

PROPOSED REVISIONS TO PORTIONS OF 25 C.F.R. PART 226

LANDOWNER REVISIONS (AS OF MARCH 8, 2013) TO DISCUSSION DRAFT AS OF
FEBRUARY 27, 2013

REG NEG COMMITTEE COMMENTS, CHANGES, PROPOSALS BASED ON FEB 26-27
MEETINGS

Code of Federal Regulations

Title 25 - Indians. CHAPTER 1 - BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF
THE INTERIOR. SUBCHAPTER 1 - ENERGY AND MINERALS.

PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS
MINING

Authority:

Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat.
1660.

§ 226.1 Definitions.

As used in this part 226, terms shall have the meanings set forth in this section.

- (a) Secretary means the Secretary of the Interior or his authorized representative acting under delegated authority.
- (b) Osage ~~Tribal Council~~ Minerals Council means the duly elected governing body of the Osage Nation or Tribe of Indians of Oklahoma vested with authority to lease ~~enter into leases~~ or take other actions on oil and gas mining pertaining to the Osage Mineral Estate.
- (c) Superintendent means the Superintendent of the Osage Agency, Pawhuska, Oklahoma, or his authorized representative acting under delegated authority, or such other person as the Secretary or Superintendent may delegate to fulfill the responsibilities and exercise the authorities under this part.
- ~~(d)~~ (d) Lease means any contract approved by the United States under the Act of June 28, 1906 (34 Stat. 539), as amended, that authorizes exploration for, extraction of, or removal of oil or gas.
- (e) Oil ~~L~~essee means any person, firm, or corporation to whom an oil mining lease is made under the regulations in this part, or his authorized representative.
- ~~(ef)~~ Gas ~~H~~essee means any person, firm, or corporation to whom a gas mining lease is made under the regulations in this part, or his authorized representative.
- ~~(fg)~~ Oil and ~~G~~as ~~L~~essee means any person, firm, or corporation to whom an oil and gas mining lease is made under the regulations in this part, or his authorized representative.

Comment [D1]: Committee to consider at March meeting, definition of "other marketable product".

Proposed definition is as follows: "other marketable product means a non-hydrocarbon product, including but not limited to helium, nitrogen, and carbon-dioxide, for which there is a market."

Comment [m2]: 43 C.F.R. 3160.0-5

Oil Lessee, Gas Lessee, and Oil and Gas Lessee, individually and collectively, hereinafter also referred to as Lessee.

(h) Surface Owner means the owner of the surface estate upon which oil and/or gas leasing and/or production takes place.

(gih) Primary term means the basic period of time for which a lease is issued during which the lease contract may be kept in force by payment of rentals.

~~— (h) Major purchaser means any one of the minimum number of purchasers taking 95-percent of the oil in Osage County, Oklahoma. Any oil purchased by a purchaser from itself, its subsidiaries, partnerships, associations, or other corporations in which it has a financial or management interest shall be excluded from the determination of a major purchaser.~~

(j) ~~Casinghead~~ — Raw natural gas or gas means gas produced from an oil well as a consequence of oil production from the same formation.

~~— (j) Natural gas means any fluid, either combustible or noncombustible, recovered at the surface in the gaseous phase oil and/or hydrocarbons recovered at the surface as gas wells including all natural gas liquids which are the result of condensation caused by reduction of pressure and temperature of hydrocarbons originally existing in a reservoir in the gaseous phase before any treating or processing.~~

(k) ~~Authorized representative of an oil lessee, gas lessee, or oil and gas lessee~~ means any person, group, or groups of persons, partnership, association, company, corporation, organization or agent employed by or contracted with a Lessee or any subcontractor to conduct oil and gas operations or provide facilities to market oil and gas.

(lk) Oil well means any well which produces one (1) barrel or more of crude petroleum oil for each 15,000 standard cubic feet of raw natural gas.

(mm) Gas well means any well which:

(1) Produces raw natural gas not associated with crude petroleum oil at the time of production or

(2) Produces more than 15,000 standard cubic feet of raw natural gas to each barrel of crude petroleum oil from the same producing formation.

~~— (nn) Onshore oil and gas order means a formal order issued or adopted by the Director of the Bureau of Indian Affairs that implements and supplements the regulations in this part.~~

(oh) Notice to lessees (NTLs) mean a written notice issued or adopted by the Superintendent. NTLs implement the regulations in this part and operating orders, and serve as instructions on specific item(s) of importance.

~~(pe)~~ Avoidably lost means the venting or flaring of produced gas or other marketable product without the prior authorization, approval, ratification or acceptance of the Superintendent and the loss of produced oil or gas or other marketable product when the Superintendent determines that such loss occurred as a result of:

(1) Negligence on the part of the Lessee; or

(2) The failure of the Lessee to take all reasonable measures to prevent and/or control the loss; or

(3) The failure of the Lessee to comply fully with the applicable lease terms and regulations, applicable orders and notices, or the written orders of the Superintendent; or

(4) Any combination of the foregoing.

The term avoidably lost does not include the (i) flaring of any gas containing 10 ppm or greater of hydrogen sulfide gas (H₂S) without the use of a “clean-burn variable tip flare” and/or the best current flaring technology as required in § 226.36(f) or (ii) venting of any gas containing H₂S which is prohibited pursuant to § 226.36(g).

~~(qp)~~ Drainage means the migration of hydrocarbons, inert gases, or associated resources caused by production from other wells.

~~(rq)~~ Maximum ultimate economic recovery means the recovery of oil and gas and any other marketable product from leased lands which a prudent lessee could be expected to make from that field or reservoir given existing knowledge of reservoir and other pertinent facts and utilizing common industry practices for primary, secondary or tertiary recovery operations.

~~(sf)~~ Production in paying quantities means production from a lease of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or minimum royalties.

(ts) Waste of oil or gas or other marketable product means any act or failure to act by the Lessee that is not sanctioned by the Superintendent as necessary for proper development and production and which results in: (1) a reduction in the quantity or quality of oil and gas or other marketable product ultimately producible from a reservoir under prudent and proper operations; or (2) avoidable surface loss of oil or gas or other marketable product.

§ 226.1A Applicability.

All oil and gas activities conducted in Osage County are subject to the regulations in this part; lease terms; orders of the Superintendent; and all other applicable laws, regulations, and authorities.

Comment [D3]: 43 C.F.R. 3160.0-5

Comment [m4]: Adapted from 43 C.F.R. § 3161.1

LEASING PROCEDURE, RENTAL AND ROYALTY

§ 226.1B Certain Responsibilities of the Superintendent.

(a) The Bureau of Indian Affairs is authorized to issue and make effective in Osage County onshore oil and gas orders or NTLs, including the adoption of such orders or NTLs issued by the Bureau of Land Management thereby adopts Bureau of Land Management Onshore Orders No. 1-7 for immediate application to all oil and gas development in Osage County, Oklahoma. The Bureau of Indian Affairs is also authorized to issue and make effective in Osage County such other Onshore Orders or NTLs it deems necessary for management of oil and gas production and protection of the surface estate. Adoption of such orders by the Bureau of Indian Affairs shall remain in effect according to their terms and shall not be modified by any action of the Bureau of Land Management unless the Director issues further orders to that effect.

(b) The Superintendent is authorized and directed to approve unitization, communitization, gas storage and other contractual agreements; to assess compensatory royalty; to approve suspensions of operations or production, or both; to approve and monitor other Lessee proposals for drilling, development or production of oil and gas and any other marketable product; to perform administrative reviews; to impose monetary assessments or penalties; to provide technical information and advice relative to oil and gas and any other marketable product development and operations; to approve, inspect and regulate the operations that are subject to the regulations in this part; to require compliance with lease terms, with the regulations in this title and all other applicable regulations and laws; and to require that all operations be conducted in a manner which (i) protects air, land, water, wildlife habitat, other natural resources and the environmental quality, (ii) protects life public health and safety and property, and (iii) results in the maximum ultimate recovery of oil and gas and any other marketable product with minimum waste and with minimum adverse effect on the ultimate recovery of other mineral resources, and (iv) does not unduly interfere with the ongoing operations and private property rights of the Surface Owner. The Superintendent may issue written or oral orders to govern specific lease operations. Any such oral orders shall be confirmed in writing by the Superintendent within 10 working days from issuance thereof. Before approving operations on leasehold, the Superintendent shall determine that the lease is in effect, that acceptable bond coverage has been provided and that the proposed plan of operations is sound.

Comment [m5]: 43 C.F.R. § 3161.2

(c) The Superintendent shall establish procedures to ensure that each lease site which has a history of noncompliance with applicable provisions of law or regulations, lease terms, orders or directives shall be inspected at least once annually monthly until compliance is verified for a period of one (1) year, and thereafter such inspections shall occur at least once annually.

Comment [m6]: 43 C.F.R. § 3161.3

§ 226.2 Sale of leases.

(a) ~~Written~~ A written application, together with any nomination fee, for tracts to be offered for lease shall be filed with the Superintendent.

(b) The Superintendent, with the consent of the Osage ~~Tribal Council~~ Minerals Council, shall publish notices for the sale of oil leases, gas leases, and oil and gas leases to the highest responsible bidder on specific tracts of the unleased Osage Mineral Estate. The Superintendent may require any bidder to submit satisfactory evidence of his good faith and ability to comply with all provisions of the notice of sale. Successful bidders must deposit with the Superintendent on day of sale a cashier's check, money order or cash electronic funds transfer in an amount not

less than 25 percent of the cash bonus offered as a guaranty of good faith. Any and all bids shall be subject to the acceptance of the Osage ~~Tribal Council~~ Minerals Council and approval of the Superintendent. Within 20 days after notification of being the successful bidder, ~~and~~ said bidder must submit to the Superintendent the balance of the ~~cash~~ bonus, a \$~~1075~~ filing fee, and the lease in completed form. The Superintendent may extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting the balance of moneys due. If the bidder fails to pay the full ~~cash~~ consideration within said period or fails to file the completed lease within said period or ~~extension~~ extension thereof, or if the lease is rejected through no fault of the Osage ~~Tribal Council~~ Minerals Council or the Superintendent, 25 percent of the ~~cash~~ bonus bid will be forfeited for the use and ~~benefits~~ benefit of the Osage ~~Tribe~~ Mineral Estate. The Superintendent may reject a lease made on an accepted bid, upon evidence satisfactory to him of collusion, fraud, or other irregularity in connection with the notice of sale. The Superintendent may approve oil leases, gas leases, and oil and gas leases made by the Osage ~~Tribal Council~~ Minerals Council in conformity with the notice of sale, regulations in this part, bonds, and other instruments required. Within ten (10) days following full execution of the Lease, the Surface Owner(s) affected by the Lease shall be notified by the Superintendent that the minerals under their surface have been leased.

(c) Each oil and/or gas lease and activities and installations associated therewith subject to these regulations shall be assessed and evaluated for its environmental impact prior to its approval by the Superintendent.

(d) Lessee shall accept a lease with the understanding that a mineral not covered by his lease may be leased separately.

(e) No lease, assignment thereof, or interest therein will be approved to any employee or employees of the Government and no such employee shall be permitted to acquire any interest in leases covering the Osage Mineral Estate by ownership of stock in corporations having leases or in any other manner. Osage Mineral Headrights shall not be held by Bureau of Indian Affairs Osage Agency employees who work in the land protection enforcement division.

(f) The Osage ~~Tribal Council~~ Minerals Council may utilize the following procedures among others, in entering into a ~~mining~~ lease. A ~~contract~~ lease may be entered into through competitive bidding as outlined in § 226.2(b), negotiation, or a combination of both. The Osage ~~Tribal Council~~ Minerals Council may also request the Superintendent to undertake the preparation, advertisement and negotiation ~~of leases, and/or to provide information regarding the current estimated value of any or all or each of the leases to the Osage Minerals Council based on comparable sales of federal, Indian, state, and private leases.~~ The Superintendent may approve any such ~~contract~~ lease made by the Osage ~~Tribal Council~~ Minerals Council.

