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Leasing of Osage Reservation Lands for Oil and Gas Mining; Final Rule

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 226**[156A2100DD/AAKC001030/  
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RIN 1076-AF17

**Leasing of Osage Reservation Lands for Oil and Gas Mining****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Final rule.

**SUMMARY:** The Bureau of Indian Affairs is issuing its final revisions to the regulations addressing mineral development of the Osage minerals estate. This rule updates the leasing procedures and the rental, operations, safety and royalty requirements for oil and gas production on Osage mineral lands and is the result of a negotiated rulemaking.

**DATES:** This rule is effective on July 10, 2015.

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**I. Executive Summary of Rule**

This rule updates the existing oil and gas regulations governing Osage County, Oklahoma as set forth in 25 CFR part 226. It is intended to strengthen the management and administration of the Osage mineral estate for the benefit of the Osage. These provisions strengthen the rule's reporting and inspection requirements, offer more specificity regarding a lessee's obligations with respect to its mining operations, and adjust royalty rate calculations and bonding amounts, in order to protect the best interests of the Osage mineral estate, ensure safety, and discourage future regulatory violations.

**II. Background**

On October 14, 2011, the United States and the Osage Nation (formerly known and referred to in Rule 226 as the "Osage Tribe") signed a Settlement Agreement to resolve litigation

regarding the United States' alleged mismanagement of the Osage Nation's oil and gas mineral estate, along with other unrelated claims. In the Settlement Agreement, the parties agreed "to address means of improving the trust management of the Osage Mineral Estate, the Osage Tribal Trust Account, and Other Osage Accounts." The parties agreed that a review and revision of the existing regulations is warranted to better assist the Bureau of Indian Affairs (BIA or Bureau) in managing the Osage mineral estate. The parties agreed to engage in a negotiated rulemaking for this purpose. Pursuant to the required, applicable procedures, after the Tribal Trust Settlement was executed, the Department of the Interior (Department) established a Negotiated Rule Making Committee in July 2012 and commenced structured negotiations on the amendment and revision of Rule 226. For additional information on this negotiated rulemaking process, please visit <http://www.bia.gov/osageregneg/>.

The Negotiated Rule Making Committee submitted its report to BIA on April 25, 2013. On August 28, 2013, BIA published a proposed rule based on the Committee's report. See 78 FR 53083. In order to provide additional time for parties to comment on the proposed rule, BIA extended the original comment deadline until November 18, 2013. See 78 FR 68859 (November 1, 2013). After a thorough evaluation of the many comments by various stakeholders with respect to the proposed rule, BIA revised and amended the proposed rule to incorporate those changes and amendments that BIA considered meritorious and beneficial in preparing the final rule as published herein.

**III. Detailed Explanation of Revisions**

This final rule revises the existing rule for "Leasing of Osage Reservation Lands for Oil and Gas Mining" with the textual and substantive changes as set forth in Table 1. The BIA's additional revisions to the proposed rule that resulted from the comment period and BIA's consideration and evaluation of those comments (as set forth in Section IV below) were adopted in BIA's final rule as published herein and as set forth in Table 2.

