting Website

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Settlement Value of Oil

Current Regulations

- Royalty is paid based on the actual selling price, but not less than the Highest Posted Price by a major purchaser in Osage County that purchases production from the Osage Mineral Estate

Proposed Rule

- Royalty is paid based on the greater of the:
 - New York Mercantile Exchange (NYMEX) Calendar Month Average Price of oil at Cushing, Oklahoma for the month in which the oil was removed or sold, adjusted for gravity

or

- Actual selling price, adjusted for gravity

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Settlement Value of Gas

Current Regulations

- Gas Produced from Oil Lease
 - Royalty is paid based on market value of the casinghead gas and all products extracted therefrom, less a reasonable allowance for manufacturing or processing
- Gas Produced from Gas Lease
 - Royalty is paid based on the value of all natural gas and products extracted therefrom

Proposed Rule

- Royalty for all gas, and gas plant products, is paid based on the measured volume of the gas, heating value, and ONRR Monthly Index Zone Price of Gas for Oklahoma Zone 1
- No deductions or allowances

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Current Regulations

- \$300 per well
- \$25 per seismic shot hole
- \$100 per tank for tanks that are 50 feet square or less
- Fee negotiated by the Lessee and Surface Owner for tanks greater than 50 feet square

Proposed Rule

- \$1,500 per well
- \$25 per seismic shot hole
- \$12 per acre or fractional acre occupied while conducting seismic survey
- \$200 per tank

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Hydrogen Sulfide (H₂S) Operations

Current Regulations

- No specific requirements for operations in H₂S areas

Proposed Rule

- Requires H₂S concentration testing
- Lessee must prepare Public Protection Plan if:
 - 100-ppm radius of exposure is > 50 feet and includes areas the public frequents
 - 500-ppm radius of exposure is > 50 feet and includes roads or highways maintained for public use
 - 100-ppm radius of exposure is > 3,000 feet
- Imposes H₂S operating, training, and safety requirements for operators

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Production Accountability & Site Security

Current Regulations

- General requirement to report accidents, theft, and vandalism

Proposed Rule

- Site facility diagrams required for all permanent facilities
- Requires use of Facility Measurement Points (FMPs) for production reporting
- Requires lines leaving and entering storage tanks to have valves capable of being sealed
- Requires valves that provide access to production before it is measured for sale to be sealed
- Existing valves may be modified

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Oil Measurement

Current Regulations

- Oil must be measured using methods the Superintendent approves
- Meters and installations must be tested as directed by Superintendent

Proposed Rule

- Incorporates American Petroleum Institute (API) standards
- Specifies requirements for measurement by tank gauging, LACT system, and Coriolis measurement system
- Imposes specific meter proving requirements

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Gas Measurement

Current Regulations

- Gas must be measured by orifice meter unless the Superintendent agrees to an alternative method of measurement

Proposed Rule

- Incorporates API, GPA Midstream (GPA), and American Gas Association (AGA) standards
- Specifies requirements for the installation and operation of orifice meters, mechanical recorders and electronic gas measurement (EGM) systems, and flow computers
- Imposes inspection, calibration, and verification requirements
- Imposes gas sampling and analysis requirements

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Waste Prevention and Drainage

Current Regulations

- General prohibition on conducting operations in a manner the results in the waste or loss of oil and gas

Proposed Rule

- Specifies what constitutes avoidably and unavoidably lost or wasted production
- Expressly requires the payment of royalties for avoidably lost or wasted production
- Imposes obligations to prevent drainage and pay compensatory royalty for drainage

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Venting and Flaring

Current Regulations

- Superintendent issued a Notice to Lessees under the current regulations prohibiting venting and flaring without prior approval

Proposed Rule

- Codifies the existing prohibition on venting and flaring without the Superintendent's prior approval, subject to certain exceptions:
 - Initial Production Testing
 - Subsequent Well Tests
 - Downhole Maintenance
 - Emergencies
- Requires measurement and reporting of gas vented or flared

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Assessments and Civil Penalties

Current Regulations

- Impose civil penalties, including shut-in action or lease cancellation, for violation of the terms and conditions of the lease, the regulations in 25 CFR 226, and orders or notices the Superintendent issues
- Impose civil penalties for violation of specific operating regulations

Proposed Rule

- Updates civil penalties consistent with penalties throughout Indian country
- Imposes civil penalties, including shut-in action or lease cancellation, for violation of the terms and conditions of the lease or permit, the regulations in 25 CFR 226, and orders or notices the Superintendent or ONRR issue
- Imposes immediate assessments violation of certain operating regulations

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Current Regulations

- Administrative appeals of decisions and orders the Superintendent issues are filed with BIA Regional Director pursuant to 25 CFR 2
 - Subsequent appeals of the BIA Regional Director's decisions are filed with the IBIA pursuant to 43 CFR 4, Subpart D

Proposed Rule

- Administrative appeals of decisions the Superintendent and BIA Regional Director issue continue being filed pursuant to 25 CFR 2 and 43 CFR 4, Subpart D, respectively
- Administrative appeals of decisions that ONRR issues are filed with the Director of ONRR pursuant to 25 CFR 226
 - Subsequent appeals of the Director of ONRR's decisions are filed with IBLA pursuant to 43 CFR 4, Subpart E

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Public Comments

Public Comments on the Proposed Rule are Due by March 17, 2023

Public Comments can be submitted:

- At the Public Meeting
- Online at <https://www.regulations.gov> (preferred method for written submissions)
- By Mail/Courier or Hand Delivery (addresses in Federal Register)

Tips for Public Comments:

- Identify the section/paragraph you are commenting on
- Be specific and explain your position
- If your comment is based on research or supporting documentation, please include citations or provide a copy of the materials, if possible
- Propose reasonable alternatives for BIA's consideration

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Next Steps

- Public Comment Period Closes - **March 17, 2023**
- BIA Reviews Public Comments, Makes Changes to the Regulations (as appropriate), and Prepares Final Rule
- BIA Publishes the Final Rule in Federal Register
- Final Rule Goes Into Effect 30 Days after Publication in the Federal Register

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For Further Information

Oliver Whaley
Office of Regulatory Affairs & Collaborative Action
Office of the Assistant Secretary – Indian Affairs
comments@bia.gov
(202) 738-6065

A link to the Proposed Rule is available on the Osage Agency's
Website under "Announcements"

<https://www.bia.gov/regional-offices/eastern-oklahoma/osage-agency>