§ 226.3 Surrender of lease.

Lessee may, with the approval of the Superintendent and payment of a \$~~1075~~ filing fee, surrender all or any portion of any lease, have the lease cancelled as to the portion surrendered and be relieved from all subsequent obligations and liabilities. If the lease, or portion being surrendered, is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation: Provided, That if this lease has been recorded, Lessee shall

execute a release and record the same in the proper office. Such surrender shall not entitle Lessee to a refund of the unused portion of rental paid in lieu of development, nor shall it relieve Lessee and his sureties of any obligation and liability incurred prior to such surrender: Provided further, That when there is a partial surrender of any lease and the acreage to be retained is less than 160 acres or there is a surrender of a separate horizon, such surrender shall become effective only with the consent of the Osage ~~Tribal Council~~ Minerals Council and approval of the Superintendent.

§ 226.4

~~Form of payment.~~

Sums due under a lease contract and/or the regulations in this part shall be paid ~~by cash or check made payable to in the Bureau of Indian Affairs manner and delivered to method specified by the Osage Agency, Pawhuska, Oklahoma 74056~~ Superintendent. Such sums shall be a prior lien on all equipment and unsold oil on the leased premises.

§ 226.5 Leases subject to current regulations.

~~Leases subject to current regulations.~~

Leases issued pursuant to this part shall be subject to the current regulations of the Secretary, all of which are made a part of such leases: Provided, That no amendment or change of such regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties and approved by the Superintendent.

§ 226.6 Bonds.

Lessees shall furnish ~~with each lease a corporate surety bond~~ bonds or personal bonds acceptable to the Superintendent as follows:

(a) ~~A bond on Form D shall be filed with each lease submitted for approval. Such bond shall be in an amount of not less than \$5,000 for each quarter section or fractional quarter section covered by said lease: Provided, however, That one bond in the penal sum or not less than \$50,000 may be filed on Form G covering all oil, gas and combination oil and gas leases not in excess of 10,240 acres to which Lessee is or may become a party. The per well "Bonding Amount" shall be defined as an amount sufficient to cover 125% of the cost of (i) plugging a single well and (ii) reclaiming the well site and surrounding land impacted thereby to the condition existing prior to drilling, which amount shall be set by the Superintendent, and shall be available upon request, but in any case shall be not less than \$10,000 and shall not be released until reclamation has been properly completed.~~

~~(b) In lieu of the bonds required under paragraph (a) of this section, a bond in the penal sum of \$150,000 may be filed on Form 5-5438 for full nationwide coverage of all leases, without geographic or acreage limitation, to which the Lessee is or may become a party.~~

—(b) A surety bond or personal bond equal to the Bonding Amount shall be filed with each lease submitted for approval.

(c) A bond on Form H shall be filed. Lessee shall at all times maintain on file with the Superintendent surety bonds and/or personal bonds in an amount of not less than \$5,000 covering a lease acquired through assignment where equal to the assignee does not have a collective bond on form G or nationwide bond, or Bonding Amount times the corporate surety does not execute its consent to remain bound under number of wells on the original bond given Lessee's lease, up to secure a maximum of 20 wells.

(d) To meet the faithful requirements of this section a surety bond must be issued by a qualified surety company approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

Comment [m7]: 43 CFR 3104.1(b)

(e) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(d) The right is specifically reserved. (2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to increase the amount of bonds prescribed in paragraphs (a) and (c) of this section in any particular case when specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Superintendent deems it proper. The nationwide bond may be increased at any time in the discretion of the Secretary full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Superintendent as sole payee with full authority to demand immediate payment in the case of default in the performance of the terms and conditions of a lease.

Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its term. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given shall be collected by the Superintendent if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Superintendent upon demand, in part or in full, upon receipt from the Superintendent of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the Superintendent at least 90 days prior to the originally stated or any extended expiration date.

Comment [D8]: 43 C.F.R. 3104.1(c)

(f) The Superintendent may require an increase in the amount of any bond in appropriate circumstances, including, but not limited to, a history of previous violations, uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the Superintendent. The increase in bond amount may be to any level specified by the Superintendent, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

Comment [m9]: 43 C.F.R. 3104.5(b)

§ 226.7 Provisions of forms made a part of the regulations.

Leases, assignments, and supporting instruments shall be in the form prescribed by the Secretary, and such forms are hereby made a part of the regulations.

§ 226.8 Corporation and corporate information.

(a) If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its Articles of Incorporation and, if foreign to the State of Oklahoma, evidence showing compliance with the corporation laws thereof.

(b) Whenever deemed advisable the Superintendent may require a corporation to file any additional information necessary to carry out the purpose and intent of the regulations in this part, and such information shall be furnished within a reasonable time.

§ 226.9 Rental ~~and~~, drilling, and production obligations.

(a) Oil leases, gas leases, and combination oil and gas leases. Unless Lessee shall complete and place on production a well producing and selling oil and/or gas in paying quantities on the land embraced within the lease within 12 months from the date of approval of the lease, or as otherwise provided in the lease terms, or 12 months from the date the Superintendent consents to

drilling on any restricted homestead selection, the lease shall terminate unless rental at the rate of not less than ~~\$1.00~~ \$1.00 per acre for an oil or gas lease, or not less than ~~\$2.00~~ \$2.00 per 20 per acre for a combination oil and gas lease, shall be paid ~~before~~ at the end ~~beginning~~ of the first year of the lease. These dollar amounts shall be adjusted as specified in § 226.43B(a). The lease may also be held for the remainder of its primary term without drilling upon payment of the specified rental annually in advance, commencing with the second lease year. The lease shall terminate as of the due date of the rental unless such rental shall be received by the Superintendent, ~~or shall have been mailed as indicated by postmark~~ on or before said date. The completion of a well producing in paying quantities shall, for so long as such production continues, relieve Lessee from any further payment of rental, except that should such production cease during the primary term the lease may be continued only during the remaining primary term of the lease by payment of advance rental which shall commence on the next anniversary date of the lease. Rental shall be paid on the basis of a full year and no refund will be made of advance rental paid in compliance with the regulations in this part. ~~Provided, That,~~

(b) The Superintendent may, with the consent of and under terms approved by the Osage Minerals Council, grant an extension of the primary term of a lease on which actual drilling of a well shall have commenced within the term thereof, or for the purpose of enabling the Lessee to obtain a market for his oil and/or gas production.

(c) Irrespective of whether the Lessee has drilled or paid rental, the Superintendent in his discretion may order further development of any leased acreage or separate horizon in any lease term if, in his opinion, a prudent operator/lessee would conduct further development. A prudent lessee will diligently develop the minerals underlying the leasehold. The Osage Minerals Council shall have the right to request a determination of whether there is diligent development by the Superintendent as to any lease and may submit any materials or analysis to support its request. Upon receipt of a request, the Superintendent shall issue such a determination within 90 days.

(d) If Lessee refuses to comply, with an order by the Superintendent to diligently develop its leasehold as a result of a determination under (c), the refusal will be considered a violation of the lease terms and said lease shall be subject to cancellation/terminated as to the acreage or horizon the further development of which was ordered. Provided further, That the, after any appeal of an order. The Superintendent shall promptly notify the Lessee of such termination.

(e) (1) Except for a lease during its primary term for which rental payment has been paid, a lease that does not produce in paying quantities for 90 consecutive days is thereby terminated, effective immediately. The Superintendent shall notify the Lessee of such termination.

(2)(A) The Superintendent shall have the authority before termination to approve in writing a temporary suspension of operations tolling the ninety-day period for a specified number of days, due to force majeure, other hardship, or extenuating circumstance.

(B) Any request for a temporary suspension of operations shall be made in writing to the Superintendent no later than the forty-fifth (45) day that the lease has not produced in paying quantities. The Superintendent may waive this requirement.

Comment [ATA10]: This requires drilling commence within 12 months of leasing or the mineral lease is terminated. However, such conditions appear to be variable with some of the recent large concessions granted in Osage County. Some concessions appear to still have a mandate of at least one well drilled per quarter section to hold the lease, while others do not have drilling requirements at that fine of a scale. These large concessions typically include expansive blocks of land that have not had a successful oil and gas producing history. Forcing drilling on every quarter section to hold the lease exposes the Lessee to excessive financial risk (dry holes), and causes excessive impacts to the land and wildlife. Leases should be structured to allow focused drilling rather than a "shotgun" approach.

(C) The Superintendent in his discretion may extend in writing the time of any temporary suspension of operations.

(3) The Superintendent shall provide a copy of any decision under subparagraph (e) to the Osage Minerals Council at the same time it is delivered to the Lessee.

(f) Whenever the Osage Minerals Council identifies any lease that has terminated or may be subject to termination for any reason, the Osage Minerals Council shall have the right to request in writing appropriate action by the Superintendent, including but not limited to the issuance of a notice of termination to the Lessee, and may submit any materials or analysis in support of its request. Upon receipt of such a request, within 90 days the Superintendent shall either take the requested action or issue a written decision responsive to the request.

(g) The Superintendent may impose restrictions as to time of drilling and rate of production from any well or wells when in his judgment, such action may be necessary or proper for the protection of the (i) air, land, water, natural resources and overall environmental quality of the leased land and lands directly adjacent thereto, (ii) public health and safety, and (iii) the interests of the Osage Tribe Mineral Estate. All oil and gas activities shall be conducted so as to not unduly interfere with the ongoing operations and private property rights of the Surface Owner. The superintendent may Superintendent may consider, among other things, Federal and Oklahoma laws regulating either drilling or production.

(h) If a Lessee holds both an oil lease and a gas lease covering the same acreage, such Lessee is subject to the provisions of this section as to both the oil lease and the gas lease.

(b) The Superintendent may, with the consent of and under terms approved by the Osage Tribal Council, grant an extension of the primary term of a lease on which the actual drilling of a well shall have commenced within the term thereof or for the purpose of enabling Lessee to obtain a market for his oil and/or gas production.

§ 226.9A Drainage: drilling and production or payment of compensatory royalty.

(a) Where lands in any leases are being drained of their oil or gas content by wells outside the lease, the Lessee shall drill or modify and produce all wells necessary to protect the leased lands from drainage within a reasonable time after the earlier of when the Lessee knew or should have known of the drainage. In lieu of drilling or modifying necessary wells, the Lessee may, with the consent of the Superintendent, pay compensatory royalty for drainage that has occurred or is occurring.

(b) Actions under paragraph (a) are not required if the Lessee proves to the Superintendent that when it first knew or had constructive notice of drainage it could not produce a sufficient quantity of oil or gas from a protective well on the lease in paying quantities above the cost of drilling, and completing the protective well.

(c) A Lessee has constructive notice that drainage may be occurring when well completion or first production reports for the draining well are publicly available, or, if the Lessee operates or own any interest in the draining well or lease, upon completion of drill stem, production, pressure analysis, or flow tests of the draining well.

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Comment [D11]: 43 CFR § 3100.2-2

Comment [m12]: 43 CFR § 3162.2-5 and § 3162.2-6

Comment [m13]: 43 CFR § 3162.2-7

(d) If a Lessee assigns its interest in a lease or transfers its operating rights, it is liable for drainage that occurs before the date the assignment or transfer is approved by the Superintendent. Any Lessee who acquires an interest in a lease that is being drained is liable for all drainage obligations accruing on and after the date the assignment or transfer is approved by the Superintendent.

Comment [m14]: 43 CFR § 3162.2-8, § 3162.2-13

(e) The Superintendent may send a demand letter by certified mail, return receipt requested, or personally serve the Lessee with notice, if the Superintendent believes that drainage is occurring. However, the Lessee's responsibility to take protective action arises when it first knew or had constructive notice of the drainage, even when that date precedes the demand letter.