TABLE 1

Current 25 CFR section	Final rule section	Final rule change
Part 226 .....	Part 226 .....	Throughout the final rule the use of "Osage Tribal Council" has been deleted and replaced with "Osage Minerals Council" ("OMC") because the former no longer exists and the latter holds the authority to make decisions regarding the Osage minerals estate. Similarly, all references to "lease cancellation" in the existing rule have been changed to "lease termination," unless the reference in the final rule is to a voluntary lease cancellation by a lessee. Also, to clarify time deadlines, all references to due dates are to be uniformly calculated by calendar days, unless specifically noted otherwise. In addition, the final rule adds the term "other marketable product" to existing references to oil and gas in order that other minerals will not leave a gap and resulting in unregulated minerals.
226.1 .....	226.1 .....	The final rule deletes the terms "contract" and "agreement" and substitutes the term "lease"; provides definition for a "lease;" clarifies that "an authorized representative of a lessee" is bound by those regulations that apply to the lessee represented; deletes the definition for "major purchaser" because it is no longer relevant; replaces and combines the definitions for "casinghead gas" and "natural gas" into one definition for "raw natural gas" and "gas"; adds definitions for the additional following new terms: "avoidably lost," "condensate," "drainage," "marketable condition," "maximum ultimate economic recovery," "natural gas liquids," "notice to lessee," "onshore oil and gas order," "other marketable product," "production in paying quantities," "surface owner," and "waste of oil and gas or other marketable product".
N/A .....	226.2 (New) .....	The final rule sets forth sources of governing requirements for activities in Osage County related to oil and gas and the development of "other marketable products".
N/A .....	226.3 (New) .....	The final rule sets forth the authority of Bureau of Indian Affairs ("BIA") to issue certain notices and orders after consultation with the OMC.
N/A .....	226.4 (New) .....	The final rule enumerates the responsibilities and authority of the Superintendent with respect to management and administration of the Osage mineral estate.
226.2 .....	226.5 .....	The final rule breaks the prior regulation into subparts and removes references to oil and gas in paragraphs (b) and (d), extends the time for a successful bidder to deposit his/her payment, requires that payment be made in a specified form other than cash; increases the filing fee for submitting a completed lease form; enumerates the circumstances in which a portion of the bonus bid will be forfeited; requires that the Superintendent post legal descriptions within 30 days of a lease sale; and authorizes the OMC to request comparable lease sales data from the Superintendent.
226.3 .....	226.6 .....	The final rule increases the filing fee, adds requirements regarding lessee's responsibility for plugging and abandoning wells upon surrender, and deletes the reference to allowing surrender of separate horizons.
226.4 .....	226.7 .....	The final rule amends the provision to allow the Superintendent to specify the manner and method of payments due under a lease or regulation.
226.5 .....	226.8 .....	No substantive change from current rule.
226.6 .....	226.9 .....	The final rule sets forth each bonding requirement in its own paragraph to improve readability, it adds personal bonds to surety bonds as acceptable bonding methods, it sets forth the requirements for personal and surety bonds and changes the bonding amount from a per lease-area bond to a \$5,000 per well bond for up to 25 wells. The final rule also adds back in nationwide bonding, which was not in the proposed rule.
226.6(d) .....	226.10 .....	The final rule moves the provision allowing the Superintendent to increase the amount of a required bond to its own section and amends the previous provision under which the Superintendent can increase the amount of a bond.
N/A .....	226.11 (New) .....	The final rule sets forth the circumstances under which the Superintendent must release a bond.
226.7 .....	226.12 .....	No substantive change from current rule.
226.8 .....	226.13 .....	No substantive change from current rule.
226.9 .....	226.14 .....	The final rule sets forth each current requirement in its own paragraph to improve readability. It also increases rental rates, clarifies the lessee's responsibility for diligent development, adds a new provision allowing the Osage Minerals Council to request a determination as to the diligent development of a lease and new procedures for the automatic termination of a lease for failure to diligently develop.
N/A .....	226.15 (New) .....	The final rule sets forth lessee's new obligations to protect land from drainage of its oil or gas content by wells outside the lease
N/A .....	226.16 (New) .....	The final rule specifies the Superintendent's new remedies for requiring protective action once drainage has occurred.
226.10 .....	226.17 .....	No substantive change from current rule.
226.11 .....	(See below) .....	The final rule divides the current section on royalties into several new sections to improve readability, as shown below.
226.11(a) .....	226.18 .....	The final rule clarifies that royalty may be taken in-kind. It also amends the royalty rate calculation for oil, subject to a price adjustment for gravity.
N/A .....	226.19 (new) .....	The final rule sets forth how the gravity adjustment is calculated.
226.11(b) .....	226.20 .....	The final rule amends the royalty rate calculation for gas and specifies how gross proceeds are calculated; allows the Superintendent to direct that gross proceeds be calculated in an alternative manner where reasonable cost of processing cannot be obtained; and adds a minimum royalty provision.
N/A .....	226.21 (new) .....	The final rule provides that royalty must be paid for any oil and gas avoidably lost and allows the Superintendent to determine the volume and quality of the lost oil and gas.

