

SUMMARY: ONNR proposes to amend its regulations governing the valuation, for royalty purposes, of oil produced from Indian leases.

COMMENTS SUBMITTED BY MUSCOGEE (CREEK) NATION:

1. Transportation costs passed to the lessor in Oklahoma is an issue. Generally, this is a cost of doing business to the company. Specifically, it is errant to apply a statewide index for transportation cost, as a true cost would vary from location to location, increasing with distance from the point of sale. In Oklahoma pipelines go to a central point, Cushing, so transportation costs are not equal depending on the location of the leased site. Transportation costs should not be passed on to the lessor unless doing so is proven to add extraordinary value to the product.
2. Considering Oklahoma as a statewide single designated rate does not take into consideration the difference in oil quality from the East side of the State to the West side of the state. Geographical location of the well makes a difference in the quality produced and thus the price the market is willing to bear. Therefore for valuation purposes, a single designated rate is not a fair and equitable valuation method for which to pay royalties.
3. The ONNR formula for valuing oil produced on Indian tribal or allotted lands is too complex and too difficult to understand for the Indian lessor, as to how the 30 day average of NYMEX compared to the major portion analysis would apply. This proposed formula is too labor intensive and susceptible to error.
4. The proposed rule leaves no ability for the lessor to negotiate a rate when the opportunity presents itself. We propose a simpler methodology that leaves room for the lessor to negotiate.
5. The Muscogee Creek Nation objects that the proposed rule attempts to exclude Tribes in Eastern Oklahoma, individual allottees, and specifically the District Court Leases under §1206.50, which includes the 5 Tribes in Oklahoma. The main substantive pronouncement in the proposed rule invokes language that states the “Secretary establishes value, as the Secretary has a trust responsibility to tribes and individual Indians.” The District Court leases, thousands of Muscogee (Creek) Nation leases, do not include “major portions clause” or “value by Secretary” language as Trust officials have failed to ensure inclusion in leases.
6. Therefore, this proposed rule does not state it clearly but infers that the DOI’s trust responsibility and fiduciary responsibility over tribes in Eastern Oklahoma, the 5 Tribes, and would not apply any longer to oil leases.
7. By excluding certain Oklahoma tribes and allottees from trust oversight, the Indian lessor has no way to negotiate royalty rates, leases are made in perpetuity, and therefore the lessor is stuck with an unfair and unjust royalty for as long as the well is producing.
8. By excluding the Eastern Oklahoma Tribes and the 5 Civilized Tribes from regulation, it then prevents multi-depth leasing opportunities which in turn leaves the lessor unable to collect improved or increased revenues.