Comment [m15]: 43 C.F.R. § 3162.2-10

(f) Since the time required to drill and produce a protective well varies according to the location and conditions of the oil and gas reservoir, the Superintendent will determine this on a case-by-case basis. The Superintendent will consider several factors including, but not limited to:

(1) Time required to evaluate the characteristics and performance of the draining well;

(2) Rig availability;

(3) Well depth;

(4) Required environmental analysis;

(5) Special lease stipulations which provide limited time frames in which to drill; and

(6) Weather conditions.

(g) If the Superintendent determines that a Lessee did not take protection action in a timely manner, the Lessee will owe compensatory royalty for the period of the delay.

Comment [m16]: 43 C.F.R. 3162.2-11(b), (c)

(h) The Superintendent will assess compensatory royalty beginning on the first day of the month following the earliest reasonable time the Lessee should have taken protective action and continuing until:

(1) The Lessee drills sufficient economic protective wells and remain in continuous production;

(2) The draining well stops producing; or

(3) The Lessee relinquishes its interest in the lease.

Comment [m17]: 43 C.F.R. 3162.2-12

§ 226.10 Term of lease.

Leases issued hereunder shall be for a primary term as established by the Osage Tribal Council Minerals Council, approved by the Superintendent, and so stated in the notice of sale of such leases and so long thereafter as the minerals specified are produced in paying quantities.

§ 226.11 Royalty payments.

(a) Royalty on oil—(1) Royalty rate. Lessee shall pay or cause to be paid to the Superintendent, as royalty, the sum of not less than $\frac{162}{320}$ percent of the gross proceeds from sales after deducting value of the oil used by Lessee for development and operation purposes on the lease: Provided, That when the quantity of oil taken from all the producing wells on any quarter section or fraction thereof, according to the public survey, during any calendar month is sufficient to average one hundred or more barrels per active producing well per day the royalty on such oil shall be not less than 20 percent. The Osage Tribal Council may, upon presentation of justifiable economic evidence by Lessee, agree to determined under subparagraph (a) revised royalty rate subject to approval by the Superintendent, applicable to additional oil produced from a lease or leases by enhanced recovery methods, which rate shall not be less than $\frac{121}{2}$ percent of the gross proceeds from sale of oil produced by enhanced recovery processes, other than gas injection, after deducting the oil used by Lessee for development and operating purposes on the lease or leases.)(2).

(2) Unless the Osage Tribal Council Minerals Council, with approval of the Secretary, shall elect to take the royalty in kind, payment is owing at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the actual selling price, but at not less than the highest posted price by a major purchaser (as defined in § 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases value per barrel shall be the greater of (a) the average NYMEX daily price of oil at Cushing, Oklahoma, for the month in which the produced oil was sold, adjusted for gravity using the scale applicable under paragraph 4; or (b) the actual selling price as adjusted for gravity. The applicable average NYMEX daily price and gravity adjustment scale shall be available from the Superintendent upon request, on or before the fifth day of the month following production.

(3) Royalty in kind. Should Lessor, with approval of the Secretary, elect to take the royalty in kind, Lessee shall furnish free storage for royalty oil for a period not to exceed 60 days from date of production after notice of such election.

—(b) Royalty on gas—(1) Oil lease. All casinghead gas shall belong to the oil Lessee subject to any rights(4) Gravity Adjustment of Average Daily NYMEX Price. The gravity adjustment under existing paragraph 2(a) above shall be a deduction from the price per barrel, as follows: for oil of gravity between 40.0 and 44.9 degrees, zero; for oil of gravity between 35.0 and 39.9 degrees, two cents for each degree or fraction thereof below 40.0; for oil of gravity below 35.0 degrees, ten cents plus an additional one-and-a-half cents for each one-tenth of one degree below 35.0; and for oil of gravity above 44.9 degrees, one-and-a-half cents for each one-tenth of one degree above 44.9. The Superintendent may, on or before the fifth day of the month following production, publish a gravity adjustment scale for oil of gravity below 40.0 degrees or above 44.9 degrees that supersedes this paragraph, but only if the Superintendent determines, based on substantial evidence, that market conditions so warrant.

—(b) Royalty on gas leases. All casinghead gas removed from the lease from which it is produced shall be metered before removal unless otherwise approved by the Superintendent and be subject to a royalty of not less than $\frac{162}{3}$ percent of the market value of the gas and all products extracted therefrom, less a reasonable allowance for manufacture or processing. If an

oil Lessee supplies casinghead 20 percent of the gross proceeds of the gas. Unless the Osage Minerals Council, with approval of the Secretary, shall elect to take the royalty in kind, gross proceeds shall be calculated pursuant to subparagraph 1; except that the Superintendent may direct (and the Osage Minerals Council may request that the Superintendent direct) any Lessee, upon no less than 30 days notice, to calculate gross proceeds at the higher royalty value of subparagraph 1 or subparagraph 2.

Comment [V18]: Committee to look at language to incorporate theoretical dual accounting

(1) Under this paragraph 1, gross proceeds of the gas shall be determined by multiplying the entire volume of gas at the well times the heating value of the gas measured in MMBtu as determined by periodic gas analysis, times the Monthly Index Price in dollars per MMBtu for Oklahoma Zone 1 published by the Department of the Interior's Office of Natural Resources Revenue. If that Monthly Index Price ceases to be published and is not otherwise available, the price shall be calculated in a comparable manner to be determined by the Superintendent. If any Lessee supplies gas produced from one lease for operation and/or development of any other leases, either his/hers or others, a royalty of not less than $16\frac{2}{3}$ percent shall be paid on the market value of all casinghead gas so used. All casinghead gas not utilized by the oil Lessee may, with the approval of the Superintendent, be utilized or sold by the gas Lessee, subject to the prescribed royalty of not less than $16\frac{2}{3}$ percent of the market value. lease, including another lease held by the same Lessee, royalty calculated under this section shall be paid on all gas so used.

— (2) Gas lease. Lessee shall pay a royalty of not less than $16\frac{2}{3}$ percent of the market value value of all natural gas and products extracted therefrom produced and sold from his lease. Natural gas used in the reasonable and prudent operation and development of said lease shall be exempted from royalty payment.

— (3) Combination oil and gas lease. Lessee shall pay royalty as provided in paragraphs (b)(1) and (2) of this section.

(e)-(2) Under this subparagraph 2, gross proceeds of the gas shall be one hundred percent of the actual proceeds from sales of all residue gas produced from the lease and one hundred percent of the actual proceeds from sales of all natural gas liquids produced from the lease (including drip condensate) minus the actual, reasonable cost of processing not to exceed fifty percent of the actual sales value of the natural gas liquids (including drip condensate). There shall be no other deductions of any kind, whether monetary or volumetric or otherwise, for any purpose, including but not limited to compression, dehydration, gathering, treating, or transportation.

(c) Royalty on minerals wasted or avoidably lost. Royalty shall be due on all oil and gas wasted or avoidably lost, the volume and quality of which shall be determined by the Superintendent, resolving all doubts about volume and quality in favor of the lessor.

(d) Minimum royalty. In no event shall the royalty paid from producing leases during any year be less than an amount equal to the annual rental specified for the lease. Any underpayment of minimum royalty shall be due and payable within 45 days following at the end of the lease year. After the primary term, Lessee shall submit with his payment evidence that the

lease is producing in paying quantities. The Superintendent is authorized to determine whether the lease is actually producing in paying quantities or has terminated for lack of such production. Payment for any underpayment not made within the time specified shall be subject to a late charge at the rate of not less than 1 1/2 percent per month for each month or fraction thereof until paid, or such other rate as may be set by the Superintendent after consultation with the Osage Minerals Council. Minimum royalty shall be adjusted in the same manner as the annual rental, consistent with § 226.9(a) and § 226.43B(a).

(e) Royalty on other marketable products. Royalty on other marketable products shall be paid at the rate of not less than 20% of the actual sales value of the other marketable products sold, irrespective of any other royalty due on oil or gas.

Comment [D19]: Added for consistency

§ 226.12 Government reserves right to purchase oil.

Any of the executive departments of the U.S. Government shall have the option to purchase all or any part of the oil produced from any lease at not less than the highest posted price as defined in § 226.11.

§ 226.13 Time of royalty payments- Royalty payments and reports.

(a) Royalty payments due may be paid by either purchaser or Lessee. Unless otherwise provided by the Osage ~~Tribal Council~~ Minerals Council and approved by the Superintendent, all payments shall be due by the 25th day ~~end of each~~ month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday. In such cases, payments are due on the first business day of the succeeding month. All such payments shall cover the sales of the preceding month. Failure to make such payments shall subject Lessee or purchaser, whoever is responsible for royalty payment, to a late charge at the rate of not less than ~~1 1/2~~ 1 1/2 percent for each month or fraction thereof until paid, or such other rate as may be set by the Superintendent after consultation with the Osage Minerals Council. The Osage ~~Tribal Council~~ Minerals Council, subject to the approval of the Superintendent, may waive the late charges.

(b) Lessee shall furnish certified monthly reports by the 25th of each following month covering all operations in a form specified by the Superintendent, whether there has been production or not, indicating therein the total amount of oil, raw natural gas, ~~easinghead gas~~, and other products subject to royalty payment, by the end of the month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday. In such cases, reports are due on the first business day of the succeeding month.

(1) Reports covering oil production shall include the date of each sale of oil, well or lease identity, Lessee, purchaser, volume of oil sold, gravity of oil sold, price paid per barrel for the sale, 40-degree price used for the sale, gravity adjustment scale used for the sale, and total amount paid for the sale.

(2) Reports covering gas production shall contain the total volume of raw natural gas measured at the well, the BTU value of raw natural gas produced at the well, the periodic gas analysis applicable to the sale, and the total value paid for the raw natural gas.

(3) Report forms shall be submitted in .csv (comma separated value) or ASCII format, or such other equivalent format specified by the Superintendent. The Superintendent shall specify the method of transmittal. The Superintendent may specify that Lessees shall submit the reports and information required by this section directly to other federal agencies within the Department of the Interior, in lieu of the Superintendent.

(4) The Superintendent shall cause to be provided to the Osage Minerals Council copies of all reports under this section on at least a quarterly basis in the format originally received by the Lessee. Upon written request by the Osage Minerals Council, the Superintendent shall require Lessees to provide to the Osage Minerals Council copies of run tickets.

(c) Failure to remit payments or reports shall subject Lessee to further penalties as provided in §§ 226.42 and 226.43 and shall subject the division order to cancellation.

§ 226.14 Contracts and division orders.

(a) Lessee may enter into division orders or contracts with the purchasers of oil, gas, or derivatives therefrom which will provide for the purchaser to make payment of royalty in accordance with his lease: Provided, That such division orders or contracts shall not relieve Lessee from responsibility for the payment of the royalty should the purchaser fail to pay. No production shall be removed from the leased premises until a division order and/or contract and its terms are approved by the Superintendent: Provided further, That the Superintendent may grant temporary permission to run oil or gas from a lease pending the approval of a division order or contract. Lessee shall file a certified monthly report and pay royalty on the value of all oil and gas used off the premises for development and operating purposes. Lessee shall be responsible for the correct measurement and reporting of all oil and/or gas taken from the leased premises.

(b) Lessee shall require the purchaser of oil and/or gas from his/her lease or leases to furnish the Superintendent, no later than the 25th day of each month, a statement reporting the gross barrels of oil and/or gross Mcf of gas sold and sales price per barrel and/or gross McF during the preceding month, by the end of the month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday. In such cases, statements are due on the first business day of the succeeding month. The Superintendent may authorize an extension of time, not to exceed 10 days, for furnishing this statement.

§ 226.15 Unit leases, assignments and related instruments.