TABLE 1—Continued

Current 25 CFR section	Final rule section	Final rule change
226.11(c) .....	226.22 .....	The final rule amends the date for payment of royalties and adds provision for adjusting the minimum royalty.
226.11(e) .....	226.23 (New) .....	The final rule sets forth the minimum royalty due for “other marketable products” and clarifies that it is in addition to any royalty that may be due on oil or gas.
226.12 .....	226.24 .....	The final rule amends the reference to royalty payment to ensure that the federal government purchases oil consistent with the new requirements.
226.13(a) .....	226.25 .....	The final rule requires lessees to provide a written agreement when purchaser is the party responsible for payment; provides procedure for making royalty payments and late payments; describes how royalty payments are made; and deletes the provision allowing the Osage Minerals Council to waive late charges with approval of the Superintendent.
226.13(b), (c) .....	226.26 .....	The final rule sets forth those reports that lessees must submit to the Superintendent and further specifies the format and content of those reports. The final rule also adds a requirement that the Osage Minerals Council be copied on all such reports, as well as establishing the date that the monthly reports are due.
226.14 .....	226.27 .....	The final rule sets forth each current requirement for division orders in its own paragraph to improve readability. It also extends the due date in paragraph (b) for submitting the reporting statement for oil and gas sold should the due date fall on a weekend or holiday.
226.15 .....	(See below) .....	The final rule divides the current section on lease unitizations and assignments into several new sections to improve readability, as shown below.
226.15(a) .....	226.28 .....	No substantive change from current rule.
226.15(b) .....	226.29 .....	The final rule sets forth each current requirement in its own paragraph to improve readability. It also adds provisions relating to the responsibilities and liabilities of assignors and assignees and deletes the provisions that allowed for the assignment of separate lease horizons.
226.15(c) .....	226.30 .....	No substantive change from current rule.
226.15(d) .....	226.31 .....	No substantive change from current rule.
226.15(e) .....	226.32 .....	No substantive change from current rule.
N/A .....	226.33 (New) .....	Sets forth the general requirements governing leasing operations.
226.16 .....	226.34 .....	The final rule sets forth each current requirement in its own paragraph to improve readability and adds specific reference to the existing requirement that the Superintendent comply with the National Environmental Policy Act and the National Historic Preservation Act where applicable.
226.17 .....	226.35 .....	No substantive change from current rule.
226.18 .....	226.36 .....	The final rule reformats this section to improve readability. It also adds requirements for notice to surface owners before lessees conduct certain activities and eliminates any difference in notice based on the surface owner’s residence status as within or outside Osage County.
226.19(a) .....	226.37 .....	The final rule sets forth in its own paragraph each current aspect of a lessee’s rights and responsibilities in using the surface of the land to improve readability. It also adds a provision requiring notification to the lessee and surface owner before the Superintendent sets the routing of pipelines, electric lines, etc.
226.19(b), (c) .....	226.38 .....	The final rule sets forth each current requirement with respect to commencement money into its own paragraph to improve readability. It also increases the amount of commencement money the lessee must pay the surface owner.
226.19(d) .....	226.39 .....	The final rule increases per tank siting fees and provides for arbitration to determine fees to be paid for tanks occupying more than 2500 sq. feet if the parties are unable to agree.
226.20 .....	226.40 .....	No substantive change from current rule.
226.21 .....	226.41 .....	No substantive change from current rule.
N/A .....	226.42 (New) .....	The final rule sets forth additional obligations with respect to lessee’s obligation for production and marketability.
N/A .....	226.43 (New) .....	The final rule requires documentation for transportation of oil, gas or other marketable product to enable the Superintendent to inspect and confirm proper transportation.
226.22 .....	226.44 .....	The final rule sets forth each current requirement in its own paragraph to improve its readability. It also adds provisions in paragraph (e) clarifying that pits or tanks used for collecting deleterious fluids must have fencing and be removed and reclaimed immediately after operations.
N/A .....	226.45 (New) .....	The final rule sets forth a lessee’s specific environmental responsibilities and obligations while conducting operations.
N/A .....	226.46 (New) .....	The final rule requires certain safety standards and equipment for lessee operations, as well as compliance with the National Electric Code.
226.23 .....	226.47 .....	The final rule adds a provision requiring the Superintendent to notify or attempt to notify surface owners before decisions are made with respect to easements of leased premises.
226.24 .....	226.48 .....	No substantive change from current rule.
226.25 .....	226.49 .....	The final rule has reformatted this section on the responsibility of other types of lessees when they are not the lessee drilling in order to improve its readability. It also deletes prior/current requirements that wells be plugged if no apportionment agreement is accepted, making the Superintendent’s decision on apportionment final.
226.26 .....	226.50 .....	No substantive change from current rule.
226.27 .....	226.51 .....	The final rule adds general requirement that gas for tribal use must be odorized and treated to ensure public safety.