(a) Unitization of leases. The Osage ~~Tribal Council~~ Minerals Council and Lessee or Lessees, may, with the approval of the Superintendent, unitize or merge, two or more oil or oil and gas leases into a unit or cooperative operating plan to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof embracing the lands covered by such lease or leases. The cooperative or unit agreement shall be subject to the regulations in this part and applicable laws governing the leasing of the Osage Mineral Estate. Any agreement between

the parties in interest to terminate a unit or cooperative agreement as to all or any portion of the lands included shall be submitted to the Superintendent for his approval. Upon approval the leases included thereunder shall be restored to their original terms: Provided, That for the purpose of preventing waste and to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof, all oil leases, oil and gas leases, and gas leases issued heretofore and hereafter under the provisions of the regulations in this part shall be subject to any unit development plan affecting the leased lands that may be required by the Superintendent with the consent of the Osage ~~Tribal Council~~ Minerals Council, and which plan shall adequately protect the rights of all parties in interest including the Osage Mineral Estate.

(b) Assignments. Approved leases or any interest therein may be assigned or transferred only with the approval of the Superintendent. The assignee must be qualified to hold such lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions thereof. Lessee must assign either his entire interest in a lease or legal subdivision thereof, or an undivided interest in the whole lease: Provided, That when an assignment covers only a portion of a lease or covers interests in separate horizons such assignment shall be subject to both the consent of the Osage ~~Tribal Council~~ Minerals Council and approval of the Superintendent. If a lease is divided by the assignment of an entire interest in any part, each part shall be considered a separate lease and the assignee shall be bound to comply with all the terms and conditions of the original lease. A fully executed copy of the assignment shall be filed with the Superintendent within 30 days after the date of execution by all parties. If requested within the 30-day period, the Superintendent may grant an extension of 15 days. A filing fee of \$~~1075~~ shall accompany each assignment.

(c) Overriding royalty. Agreements creating overriding royalties or payments out of production shall not be considered as an interest in a lease as such term is used in paragraph (b) of this section. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in any such agreement shall be construed as modifying any of the obligations of Lessee under his lease and the regulations in this part. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. The existence of agreements creating overriding royalties or payments out of production, whether or not ~~actually~~ actually paid, shall not be considered in justifying the shutdown or abandonment of any well. Agreements creating overriding royalties or payments out of production need not be filed with the Superintendent unless incorporated in assignments or instruments required to be filed pursuant to paragraph (b) of this section. ~~An agreement creating overriding royalties or payment out of production shall be suspended when the working interest income per active producing well is equal to or less than the operational cost of the well, as determined by the Superintendent.~~

(d) Drilling contracts. The Superintendent is authorized to approve drilling contracts with a stipulation that such approval does not in any way bind the Department to approve subsequent assignments that may be provided for in said contracts. Approval merely authorizes entry on the lease for the purpose of development work.

(e) Combining leases. The ~~U~~essee owning both an oil lease and gas lease covering the same acreage is authorized to convert such leases to a combination oil and gas lease.

OPERATIONS

§ 226.15A General requirements.

(a) The Lessee shall comply with applicable laws and regulations; with the lease terms; and with orders and instructions of the Superintendent. These include, but are not limited to, conducting all operations in a manner which ensures the proper handling, measurement, disposition, and site security of leasehold production; which protects air, land, water, and other natural resources and overall environmental quality of the leased land and lands directly adjacent thereto; which protects public health and safety; life and property; and which results in maximum ultimate economic recovery of oil and gas and other marketable products with minimum waste and with minimum adverse effect on ultimate recovery of other mineral resources. All oil and gas activities shall be conducted so as to not unduly interfere with the ongoing operations and private property rights of the Surface Owner.

(b) The Lessee shall permit properly identified authorized representatives of the Superintendent to enter upon, travel across and inspect lease sites and records normally kept on the lease pertinent thereto without advance notice. Inspections normally will be conducted during those hours when responsible persons are expected to be present at the operation being inspected. Such permission shall include access to secured facilities on such lease sites for the purpose of making any inspection or investigation for determining whether there is compliance with the applicable law, the regulations in this part, and any applicable orders, notices or directives.

(c) For the purpose of making any inspection or investigation, the Superintendent shall have the same right to enter upon or travel across any lease site as the Lessee.

Comment [m20]: 43 C.F.R. 3162.1

§ 226.16 Commencement of operations.

(a) No operations shall be permitted upon any tract of land until a lease covering such tract shall have been approved by the Superintendent: Provided, That the Superintendent may grant authority to any party under such rules, consistent with the regulations in this part that he deems proper, to conduct geophysical and geological exploration work. Prior to entering the land to conduct any seismic activities, Lessee shall negotiate and enter into a written agreement with the Surface Owner regarding the terms and conditions of such activities. No oil and gas operations shall commence until Lessee negotiates and enters into a written agreement with the Surface Owner regarding the use of the surface land in accordance with § 226.18.

(b) Lessee shall submit applications on forms to be furnished by the Superintendent and secure his approval before:

- (1) Well drilling, treating, or workover operations are started on the leased premises.
- (2) Removing casing from any well.

(c) Lessee shall notify the Superintendent a reasonable time in advance of starting work, of intention to drill, redrill, deepen, plug, or abandon a well.

§ 226.17 How to acquire permission to begin operations on a restricted homestead allotment.

(a) Lessee may conduct operations within or upon a restricted homestead selection only with the written consent of the Superintendent.

(b) If the allottee is unwilling to permit operations on his homestead, the Superintendent will cause an examination of the premises to be made with the allottee and Lessee or his representative. Upon finding that the interests of the Osage ~~Tribe~~Mineral Estate require that the tract be developed, the Superintendent will endeavor to have the parties agree upon the terms under which operations on the homestead may be conducted.

(c) In the event the allottee and Lessee cannot reach an agreement, the matter shall be presented by all parties before the Osage ~~Tribal Council~~Minerals Council, and the Council shall make its recommendations. Such recommendations shall be considered as final and binding upon the allottee and Lessee. A guardian may represent the allottee. Where no one is authorized or where no person is deemed by the Superintendent to be a proper party to speak for a person of unsound mind or feeble understanding, the Principal Chief of the Osage Tribe shall represent him.

(d) If the allottee or his representative does not appear before the Osage ~~Tribal Council~~Minerals Council when notified by the Superintendent, or if the Council fails to act within 10 days after the matter is referred to it, the Superintendent may authorize Lessee to proceed with operations in conformity with the provisions of his lease and the regulations in this part.

§ 226.18 ~~Information to be given~~Negotiation of Surface Use Agreement with surface-owner~~Surface Owner~~(s) prior to commencement of drilling operations.

~~Except for the surveying and staking of a well, n~~No operations of any kind, ~~including without limitation surveying and staking of a well,~~ shall commence until the Lessee or his/her authorized representative shall meet with the ~~surface owner~~Surface Owner or his/her representative, if a resident of and present in Osage County, Oklahoma. Unless waived by ~~the Superintendent or otherwise agreed to between the lessee and surface owner~~Surface Owner, such meeting shall be held at least ~~160~~ days prior to the commencement of ~~fr~~ any operations, ~~except including for the surveying and staking of the well.~~ At such meeting Lessee, or his/her authorized representative, and the Surface Owner, or his/her authorized representative, shall negotiate a written agreement governing all aspects of the proposed development (Surface Use Agreement), ~~including without limitation:~~

~~(a) the location and size of the well site(s);~~

~~(b) the location and scope of access to and from the well site(s);~~

~~(c) the location, nature, and maintenance of any (i) roads, fences and gates, (ii) pipelines, electric lines, pull rods, and flow lines (all of which shall be buried no less than three (3) feet below the surface of the land), and (iii) other appliances necessary for operations and marketing.~~

~~(d) any temporal, geographic or other restrictions on drilling, completion and operational activities to protect (i) human health and safety, (ii) air, land, water, wildlife and other natural resources and overall environmental quality, and (iii) against residential, agricultural and/or commercial disturbance;~~

~~(d) the amount of damages, as well as insurance, liability and indemnification requirements; and~~

~~(f) any and all factors deemed important by the parties. Lessee or his/her authorized representative shall comply with the following requirements:~~

~~— (a) Indicate the location of the well or wells to be drilled.~~

~~— (b) Arrange for route of ingress and egress. Upon failure to agree on route ingress and egress, said route shall be set by the Superintendent.~~

~~— (c) Impart to said surface owners the name and address of the party or representative upon whom the surface owner shall serve any claim for damages which he may sustain from mineral development or operations, and as to the procedure for settlement thereof as provided in § 226.21.~~

~~— (d) Where the drilling is to be on restricted land, lessee or his authorized representative in the manner provided above shall meet with the Superintendent.~~

~~In the event the parties can not agree on all, or any part of, the terms of the Surface Use Agreement within 60 days following the meeting, then each party shall have ten (10) days to appoint an arbitrator and the two arbitrators shall agree upon a third arbitrator. If a third arbitrator cannot be agreed upon, then the parties shall appeal to the Osage County District Court, as the court of competent jurisdiction, which shall have twenty (20) days to select the third arbitrator. After the third arbitrator has been selected, the arbitrators shall have 30 days to assess value, location, size or any matters aggrieved upon and make a decision regarding the contested terms of the Surface Use Agreement. It shall require a minimum of two (2) arbitrators to make a final decision. In the event one party does not appoint an arbitrator or does not abide by the date limits set forth herein, then the Osage County District Court shall also appoint such arbitrator. The arbitrators shall be disinterested persons. For purposes of this section, a person is considered disinterested, provided the person or the person's spouse, parent, child or sibling (1) is not a party to the contract or transaction or materially involved in the conduct that is the subject of the claim or challenge; and (2) does not have a material financial interest in the outcome of the contract or transaction or the disposition of the claim or challenge. Each Lessee or his authorized representative and claimant shall pay the fee and expenses for the arbitrator appointed by him. The fees and expenses of the third arbitrator shall be borne equally by the claimant and Lessee or his authorized representative. Nothing herein contained shall be construed to deny any party the right to file an action in the Osage County District Court, or other court of competent jurisdiction, if he is dissatisfied with the arbitrators' decision.~~

~~(e) When the sSurface eOwner or his/her representative is not a resident of, or is not physically present in, Osage County, Oklahoma, or cannot be contacted at the last known address, the Superintendent may authorize LLessee to proceed with operations.~~

§ 226.19 Use of surface of land. Oil and gas operations shall be conducted in a manner that accommodates Surface Owners and minimizes intrusion upon and damage to surface lands. This can be achieved by selecting alternative locations for wells, roads, pipelines, and production facilities, or employing alternative means of operations, where such alternatives are technologically sound, economically practicable, and reasonably available to the operator.

Comment [V21]: This section and 226.18 being considered further by Committee, as well as, consideration of public comment made during the session.

(a) Lessee or his/her authorized representative shall be governed by the Surface Use Agreement and the terms of 25 C.F.R. Part 226 regarding use of surface land. In the event of a conflict between the terms of the Surface Use Agreement and the terms 25 C.F.R. Part 226, the terms most favorable to the Surface Owner shall control. have the right to use so much of the surface of the land within the Osage Mineral Estate as may be reasonable for operations and marketing. This includes but is not limited to the right to lay and maintain pipelines, electric lines, pull rods, other appliances necessary for operations and marketing, and the right of way for ingress and egress to any point of operations. If Lessee and surface owner are unable to agree as to the routing of pipelines, electric lines, etc., said routing shall be set by the Superintendent. The right to use of water for lease operations shall be governed by the laws of the State of Oklahoma, is established by § 226.24. Lessee shall conduct his/her operations in a workmanlike manner, commit no waste and allow none to be committed upon the land, nor permit any unavoidable nuisance, threats to the public health or safety, or pollution of air, land, water, wildlife, other natural resources or overall environmental quality of the land, to be maintained on the premises under his/her control. All oil and gas activities shall be conducted so as to not unduly interfere with the ongoing operations and private property rights of the Surface Owner. Lessee shall follow the Bureau of Land Management's best management practices.