TABLE 1—Continued

Current 25 CFR section	Final rule section	Final rule change
226.28 .....	226.52 .....	The final rule provides new standards for determining whether a well may be permanently abandoned on a showing that it is incapable of future profitable production, as opposed to being capable of producing in paying quantities.
226.29 .....	226.53 .....	The final rule has reformatted this section to improve its readability. In paragraph (a), it also eliminates an exception for termination of a lease, other than for cause. In paragraph (c), it also adds a requirement that a Superintendent's orders for plugging a well must be in writing, as well as eliminating the fee for submitting an application to plug a well.
226.30 .....	226.54 .....	The final rule divides paragraph (b) into two provisions, thereby adding a paragraph (c). It also adds paragraph (d), which requires that lessees maintain records for a period of 6 years, unless notified to maintain certain records for a longer period.
226.31 .....	226.55 .....	The final rule deletes the provision applying when several parties own a lease jointly allowing the designation of a representative be made by the party in charge of operations when several parties own a lease jointly, to requiring that all of the parties must jointly designate the representative.
226.32 .....	226.56 .....	The final rule reformats this section to improve its readability.
226.33 .....	226.57 .....	No substantive change from current rule.
226.34 .....	226.58 .....	The final rule adds a requirement that wells and tank batteries be marked with lessee's name.
226.35 .....	226.59 .....	No substantive change from current rule.
226.36 .....	226.60 .....	The final rule adds paragraphs (b)–(f), which require safety precautions for drilling wells generally, drilling vertical wells, maintaining and controlling high pressure or loss of circulation in wells, protecting fresh water and other minerals and ensuring safety and protection when hydrogen sulfide gas is present at certain levels by adopting BLM On-Shore Oil and Gas Order 6.
226.37 .....	226.61 .....	No substantive change from current rule.
226.38 .....	226.62 .....	The final rule adds paragraphs (b)–(d), which specify requirements for measuring, calibrating and adjusting meters, including notice to and follow-up by the Superintendent; require notification to the Superintendent when an oil tank is ready for removal or for witnessing gaugings, and provide that repeated failures to comply with the new provisions subject the lessee to lease termination after consultation with the Osage Minerals Council.
226.39 .....	226.63 .....	The final rule adds paragraphs requiring measurement of gas to be done in accordance with BLM Onshore Oil and Gas Order 5, specify a lessee's obligations for calibrating, inspecting and adjusting meters, including notification and inspection by the Superintendent, and provide that repeated failures to comply will subject the lease to termination after consultation with the Osage Minerals Council.
226.40 .....	226.64 .....	No substantive change from current rule.
N/A .....	226.65 (New) .....	The final rule sets forth specific safety and other requirements to ensure proper site security.
226.41 .....	226.66 .....	The final rule adds requirements to ensure that incidents are reported in a timely manner, that notification is provided when environmental or other types of accidents occur, specifying who must be notified, including impacted surface owners.
226.42 .....	226.67 .....	The final rule allows lease provisions for different fines and penalties, and it deletes the provision allowing the Osage Minerals Council to waive late charges.
226.43 .....	226.68 .....	No substantive change from current rule.
226.44 .....	226.69 .....	No substantive change from current rule.
226.45 .....	226.70 .....	No substantive change from current rule.
226.46 .....	226.71 .....	The final rule adds information concerning approval of OMB and the assigned OMB Control Number.