(b) Before commencing a drilling operation, Lessee shall pay or tender to the surface owner Surface Owner commencement money in the amount of no less than \$4,000 per linear mile for 2D seismic shot hole line laid on the ground and no less than \$10.00 per acre for 3D seismic and commencement money in the amount of no less than \$300,000 for each well per acre, after which Lessee shall be entitled to immediate possession of the drilling site and shall be negotiated as part of the Surface Use Agreement required pursuant to Section 226.18. Commencement money shall also be paid to the Surface Owner for will not be required for the redrilling of a well which was originally drilled under the currently lease has previously been plugged, abandoned and reclaimed. Further, the Surface Owner shall be compensated no less than \$10,000 per acre equivalent for roads, flow lines, and electric transmission lines. A drilling site shall be held to the minimum area essential for operations and shall not exceed the limits described in § 226.19(b)(1)-(4) below one and one half acres in area unless authorized by the Superintendent Surface Owner. Commencement money shall be a credit toward the settlement of the total damages. Acceptance of commencement money by the surface owner Surface Owner does not affect his/her right to compensation for damages as described in § 226.20, occasioned by the drilling and completion of the well for which it was paid. Since actual damage to the surface from operations cannot necessarily be ascertained prior to the completion of a well as a serviceable well or dry hole, a damage settlement covering the drilling operation need not be made until after completion of drilling operations. Lessee shall negotiate with Surface Owner in good faith and may not commence with drilling operations until a Surface Use Agreement is entered into with Surface Owner.

(1) When constructing the drill pad, Lessee shall first blade-off the topsoil, pushing it into a berm such that it shall be available for restoration of the site when the well is plugged. The size of the drill pad hosting at least three (3) horizontal wells shall be no greater than three (3) acres and for vertical wells shall be no greater than one and a half (1.5) acres.

(2) Within ninety (90) days of well completion, Lessee will (a) reduce the size of the well pad to as small of an area as is reasonably practicable for oil field operations, but in no event greater than three-quarter (.75) acres for horizontal wells, and no greater than one-third (.3) acres for vertical wells, and (b) restore the original contour and soil profile (topsoil on top) of the unused portion of the well pad, and plant vegetation per the instructions of the Surface Owner.

(3) The Lessee is encouraged to drill multiple wells from one well pad site to reduce the amount of surface impact.

(4) The terms of the Surface Use Agreement shall govern commencement money, damages, and reclamation.

(c) Where the surface is restricted land, commencement money shall be paid to the Superintendent for the ~~landowner~~Surface Owner. All other ~~surface owner~~Surface Owner(s) shall be paid or tendered such commencement money directly in accordance with the schedule set forth in the Surface Use Agreement. Where such ~~surface owner~~Surface Owner(s) are not residents of Osage County nor have a representative located therein, such payment shall be made or tendered to the last known address of the ~~surface owner~~Surface Owner at least 5 days before commencing drilling operation on any well: Provided, That should ~~L~~essee be unable to reach the owner of the surface of the land for the purpose of tendering the commencement money or if the ~~owner of the surface of the land~~Surface Owner shall refuse to accept the same, ~~L~~essee shall deposit such amount with the Superintendent by check payable to the Bureau of Indian Affairs. The superintendent shall thereupon advise the owner of the surface of the land by mail at his last known address that the commencement money is being held for payment to him upon his written request.

(d) Lessee shall also pay fees for each tank sites not exceeding 50 feet squaresited at the rate agreed in writing by the parties, but of no less than \$100500 per tank site or other vessel: ~~Provided, That, except that (1) no payment shall be due for a tank temporarily set on a well location site for drilling, completing, or testing. The, and (2) the sum to be paid for a tank occupying an area more than 50 feet2500 square feet shall be agreed upon between the s~~Surface e~~Owner and L~~essee or, on failure to agree, the same shall be determined by arbitration as provided by § 226.21.

Comment [V22]: There is a question before the Committee regarding whether need to specify that this subsection (d) is commencement payments only

§ 226.20 Settlement of damages claimed.

(a) Lessee or his authorized representative or geophysical permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages as may be occasioned by operations. Commencement money shall be a credit toward the settlement of the total damages occasioned by the drilling and completion of the well for which it was paid. Such damages shall be paid to the owner of the surface and by him apportioned among the

parties interested in the surface, whether as owner, surface lessee, or otherwise, as the parties may mutually agree or as their interests may appear. If ~~L~~essee or his authorized representative and ~~s~~Surface ~~o~~wner are unable to agree concerning damages, the same shall be determined by arbitration. Nothing herein contained shall be construed to deny any party the right to file an action in the Osage County District Court, as the court of competent jurisdiction, if he is dissatisfied with the amount of the award.

(b) Surface ~~O~~wners shall notify their lessees or tenants of the regulations in this part and of the necessary procedure to follow in all cases of alleged damages. If so authorized in writing, surface lessees or tenants may represent the ~~surface owner~~ Surface Owner(s).

(c) In settlement of damages on restricted land all sums due and payable shall be paid to the Superintendent for credit to the account of the Indian entitled thereto. The Superintendent will make the apportionment between the Indian landowner or owners and surface Lessee of record.

(d) Any person claiming an interest in any leased tract or in damages thereto, must furnish to the Superintendent a statement in writing showing said claimed interest. Failure to furnish such statement shall constitute a waiver of notice and estop said person from claiming any part of such damages after the same shall have been disbursed.

§ 226.21 Procedure for settlement of damages claimed.

Where the ~~S~~urface ~~O~~wner or his lessee suffers damage due to the oil and gas operations and/or marketing of oil or gas by ~~L~~essee or his authorized representative, the procedure for recovery shall be governed by the Surface Use Agreement, or if not discussed therein shall be as follows:

(a) The party or parties aggrieved shall, as soon as possible after the discovery of any damages, serve written notice to Lessee or his authorized representative as provided by § 226.18. Written notice shall contain the nature and location of the alleged damages, the date of occurrence, the names of the party or parties causing said damages, and the amount of damages. It is not intended by this requirement to limit the time within which action may be brought in the courts to less than the 90-day period allowed by section 2 of the Act of March 2, 1929 (45 Stat. 1478, 1479).

(b) If the alleged damages are not adjusted at the time of such notice, Lessee or his authorized representative shall try to adjust the claim with the party or parties aggrieved within 20 days from receipt of the notice. If the claimant is the owner of restricted property and a settlement results, a copy of the settlement agreement shall be filed with the Superintendent. If the settlement agreement is approved by the Superintendent, payment shall be made to the Superintendent for the benefit of said claimant.

(c) If the parties fail to adjust the claim within the 20 days specified, then within 10 days thereafter each of the interested parties shall appoint an arbitrator who immediately upon their appointment shall agree upon a third arbitrator. If the two arbitrators shall fail to agree upon a third arbitrator within 10 days, then the parties shall appeal to the Osage County District Court, as the court of competent jurisdiction, which shall have twenty (20) days to select the third Arbitrator. ~~they shall immediately notify the parties in interest. If said parties cannot agree upon a~~

~~third arbitrator within 5 days after receipt of such notice, the Superintendent shall appoint the third arbitrator. If in the event one party does not appoint arbitrator or does not abide by date limits, then the Osage County District Court shall also appoint such arbitrator. The arbitrators shall be disinterested persons. For purposes of this section, a person is considered disinterested, provided the person or the person's spouse, parent, child or sibling (1) is not a party to the contract or transaction or materially involved in the conduct that is the subject of the claim or challenge; and (2) does not have a material financial interest in the outcome of the contract or transaction or the disposition of the claim or challenge. Each Lessee or his authorized representative and claimant shall pay the fee and expenses for the arbitrator appointed by him. The fees and expenses of the third arbitrator shall be borne equally by the claimant and Lessee or his authorized representative.~~

~~(d) As soon as the ~~third~~ three arbitrators ~~isare~~ appointed, the arbitrators shall have 30 days to assess value, location, size or any matters aggrieved upon and make a decision as to the amount of damages due, meet; hear the evidence and arguments of the parties; and examine the lands, crops, improvements, or other property alleged to have been injured. Within 10 days they shall render their decision as to the amount of the damage due. The arbitrators shall be disinterested persons. The fees and expenses of the third arbitrator shall be borne equally by the claimant and Lessee or his authorized representative. Each Lessee or his authorized representative and claimant shall pay the fee and expenses for the arbitrator appointed by him.~~

~~(e) When an act of an oil or gas Lessee or his authorized representative results in injury to both the Surface Owner and his lessee, the parties aggrieved shall join in the appointment of an arbitrator. Where the injury complained of is chargeable to one or more oil or gas Lessee, or his authorized representative, such Lessee or said representative shall join in the appointment of an arbitrator.~~

(f) Any two of the arbitrators may make a decision as to the amount of damage due. The decision shall be in writing and shall be served forthwith upon the parties in interest. Each party shall have 90 days from the date the decision is served in which to file an action in a court of competent jurisdiction. If no such action is filed within said time and the award is against Lessee or his/her authorized representative, he/she shall pay the same, together with interest at an annual rate established for the Internal Revenue Service from date of award, within 10 days after the expiration of said period for filing an action.

(g) Lessee or his authorized representative shall file with the Superintendent a report on each settlement agreement, setting out the nature and location of the damage, date, and amount of the settlement, and any other pertinent information.

~~(h) Nothing herein contained shall be construed to deny any party the right to file an action in the Osage County District Court, or other court of competent jurisdiction, if he is dissatisfied with the amount of the award.~~

§ 226.21A Disposition of production.

(a) The Lessee shall put into marketable condition at no cost to the lessor, all oil, gas, and other marketable products produced from the leased land.

(b) Where oil accumulates in a pit, such oil must either be (1) recirculated through the regular treating system and returned to the oil stock tanks for sale, or (2) pumped into an oil stock tank without treatment and measured for sale in the same manner as from any sales tank in accordance with applicable orders and notices. In the absence of prior approval from the Superintendent, no oil should go to a pit except in an emergency. Each such occurrence must be reported to the Superintendent and the oil promptly recovered in accordance with applicable orders and notices.

(c)(1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry on his/her person, in his/her vehicle, or in his/her immediate control, documentation showing at a minimum, the amount, origin, and intended first purchaser of the oil.

(2) Any person engaged in transporting any oil or gas or other marketable product by pipeline from any lease site, or allocated to any lease site, shall maintain documentation showing, at a minimum, the amount, origin, and intended first purchaser of such oil or gas or other marketable product.

(3) On any lease site, any authorized representative of the Superintendent who is properly identified may stop and inspect any motor vehicle that he/she has probable cause to believe is carrying oil from any such lease site, or allocated to such lease site, to determine whether the driver possesses proper documentation for the load of oil.

(4) Any authorized representative of the Superintendent who is properly identified and who is accompanied by an appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he/she has probable cause to believe the vehicle is carrying oil from a lease site, or allocated to a lease site, to determine whether the driver possesses proper documentation for the load of oil.

Comment [m23]: 43 C.F.R. § 3162.7-1

§ 226.22 Prohibition of pollution.

(a) All operators, Lessees, contractors, drillers, service companies, pipe pulling and salvaging contractors, or other persons, shall at all times conduct their operations and drill, equip, operate, produce, plug and abandon all wells drilled for oil or gas, service wells or exploratory wells (including seismic, core and stratigraphic holes) in a manner that will prevent (i) pollution of air, land, and water and the migration of oil, gas, salt water or other substance from one stratum into another, including any fresh water bearing formation, (ii) damage to wildlife habitat, other natural resources and overall environmental quality, and (iii) threats to public health and safety. When oil-based drilling fluid is being used, the operator shall use a closed-loop fluid system and all associated waste will be properly disposed of by recycling or injection. All flow back fluids used in hydraulic fracturing will be either recycled or disposed of by injection. All pits, regardless of use, should be lined with impermeable plastic of at least thirty (30) mil, unless otherwise approved by Surface Owner. Surface disposal (land spreading) of drilling fluids and cuttings is prohibited unless otherwise authorized by Surface Owner.

(b) Pits for drilling mud or deleterious substance used in the drilling, completion, recompletion, or workover of any well shall be constructed and maintained to prevent pollution

of surface and subsurface fresh water. These pits shall be enclosed with a fence of at least four strands of barbed wire, or an approved substitute, stretched taut to adequately braced corner posts, unless the ~~surface owner~~Surface Owner, user, or the Superintendent gives consent to the contrary. Immediately after completion of operations, pits shall be emptied, reclaimed and leveled unless otherwise requested by ~~surface owner~~Surface Owner or user.