Table 2 below sets forth the substantive changes made in the final rule to the text of the proposed rule as published August 28, 2013. The basis for each of these changes is discussed in the next section of this preamble.

TABLE 2

Section	Final rule's change to proposed rule
226.1 .....	The final rule adds a definition for "surface owner", references "other marketable product" in the definition of "lease" and "Osage Minerals Council" and amends the definition of "waste of oil or gas or other marketable product."
226.2 .....	The final rule adds a reference to other marketable products.
226.3 .....	The final rule deletes the reference in 226.3(a) to the Administrative Procedure Act and replaces it with "applicable law and regulations" and also adds the phrase "where appropriate" after the reference to consultation with the Osage Minerals Council because not all of the items listed in the provision are subject to the APA or the Department's Consultation Policy.
226.4(a)(4) .....	The final rule deletes reference to "other" as unnecessary.
226.4(a)(10) .....	The final rule adds the phrase "unless otherwise approved by the Superintendent" at the end.
226.4(b) .....	The final rule removes provisions that allowed the Superintendent to issue oral orders.
226.4(c) .....	The final rule adds a requirement that any history of noncompliance be documented.
226.5(a)(4) (ii) .....	The final rule removes the phrase "twenty five percent of the bonus bid" at the beginning of the provision and adds a reference to paragraph 5 in subparagraph (c).

TABLE 2—Continued

Section	Final rule's change to proposed rule
226.5(b)	Deletes references to oil and gas as unnecessary.
226.5(d)	Language added to end of the provision to clarify that the environmental analyses will be completed in accordance with existing Bureau procedures.
226.5(f)	Amends the reference to corporation
226.6	The final rule deletes the reference to “surrender of a separate horizon” in (b)(4). It also adds a paragraph (c) that requires the Superintendent to determine that wells have been plugged and abandoned or that legal liability therefore has been otherwise assumed before approving surrender or partial surrender of a lease.
226.9	The final rule adds paragraph (f), which allows for a bond for nationwide coverage in lieu of a surety or personal bond.
226.11	Paragraph (c) was deleted.
226.14	The final rule changed time period for non-production of a lease from 90 days to 120 days in paragraph (e) and the deadline for requesting a temporary suspension of operations to 20 days prior to the expiration of the 120-day period, rather than the 45th day in which the lease has not produced. The final rule also deletes waiver language and adds a requirement of good cause in order for the Superintendent to extend a temporary extension.
226.15	In paragraph (b), the final rule replaces the reference to “in paying quantities” with “for a reasonable profit”. It also adds that assignors are liable for drainage upon determination of the Superintendent
226.18	Paragraph (a) of the final rule was amended to allow royalty to be taken in kind. In paragraph (b) the provision regarding time for payment was deleted, and in subparagraph (b)(2) the reference to NYMEX was moved to subparagraph (b)(1).
226.20	In paragraph (b) of the final rule, the calculation for determining gross proceeds was amended and a method for determining the heating value of gas was added. In paragraph (c) the reference to 1206.173 was replaced with a reference to 1206.180(a)–(b).
226.20	The final rule defines how the minimum royalty is to be calculated, and it deletes paragraph (d).
226.25	In paragraph (a), the final rule adds a provision requiring that the Superintendent be notified if the purchaser is the responsible party for making payment. In paragraph (b), it deletes the provision stating “unless otherwise provided by the Osage Minerals Council and approved by the Superintendent,” in an effort to standardize and ensure prompt, consistent payments. Paragraph (c) was revised to reference back to paragraph (a) and to delete language allowing other rates to be set and the waiver of late fees.
226.27	In paragraph (a) at the end, the words “his lease” are replaced with “Section 226.25”. In paragraph (b), the provision allowing the Superintendent to authorize extensions was deleted.
226.29	The final rule deletes the provision allowing assignment of separate horizons. It also adds paragraphs (a)(i) and (a)(ii), which specify the liability and obligations of both the assignor and assignee when a lease is assigned.
226.34	The final rule explicitly requires compliance with NEPA and NHPA.
226.36	In paragraph (b), the final rule requires the Superintendent to notify or attempt to notify both the surface owner and the lessee of their opportunity to meet and submit information before the Superintendent issues a decision.
226.37	The final rule adds a requirement that the Superintendent to notify or attempt to notify both the surface owner and lessee before setting routes.
226.40(a)	The final rule deletes the last sentences referencing a court of competent jurisdiction and replaces it with an express reference to 226.41, which provides for the same relief after compliance with the dispute resolution provisions.
226.44	The final rule adds requirements for pits or tanks containing deleterious fluids in order to protect the environment.
226.46	The final rule adds a requirement for compliance with the National Electric Code.
226.47	The final rule adds a requirement for the Superintendent to notify or attempt to notify both surface owner and lessee before easements are granted.
226.52	The final rule amends the provision allowing wells to be permanently abandoned if they are no longer capable of producing in paying quantities rather than for lack of further profitable production.
226.53	In paragraph (a), the final rule deletes the provision that creates an exception for termination of a lease other than for cause, and paragraph (c) adds a requirement that the Superintendent's orders for plugging a well be in writing.
226.55(b)	In the final rule, the provision allowing the designation of the parties' representative to be made by the “party in charge of operations” was deleted and changed to require that all of the parties must jointly designate a representative.
226.62	The final rule in paragraph (c) deletes the provision regarding penalties and the adjustment provision for penalties.
226.66	The final rule clarifies that accidents include environmental and other types of accidents. It also requires the reporting of thefts within one business day, rather than “promptly” and requires lessees to notify, or attempt to notify, the surface owner or agent in writing.
Subpart F (226.67–68)	The final rule reverts to the language in the current/prior version of the regulation and deletes the Committee's recommendations for penalties for violations of lease terms, instead adding a provision that the lease can specify alternative fines and penalties. In 226.68(j) the provision regarding criminal penalties was deleted as unnecessary because criminal laws are applicable irrespective of their inclusion or reference within these regulations.

#### IV. Explanation of Changes Made in Response to Departmental Review

In drafting the final rule, the Department made revisions to the proposed rule based on its own internal

review, in addition to its review and analysis of the public comments. This section sets forth those the changes made as a result of that internal review. In Section 226.1, the Department added

references to “other marketable product” in the definitions of “lease” and “Osage Mineral Council” in order to fully incorporate the addition of the term “other marketable product” into

the regulations. Without these changes, the Department was concerned that “other marketable product” would not have been fully and consistently referenced as part of the Osage minerals estate, which was the original intent of the Negotiated Rulemaking Committee. For the same reason, references to “other marketable product” were added to Section 226.2 and the words “oil and gas” were deleted from 226.5(b) and (d), so that the provision references all leases generally.

The Department revised the definition of “waste of oil or gas or other marketable product” to clarify that waste only occurs after the Superintendent makes a specific finding. The Department was concerned that without that change, the regulations would suggest that any production without the advance approval of the Superintendent would be considered waste, resulting in unnecessary administrative burdens.

In 226.3, the Department qualified that that consultation with the Osage Minerals Council is required where appropriate and notes that consultation must be conducted in accordance with the Department’s Tribal Consultation Policy where applicable. Similarly, the notice and comment requirements of the Administrative Procedure Act (APA) do not apply to each of the proposed actions and the reference to requiring adherence to the APA has been removed to avoid any presumption that notwithstanding the limitations of the APA, it automatically applies. Rather, it should be noted that the APA only applies where required by law. For example, notices to lessees (NTLs) are interpretive rules that are not subject to the notice and comment requirements of the APA. *See e.g., Perez v. Mortgage Bankers Assoc.*, No. 13–1041, \_\_\_ U.S. \_\_\_ (March 9, 2015).

The Department deleted the word “other” from 226.4(a)(4) because it was confusing. The Superintendent is responsible for approving and monitoring all lease proposals, not “other” lease proposals.