(c) Drilling pits shall be adequate to contain mud and other material extracted from wells and shall have adequate storage to maintain a supply of mud for use in emergencies.

(d) No earthen pit, except those used in the drilling, completion, recompletion or workover of a well, shall be constructed, enlarged, reconstructed or used without approval of the Superintendent. Unlined earthen pits shall not be used for the ~~continued~~ storage of salt water or other deleterious substances.

(e) Deleterious fluids other than fresh water drilling fluids used in drilling or workover operations, which are displaced or produced in well completion or stimulation procedures, including but not limited to fracturing, acidizing, swabbing, and drill stem tests, shall be collected into a pit lined with impermeable plastic of at least 30 mil or a metal tank and maintained separately from above-mentioned drilling fluids to allow for separate disposal. Pits located at tank batteries shall be lined with impermeable plastic of at least 30 mil.

§ 226.22A Environmental obligations.

(a) The Llessee shall conduct operations in a manner which protects the mineral resources, air, land, water, wildlife habitat, other natural resources, and overall environmental quality. In that respect, the Llessee shall comply with the pertinent orders of the Superintendent, including Bureau of Land Management Onshore Orders No. 1-7 and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan or subsequent operations plan. Flaring of natural gas must be conducted in accordance with § 226.36(f). Venting of natural gas is strictly prohibited pursuant to § 226.36(g).

(b) The Llessee shall exercise due care and diligence to assure that leasehold operations do not result in undue (i) damage to surface or subsurface resources or surface improvements, air, land, water, wildlife habitat, other natural resources and overall environmental quality, and (ii) interference with Surface Owner's use of his property. All produced water must be disposed of by injection into the subsurface, by approved pits, or by other methods which have been approved by the Superintendent. Upon the conclusion of operations, the Llessee shall reclaim the disturbed surface pursuant to the requirements of in a manner approved or reasonably prescribed by the Superintendent the Surface Use Agreement.

(c) All spills or leakages of oil, gas, other marketable products, produced water, toxic liquids, or waste materials, blowouts, fires, personal injuries, and fatalities shall be reported by the Llessee to the Superintendent as soon as discovered, but not later than the next business day. The Llessee shall exercise due diligence in taking necessary measures, subject to approval by the Superintendent, to control and remove pollutants and to extinguish fires. A Llessee's compliance with the requirements of the regulations in this part shall not relieve the Llessee of the obligation to comply with other applicable laws and regulations.

(d) When ~~reasonably~~ required by the Superintendent, a contingency plan shall be submitted describing procedures to be implemented to protect life, property, and the environment.

(e) The Lessee's liability for damages to third parties shall be governed by applicable law.

Comment [m24]: 43 C.F.R. 3162.5-1

(f) The amount and type of chemicals used in a hydraulic fracturing operation shall be reported by the operator to www.fracfocus.org within sixty (60) days of hydraulic fracturing completion for public disclosure.

§ 226.22B Safety precautions.

The Lessee shall perform operations and maintain equipment in a safe and workmanlike manner. The Lessee shall take all precautions necessary to provide adequate protection for the health and safety of life and the protection of property. Such precautions shall not relieve the Lessee of the responsibility for compliance with other pertinent health and safety requirements under applicable laws or regulations, including Bureau of Land Management Onshore Order No. 6 and §226.36(f) regarding H2S.

Comment [m25]: 43 C.F.R. § 3162.5-3

§ 226.23 Easements for wells off leased premises.

The Superintendent, with the consent of the Osage ~~Tribal Council~~ Minerals Council and the Surface Owner(s), may grant commercial and noncommercial easements for wells off the leased premises to be used for purposes associated with oil and gas production. Rental payable to the Osage ~~Tribe~~ Mineral Estate for such easements shall be an amount agreed to by Grantee and the Osage ~~Tribal Council~~ Minerals Council subject to the approval of the Superintendent. Grantee shall be responsible for all damages resulting from the use of such wells and settlement therefor shall be made as provided in § 226.21.

§ 226.24 Lessee's use of water.

Lessee's use of water shall be governed by the laws of the State of Oklahoma. Lessee or his contractor may, with the approval of the Superintendent, use water from streams and natural water courses to the extent that same does not diminish the supply below the requirements of the surface owner from whose land the water is taken. Similarly, Lessee or his contractor may use water from reservoirs formed by the impoundment of water from such streams and natural water courses, provided such use does not exceed the quantity to which they originally would have been entitled had the reservoirs not been constructed. Lessee or his contractor may install necessary lines and other equipment within the Osage Mineral Estate to obtain such water. Any damage resulting from such installation shall be settled as provided in § 226.21.

§ 226.25 Gas well drilled by ~~e~~Oil Lessees and vice versa.

Prior to drilling, the ~~O~~eil Lessee or ~~g~~Gas Lessee shall notify the other Lessees of his/her intent to drill. When an ~~e~~Oil Lessee in drilling a well encounters a formation or zone having indications of possible gas production, or the ~~G~~gas Lessee in drilling a well encounters a

formation or zone having indication of possible oil production, he/she shall immediately notify the other Lessee and the Superintendent. Lessee drilling the well shall obtain all information which a prudent operatorlessee utilizes to evaluate the productive capability of such formation or zone.

(a) Gas well to be turned over to gGas Lessee. If the eOil HLessee drills a gas well, he/she shall, without removing from the well any of the casing or other equipment, immediately shut the well in and notify the Ggas Lessee and the Superintendent. If the Ggas Lessee does not, within 45 days after receiving notice and cost of drilling, elect to take over such well and reimburse the Ooil Lessee the cost of drilling, including all damages paid and the cost in-place of casing, tubing, and other equipment, the Ooil Lessee shall immediately confine the gas to the original stratum. The disposition of such well and the production therefrom shall then be subject to the approval of the Superintendent. In the event the Ooil HLessee and Ggas HLessee cannot agree on the cost of the well, such cost shall be apportioned between the eOil Lessee and Ggas Lessee by the Superintendent. ~~If such apportionment is not accepted, the well shall be plugged by the oil and gas lessee who drilled the well.~~

(b) Oil well to be turned over to eOil HLessee. If the gGas HLessee drills an oil well, he/she must immediately, without removing from the well any of the casing or other equipment, notify the eOil Lessee and the Superintendent.

(1) If the eOil HLessee does not, within 45 days after receipt of notice and cost of drilling, elect to take over the well, he/she must immediately notify the Ggas Lessee. From that point, the superintendent must approve the disposition of the well, and any gas produced from it.

(2) If the Ooil Lessee chooses to take over the well, he/she must pay to the Ggas Lessee:

- (i) The cost of drilling the well, including all damages paid; and
- (ii) The cost in place of casing and other equipment.

(3) If the eOil HLessee and the gGas HLessee cannot agree on the cost of the well, the sSuperintendent will apportion the cost between the eOil Lessee and gGas Lessee. ~~If the lessees do not accept the apportionment, the oil or gas lessee who drilled the well must plug the well.~~

(c) Lands not leased. If the Ggas Lessee shall drill an oil well upon lands not leased for oil purposes or vice versa, the Superintendent may, until such time as said lands are leased, permit the Lessee who drilled the well to operate and market the production therefrom. When said lands are leased, the Lessee who drilled and completed the well shall be reimbursed by the Ooil Lessee or Ggas Lessee, for the cost of drilling said well, including all damages paid and the cost in-place of casing, tubing, and other equipment. If the HLessee does not elect to take over said well as provided above, the disposition of such well and the production therefrom shall be determined by the Superintendent. In the event the eOil Lessee and Ggas Lessee cannot agree on the cost of the well, such cost shall be apportioned between the Ooil Lessee and gGas HLessee by the Superintendent. ~~If such apportionment is not accepted, the well shall be plugged by the oil and gas lessee who drilled the well.~~

§ 226.26 Determining cost of well.

The term “cost of drilling” as applied where one Lessee takes over a well drilled by another, shall include all reasonable, usual, necessary, and proper expenditures. A list of expenses mentioned in this section shall be presented to proposed purchasing Lessee within 10 days after the completion of the well. In the event of a disagreement between the parties as to the charges assessed against the well that is to be taken over, such charges shall be determined by the Superintendent.

§ 226.27 Gas for operating purposes and tribal use.

(a) Gas to be furnished Oil Lessee. Lessee of a producing gas lease shall furnish the Oil Lessee sufficient gas for operating purposes at a rate to be agreed upon, or on failure to agree the rate shall be determined by the Superintendent: Provided, That the Oil Lessee shall at his own expense and risk, furnish and install the necessary connections to the Gas Lessee's well or pipeline. All such connections shall be reported in writing to the Superintendent.

(b) Use of gas by Osage Tribe. (1) Gas from any well or wells shall be furnished any Tribal-owned building or enterprise at a rate not to exceed the price less royalty being received or offered by a gas purchaser: Provided, That such requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that no waste would result. In the absence of a gas purchaser the rate to be paid by the Osage Tribe shall be determined by the Superintendent based on prices being paid by purchasers in the Osage Mineral Estate. The Osage Tribe is to furnish all necessary material and labor for such connection with Lessee's gas system. The use of such gas shall be at the risk of the Osage Tribe at all times.

(2) Any member of the Osage Tribe residing in Osage County and outside a corporate city is entitled to the use at his own expense of not to exceed 400,000 cubic feet of gas per calendar year for his principal residence at a rate not to exceed the amount paid by a gas purchaser plus 10 percent: Provided, That such requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that no waste would result. In the absence of a gas purchaser the amount to be paid by the Tribal member shall be determined by the Superintendent. Gas to Tribal members is not royalty free. The Tribal member is to furnish all necessary material and labor for such connection to Lessee's gas system, and shall maintain his own lines. The use of such gas shall be at the risk of the Tribal member at all times.

(3) Gas furnished by Lessee under paragraphs (b) (1) and (2) of this section may be terminated only with the approval of the Superintendent. Written application for termination must be made to the Superintendent showing justification.

CESSATION OF OPERATIONS

§ 226.28 Shutdown, abandonment, and plugging of wells.

No productive well shall be abandoned until its lack for further profitable production of oil and/or gas has been demonstrated to the satisfaction of the Superintendent. Lessee shall not shut

Comment [V26]: These provisions to be considered further by the Committee

down, abandon, or otherwise discontinue the operation or use of any well for any purpose without the written approval of the Superintendent. All applications for such approval shall be submitted to the Superintendent on forms furnished by him/her.

(a) Application for authority to permanently shut down or discontinue use or operation of a well shall set forth justification, probable duration the means by which the well bore is to be protected, and the contemplated eventual disposition of the well. The method of conditioning such well shall be subject to the approval of the Superintendent.

(b) Prior to permanent abandonment of any well, the ~~Oil~~ ^{Gas} Lessee or the ~~Gas~~ ^{Oil} Lessee, as the case may be, shall offer the well to the other for his recompletion or use under such terms as may be mutually agreed upon but not in conflict with the regulations. Failure of the Lessee receiving the offer to reply within 10 days after receipt thereof shall be deemed as rejection of the offer. If, after indicating acceptance, the two parties cannot agree on the terms of the offer within 30 days, the disposition of such well shall be determined by the Superintendent.

(c) The Superintendent is authorized to shut in a lease when the ~~Oil~~ ^{Gas} Lessee fails to comply with the terms of the lease, the regulations, and/or orders of the Superintendent.

§ 226.29 Disposition of casings and other improvements.

(a) Upon termination of lease, ~~other than by cancellation~~, permanent improvements, ~~along with personal property, shall be removed from the property unless otherwise provided by the written agreement with the surface owner Surface Use Agreement and filed with the Superintendent, shall remain a part of said land and become the property of the surface owner upon termination of the lease, other than by cancellation. Exceptions include p~~Personal property, ~~including but not limited to, tools, tanks, pipelines, electric transmission lines, pumping and drilling equipment, derricks, engines, machinery, tubing, and the casings of all wells. Provided, That when any lease terminates, all such personal property shall be removed the word~~ "terminates"; and in the last sentence of the paragraph, within ~~ninety (90)~~ days or such reasonable extension of time as may be granted by the ~~Surface Owner~~ Superintendent. Otherwise, the ownership of all casings shall revert to Lessor and all other personal property and permanent improvements to the ~~surface owner~~ Surface Owner. Nothing herein shall be construed to relieve ~~Lessee~~ of responsibility for removing any such personal property or permanent improvements from the premises if required by the ~~Superintendent~~ Surface Owner and restoring the premises as nearly as practicable to the original state. The Superintendent shall inspect the premises for compliance with this provision and non-compliance shall result in the payment of damages to the Surface Owner.

(b) Upon cancellation of lease. When there has been a cancellation for cause, Lessor shall be entitled and authorized to take immediate possession of the lease premises and all permanent improvements and all other equipment necessary for the operation of the lease.

(c) Wells to be abandoned shall be promptly plugged as prescribed by the Superintendent. Applications to plug shall include a statement affirming compliance with § 226.28(b) and shall set forth reasons for plugging, a detailed statement of the proposed work including kind, location, and length of plugs (by depth), plans for mudding and cementing, testing, parting and

removing casing, and any other pertinent information: Provided, That the Superintendent may give oral permission and instructions pending receipt of a written application to plug a newly drilled hole. Lessee shall ~~remitsubmit a fee of \$15 with each~~ written application for authority to plug a well. ~~This fee will be refunded if permission is not granted.~~

Comment [D27]: Language deleted for consistency because fee is being removed.

(d) Lessee shall plug and fill all dry or abandoned wells in a manner to confine the fluid in each formation bearing fresh water, oil, gas, salt water, and other minerals, and to protect it against invasion of fluids from other sources. Mud-laden fluid, cement, and other plugs shall be used to fill the hole from bottom to top: Provided, That if a satisfactory agreement is reached between Lessee and the ~~surface owner~~ Surface Owner, subject to the approval of the Superintendent, Lessee may condition the well for use as a fresh water well and shall so indicate on the plugging record. The manner in which plugging material shall be introduced and the type of material so used shall be subject to the approval of the Superintendent. Within 10 days after plugging, Lessee shall file with the Superintendent a complete report of the plugging of each well. When any well is plugged and abandoned, Lessee shall, within 90 days, remediate the well site by restoring the original soil contour and soil profile (topsoil on top), and plant vegetation per the instructions of the Surface Owner~~clean up the premises around such well to the satisfaction of the Superintendent.~~ The Superintendent shall inspect each dry and/or abandoned well for compliance with this provision and non-compliance shall result in the payment of damages to Surface Owner. Lessee's obligations and liabilities under this section are continuing and shall survive the termination of Lessee's rights to develop the oil and gas mineral estate underlying the property.

REQUIREMENTS OF LESSEES

§ 226.30 Lessees subject to Superintendent's orders; books and records open to inspection.

Lessee shall comply with all orders or instructions issued by the Superintendent. The Superintendent or his representative may enter upon the leased premises for the purpose of inspection. Lessee shall keep a full and correct account of all operations, receipts, and disbursements and make reports thereof, as required. Lessee's books and records shall be available to the Superintendent for inspection. Lessee shall maintain and preserve records for 6 years from the day on which the relevant transaction recorded occurred unless the Superintendent notifies the Lessee of an audit or investigation involving the records and that they must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the Lessee is released in writing from the obligation to maintain the records.

Comment [v28]: 30 CFR 1212.51(b).

§ 226.31 Lessee's process agents.

(a) Before actual drilling or development operations are commenced on leased lands, Lessee or Assignee, if not a resident of the State of Oklahoma, shall appoint a local or resident representative within the State of Oklahoma on whom the Superintendent may serve notice or otherwise communicate in securing compliance with the regulations in this part, and shall notify the Superintendent of the name and post office address of the representative appointed.

(b) Where several parties own a lease jointly, one representative or agent shall be designated whose duties shall be to act for all parties concerned. Designation of such representative should be made by the party in charge of operations.

(c) In the event of the incapacity or absence from the State of Oklahoma of such designated local or resident representative, Lessee shall appoint a substitute to serve in his stead. In the absence of such representative or appointed substitute, any employee of Lessee upon the leased premises or person in charge of drilling or related operations thereon shall be considered the representative of Lessee for the purpose of service of orders or notices as herein provided.

§ 226.32 Well records and reports.

(a) Lessee shall keep accurate and complete records of the drilling, redrilling, deepening, repairing, treating, plugging, or abandonment of all wells. These records shall show all the formations penetrated, the content and character of oil, gas, other marketable product, or water in each formation, and the kind, weight, size, landed depth and cement record of casing used in drilling each well; the record of drill-stem and other bottom hole pressure or fluid sample surveys, temperature surveys, directional surveys, and the like; the materials and procedure used in the treating or plugging of wells or in preparing them for temporary abandonment; and any other information obtained in the course of well operation. Lessee shall report all freshwater well drilling data to the Bureau of Indian Affairs and Oklahoma Water Resources Board. Well records and water well testing should be done within two thousand (2,000) feet of each oil or gas wellbore.

(b) Lessee shall take such samples and make such tests and surveys as may be required by the Superintendent to determine conditions in the well or producing reservoir and to obtain information concerning formations drilled, and shall furnish such reports ~~thereof~~ as required in the manner and method specified by the Superintendent.

(c) Within 10 days after completion of operations on any well, Lessee shall transmit to the Superintendent the applicable information on forms furnished by the Superintendent; a copy of electrical, mechanical or radioactive log, or other types of survey of the well bore; and core analysis obtained from the well. Lessee shall also submit other reports and records of operations as may be required and in the manner, form and ~~form~~method prescribed by the Superintendent.

(d) Lessee shall measure production of oil, gas, other marketable product, and water from individual wells at reasonably frequent intervals to the satisfaction of the Superintendent.

(e) Upon request and in the manner, form and ~~form~~method prescribed by the Superintendent, Lessee shall furnish a plat showing the location, designation, and status of all wells on the leased lands, together with such other pertinent information as the Superintendent may require.

§ 226.33 Line drilling.

Lessee shall not drill within ~~300~~⁶⁰⁰ feet of boundary line of leased lands, nor locate any well or tank within 200 feet of any public highway, any established watering place, or any building used as a dwelling, granary, or barn, except with the written permission of the Superintendent. Failure to obtain advance written permission from the Superintendent shall subject ~~L~~essee to cancellation of his/her lease and/or plugging of the well.

§ 226.34 Wells and tank batteries to be marked.

Lessee shall clearly and permanently mark all wells and tank batteries in a conspicuous place with number, legal description, operator, ~~L~~essee name, and telephone number, and shall take all necessary precautions to preserve these markings.

§ 226.35 Formations to be protected.

Lessee shall, to the satisfaction of the Superintendent, take all proper precautions and measures to prevent damage or pollution of oil, gas, fresh water, or other mineral bearing formations. Surface casing is required to a depth of two hundred (200) feet below that depth recommended by the most current and accurate Bureau of Indian Affairs' data and/or maps to insure freshwater protection. Lessee shall conduct third-party before-and-after water quality tests on all freshwater wells in quarter sections adjacent to well drilling locations or within not less than two thousand (2,000) feet of wellbores, with results of such testing reported to the Bureau of Indian Affairs and Surface Owners. Lessee shall comply with Bureau of Land Management Onshore Order No. 1.

§ 226.36 Control of wells. Control devices.

~~—(a)~~ In drilling operations in fields where high pressures, lost circulation, or other conditions exist which could result in blowouts, ~~L~~essee shall install an approved gate valve or other controlling device which is in proper working condition for use until the well is completed. At all times preventative measures must be taken in all well operations to maintain proper control of subsurface strata.

~~—(b)~~ Drilling wells. The Lessee shall take all necessary precautions to keep each well under control at all times, and shall utilize and maintain materials and equipment necessary to insure the safety of operating conditions and procedures. Lessee shall comply with Bureau of Land Management Onshore Order No. 2 regarding well control.

~~—(c)~~ Vertical drilling. The Lessee shall conduct drilling operations in a manner so that the completed well does not deviate significantly from the vertical without the prior written approval of the Superintendent. Significant deviation means a projected deviation of the well bore from the vertical of 10° or more, or a projected bottom hole location which could be less than 200 feet from the spacing unit or lease boundary. Any well which deviates more than 10° from the vertical or could result in a bottom hole location less than 200 feet from the spacing unit or lease boundary without prior written approval must be promptly reported to the Superintendent. In these cases, a directional survey is required.

(d) High pressure or loss of circulation. The Lessee shall take immediate steps and utilize necessary resources to maintain or restore control of any well in which the pressure equilibrium has become unbalanced.

(e) Protection of fresh water and other minerals. The Lessee shall isolate freshwater-bearing and other usable water containing 5,000 ppm or less of dissolved solids and other mineral-bearing formations and protect them from contamination. Tests and surveys of the effectiveness of such measures shall be conducted by the Lessee using procedures and practices approved or prescribed by the Superintendent. Surface casings shall be properly cemented to the surface. Lessee shall follow Bureau of Land Management Onshore Order No. 1 and the American Petroleum Institute Recommended Practice RP10 for the protection of fresh water.

((f) Flaring; hydrogen sulfide gas (H2S). The Operator shall conduct third-party testing of gas when flaring of natural gas is conducted. The results of this testing shall be provided to the Superintendent and the Surface Owner. If such test results show the natural gas contains H2S in excess of 10 ppm, the operator must utilize a "clean-burn variable tip flare" and/or the best current flaring technology for the oil and gas industry, as recommended by the American Petroleum Institute, to reduce the hazards from H2S and its flared byproducts to human health, livestock, wildlife, soils, water, and air quality. All flaring of natural gas shall be done in a manner to eliminate the visibility of the flame and produced light using a closed-combustion chamber system.

(g) Venting; hydrogen sulfide gas (H2S). Venting of any gas containing H2S is strictly prohibited.

§ 226.37 Waste of oil and gas and other marketable products.

Lessee shall conduct all operations in a manner that will prevent waste of oil and gas and other marketable products and shall not wastefully utilize oil or gas or other marketable products. The Superintendent shall have the authority to impose such requirements as he deems necessary to prevent waste of oil and gas and other marketable products and to promote the greatest ultimate recovery of oil and gas and other marketable products. Waste as applied herein includes, but is not limited to, the inefficient excessive or improper use or dissipation of reservoir energy which would reasonably reduce or diminish the quantity of oil or gas or other marketable product that might ultimately be produced, or the unnecessary or excessive surface loss or destruction, without beneficial use, of oil and/or gas or other marketable product.

§ 226.38 Measuring and storing oil.

(a) All production run from the lease shall be measured according to methods and devices approved by the Superintendent. Facilities suitable for containing and measuring accurately all crude oil produced from the wells shall be provided by Lessee and shall be located on the leasehold unless otherwise approved by the Superintendent. Lessee shall furnish to the Superintendent a copy of 100-percent capacity tank table for each tank. Meters and installations for measuring oil must be approved, and tests of their accuracy shall be made when directed by the Superintendent.

Comment [m29]: 43 C.F.R. § 3162.5-2

Comment [V30]: Committee question posed as to whether oil is metered same as gas? Subcommittee will research.

(b) When a tank of oil is ready for removal by the purchaser, Lessee shall ensure that the Superintendent is informed of that fact before the purchaser is so informed. Failure to inform the Superintendent shall subject the Lessee to a mandatory penalty of \$500. This dollar amount shall be adjusted as specified in § 226.43B(a). Repeated failures to inform the Superintendent shall render the lease subject to termination.

(c) The Superintendent shall have the right to witness all gaugings, unannounced, on each lease. Lessee shall fully cooperate with such gaugings or be subject to lease termination.

§ 226.39 Measurement of gas.

(a) All gas, required to be measured, shall be measured by meter (preferably of the orifice meter type) unless otherwise agreed to by the Superintendent. All gas meters must be approved by the Superintendent and installed at the expense of Lessee or purchaser at such places as may be agreed to by the Superintendent. For computing the volume of all gas produced, sold or subject to royalty, the standard of pressure shall be 14.65 pounds to the square inch, and the standard of temperature shall be 60 degrees F. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was ~~actually measured~~ actually measured, unless otherwise authorized in writing by the Superintendent.

(b) Lessee must ensure that each meter is inspected, calibrated, and adjusted at least twice in each calendar year, no less than five months apart. Lessee must ensure that the Superintendent is given 48 hours prior notice of all meter inspections, calibrations, and adjustments. The Superintendent shall have the right to witness, unannounced, all meter inspections, calibrations, and adjustments. Lessee shall fully cooperate with such witnessing or be subject to lease termination. If the Superintendent is not present, he may request records relating to all meter inspections, calibrations, and adjustments.

§ 226.40 Use of gas for lifting oil.

Lessee shall not use raw natural gas from a distinct or separate stratum for the purpose of flowing or lifting the oil, except where said Lessee has an approved right to both the oil and the gas, and then only with the approval of the Superintendent of such use and of the manner of its use.

§ 226.40A Site security on oil and gas and other marketable product leases.

(a) Definitions. Appropriate valves. Those valves in a particular piping system, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation.

Effectively sealed. The placement of a seal in such a manner that the position of the sealed valve may not be altered without the seal being destroyed.

Production phase. That period of time or mode of operation during which crude oil is delivered directly to or through production vessels to the storage facilities and includes all operations at the facility other than those defined by the sales phase.

Comment [V31]: Subcommittee to consider language to address shutting of production valve for 48 hours after removal of oil

Sales phase. That period of time or mode of operation during which crude oil is removed from the storage facilities for sales, transportation or other purposes.

Seal. A device, uniquely numbered, which completely secures a valve.

(b) Minimum Standards. Each Lessee shall comply with the following minimum standards to assist in providing accountability of oil or gas production:

(1) All lines entering or leaving oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise modified by other subparagraphs of this paragraph, and any equipment needed for effective sealing, excluding the seals, shall be located at the site. For a minimum of 6 years the Lessee shall maintain a record of seal numbers used and shall document on which valves or connections they were used as well as when they were installed and removed. The site facility diagram(s) shall show which valves will be sealed in which position during both the production and sales phases of operation.

(2) Each Lease Automatic Custody Transfer (LACT) system shall employ meters that have non-resettable totalizers. There shall be no by-pass piping around the LACT. All components of the LACT that are used for volume or quality determinations of the oil shall be effectively sealed. For systems where production may only be removed through the LACT, no sales or equalizer valves need be sealed. However, any valves which may allow access for removal of oil before measurement through the LACT shall be effectively sealed.

(3) There shall be no by-pass piping around gas meters. Equipment which permits changing the orifice plate without bleeding the pressure off the gas meter run is not considered a by-pass.

(4) For oil measured and sold by hand gauging, all appropriate valves shall be sealed during the production or sales phase, as applicable.

(5) Circulating lines having valves which may allow access to remove oil from storage and sales facilities to any other source except through the treating equipment back to storage shall be effectively sealed as near the storage tank as possible.

(6) The Lessee, with reasonable frequency, shall inspect all leases to determine production volumes and that the minimum site security standards are being met. The Lessee shall retain records of such inspections and measurements for 6 years from generation. Such records and measurements shall be available to the Superintendent upon request.

(7) Any Lessee may request the Superintendent to approve a variance from any of the minimum standards prescribed by this section. The variance request shall be submitted in writing to the Superintendent who may consider such factors as regional oil field facility characteristics and fenced, guarded sites. The Superintendent may approve a variance if the proposed alternative will ensure measures equal to or in excess of the minimum standards provided in paragraph (b) of this section will be put in place to detect or prevent internal and external theft, and will result in proper production accountability.

(8) Surface Owner(s) shall be consulted regarding site security and the proposed security plan should be included in the Surface Use Agreement.

(c) Site security plans. (1) Site security plans, which include the Lessee's plan for complying with the minimum standards enumerated in paragraph (b) of this section for ensuring accountability of oil/condensate production are required for all facilities and such facilities shall be maintained in compliance with the plan. For new facilities, notice shall be given that it is subject to a specific existing plan, or a notice of a new plan shall be submitted, no later than 60 days after completion of construction or first production, and on that date the facilities shall be in compliance with the plan. At the Lessee's option, a single plan may include all of the Lessee's leases, units and communitized areas, provided the plan clearly identifies each lease, unit, or communitized area included within the scope of the plan and the extent to which the plan is applicable to each lease, unit, or communitized area so identified.

(2) The Lessee shall retain the plan but shall notify the Superintendent of its completion and which leases, units and communitized areas are involved. Such notification is due at the time the plan is completed as required by paragraph (c)(1) of this section. Such notification shall include the location and normal business hours of the office where the plan will be maintained. Upon request, all plans shall be made available to the Superintendent.

(3) The plan shall include the frequency and method of the Lessee's inspection and production volume recordation. The Superintendent may, upon examination, require adjustment of the method or frequency of inspection.

(4) The site security plan shall be included in the written Surface Use Agreement.

(d) Site facility diagrams. (1) Facility diagrams are required for all facilities which are used in storing oil/condensate. Facility diagrams shall be filed within 60 days after new measurement facilities are installed or existing facilities are modified.

(2) No format is prescribed for facility diagrams. They are to be prepared on 8 1/2" x 11" paper, if possible, and be legible and comprehensible to a person with ordinary working knowledge of oil field operations and equipment. The diagram need not be drawn to scale.

(3) A site facility diagram shall accurately reflect the actual conditions at the site and shall, commencing with the header if applicable, clearly identify the vessels, piping, metering system, and pits, if any, which apply to the handling and disposal of oil, gas and water. The diagram shall indicate which valves shall be sealed and in what position during the production or sales phase. The diagram shall clearly identify the lease on which the facility is located and the site security plan to which it is subject, along with the location of the plan.

Comment [m32]: 43 C.F.R. 3162.7-5

§ 226.41 Accidents, fires, theft, and vandalism to be reported.

Lessee shall make a complete report to the Superintendent and Surface Owner(s) of all accidents, fires, or acts of theft and vandalism occurring on the leased premises, as soon as discovered, but not later than the next business day. Said report shall include an estimate of the volume of oil involved. Lessees also are expected to report such thefts promptly to local law enforcement agencies and internal company security. These reporting requirements shall apply

Comment [m33]: 43 C.F.R. § 3162.7-5(b)(8)

to environmental accidents, including but not limited to, salt water spills, oil spills, H2S leaks and killing or injuring of livestock and wildlife.

PENALTIES

§ 226.42 Penalty for violation of lease terms.

Violation of any of the terms or conditions of any lease or of the regulations in this part shall subject the lease to cancellation by the Superintendent, or Lessee to a fine of not more than ~~\$500~~\$1500 per day for each day of such violation or noncompliance with the orders of the Superintendent, or to both such fine and cancellation. ~~Fines not received within 10 days after notice of the decision shall be subject to late charges at the rate of not less than 1 1/2 percent per month for each month or fraction thereof until paid. The Osage Tribal Council, subject to the approval of the Superintendent, may waive the late charge.~~ The dollar amount of penalties under this section shall be adjusted as specified in § 226.43B(a). Penalties shall be payable to the Superintendent and may be used to carry out the duties and responsibilities set forth in these regulations.

Comment [ATA34]: This section is a significant improvement, however the threat of the penalties in the past have not deterred poor practices so we recommend the enforcement of these rules must be enhanced.

§ 226.43 Penalties for violation of certain operating regulations.

In lieu of the penalties provided under § 226.42, penalties may be imposed by the Superintendent for violation of certain sections of the regulations of this part as follows: with the dollar amounts in this section adjusted as specified in § 226.43B(a):

- (a) For failure to obtain permission to start operations required by § 226.16(b), ~~\$50 per day until permission is obtained~~\$500 per day.
- (b) For failure to file records required by § 226.32, ~~\$50~~\$500 per day until compliance is met.
- (c) For failure to mark wells ~~and/or~~ tank batteries as required by § 226.34, ~~\$50 for~~\$500 per day for each well ~~and/or~~ tank battery.
- (d) For failure to construct and maintain pits as required by § 226.22, ~~\$50 for~~\$500 for each day after operations are commenced on any well until compliance is met.
- (e) For failure to comply with § 226.36 regarding valve or other approved controlling device, ~~\$100~~\$500 per day.
- (f) For failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well, as required by §§ 226.16(c) and 226.25, ~~\$200~~\$500 per day.
- (g) For failure to properly care for and dispose of deleterious fluids as provided in § 226.22, ~~\$500 per~~\$1000 per day until compliance is met.
- (h) For failure to file plugging reports as required by § 226.29 and for failure to file reports as required by § 226.13, ~~\$50 per~~\$500 per day for each violation until compliance is met.

(i) For failure to perform or start an operation within 5 days after ordered by the Superintendent in writing under authority provided in this part, if said operation is thereafter performed by or through the Superintendent, the actual cost of performance thereof, plus 25 percent.

~~—(j) (i) For failure to maintain adequate bonding as required by § 226.6, \$500 per day.~~

~~(k) Whenever a transporter fails to permit inspection for proper documentation by any authorized representative of the Superintendent, the transporter shall be liable for a civil penalty of up to \$1000 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit inspection and continuing until the proper documentation is provided.~~

~~(l) For failure to avoid pollution to air, land, water, wildlife habitat, other natural resources and overall environmental quality, \$1,000 per day.~~

~~§ 226.43A False, inaccurate, or misleading information; unlawful acts.~~

~~(a) Lessee or his/her authorized representative is hereby notified that criminal procedures are provided by 18 U.S.C. § 1001 for knowingly filing fraudulent reports and information.~~

~~(b) Any person shall be liable for a civil penalty of up to \$25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:~~

~~(1) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or~~

~~(2) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas or other marketable product from any lease without having valid legal authority to do so; or~~

~~(3) Purchases, accepts, sells, transports or conveys to another any oil or gas or other marketable product knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a lease.~~

~~(c) The dollar amount of penalties under this section shall be adjusted as specified in~~

~~§ 226.43B(a).~~

~~§ 226.43B Scaling of fees and penalties; nonpayment.~~

~~(a) Whenever the settlement value for a barrel of oil under § 226.11(a)(2) in any month is greater than \$100 in the month preceding the assessment of any dollar amount in sections 226.9, 226.38, 226.42, 226.43, and 226.43A, the dollar amount shall be adjusted by dividing by 100 and multiplying by the Settlement Price for Oil for the preceding month.~~

(b) Fines and penalties under this part that are not received within 10 days after notice of the fine or penalty shall be subject to late charges at the rate of not less than 1 1/2 percent per month for each month or fraction thereof until paid, or such other rate as may be set by the Superintendent after consultation with the Osage Minerals Council. The Osage Minerals Council, subject to the approval of the Superintendent, may waive the late charge.

APPEALS AND NOTICES

§ 226.44 Appeals.

Any person, firm or corporation aggrieved by any decision or order issued by or under the authority of the Superintendent, by virtue of the regulations in this part, may appeal pursuant to 25 CFR part 2.

§ 226.45 Notices.

Notices and orders issued by the Superintendent to the representative ~~and/or operator~~ shall be binding on the ~~U~~lessee. The Superintendent may in his/her discretion increase the time allowed in his/her orders and notices.

§ 226.46 Information collection.

The Office of Management and Budget has determined that the information collection requirements contained in this part need not be submitted for clearance pursuant to 44 U.S.C. 3501 et seq.