The phrase “unless otherwise approved by the Superintendent” was added to the end of Section 226.4(a)(10) because as drafted it did not allow the Superintendent to approve actions that might have adverse effects on other mineral resources. However, there might be instances where the Osage Minerals Council wants to allow certain mining to have adverse effects on other lesser mineral resources, and the Department determined that the Superintendent must retain discretion to approve those actions depending on the circumstances.

In Section 226.5(a)(4)(ii), the phrase “twenty five percent of the bonus bid” at the beginning of the provision was deleted because it was inconsistent with subsection (a)(3). That subsection requires that a minimum deposit of twenty five percent of the cash bonus be offered, but it is possible for additional amounts to be deposited, and the intent of Section 226.5(a)(4)(ii) is for all of the deposit to be forfeited under certain circumstances. Section 226.5(a)(4)(ii)(C) was amended to add a reference to subsection 5 for clarification purposes. To address confusion within Osage County regarding the applicability of environmental laws, Section 226.5(d) was amended to clarify that the Agency must comply with applicable laws, including the National Environmental Policy Act (NEPA), before issuing leases and will do so by following applicable BIA regulations. Section 226.5(f) was amended to delete the reference to ownership of stock and instead reference an employee who acquires an interest in a corporation or business entity holding a lease, because one cannot acquire an “interest in a lease” by merely owning stock in a company.

In Section 226.6(b)(4), the Department deleted the reference to surrender of a separate horizon because the Osage Agency does not lease or sublease by separate horizons, in light of the administrative burdens those arrangements have caused in the past. Furthermore, allowing surrender of separate horizons causes similar problems and is not permitted elsewhere on other Indian and Federal lands.

The Department deleted subsection (c) in 226.11 because it was repetitive of the prior paragraph and the release language was moved to the beginning for clarification. In 226.14(c), the 90 day timeline for a determination on diligent production was deleted because it is considered overly burdensome, administratively. Instead, a provision was added that allows the Superintendent to require the lessee and Osage Minerals Council to submit additional information so that he/she can make an informed determination.

In Section 226.18, the Department amended subsection (a) to allow royalty to be taken in kind so that the provision is consistent with subsection (b). In 226.18(b), the provision regarding time for payment was deleted because timing of payment is governed by Section 226.25, and in subparagraph (b)(2) the provision relating to the availability of the average NYMEX daily price was moved to subparagraph (b)(1) to correct an error in the proposed rule.

In Section 226.22, the Department revised how minimum royalty is calculated because, as set out in the proposed rule, the provision confuses separate lease concepts. Minimum royalty is a separate lease term and not a subset of royalty, and Section 226.22 is not about underpayment of minimum royalty, but about the occurrence of a circumstance that triggers the obligation to pay minimum royalty.

In Section 226.25, the Department added a requirement to subsection (a) that requires lessees to provide a written agreement if the purchaser has agreed to be the responsible party for making payments. This change is intended to reduce the administrative burden placed on the Superintendent when having to determine the responsible party. Also, a cross-reference to subsection (a) was added to subsection (c) for consistency. In addition, the phrase “unless otherwise provided by the Osage Minerals Council and approved by the Superintendent” was deleted to standardize and ensure prompt, consistent payments. For the same reason, and to aid in the administrative implementation of the provision, the Department deleted the provisions in subsection (c), allowing the Superintendent to set other rates for late fees and allowing the Osage Minerals Council to waive late fees, with approval by the Superintendent.

In Section 226.27(a), the Department added that royalty payments on division orders or contracts must be made in accordance with Section 226.25, since it is Section 226.25 that governs payments of royalties and all leases are subject to the regulations. And, in subsection 226.27(b), the provision allowing the Superintendent to authorize extensions was deleted in order to reduce the considerable administrative burden on the Superintendent of having to consider requests for extensions on a case by case basis.

The Department added provisions in 226.29 to clarify liability for wells and related facilities once a lease is assigned. The Department found that there has been a concern both by surface owners during the negotiated rulemaking and the Office of Inspector General with respect to the abandonment of wells within Osage County. The new provisions regarding liability will provide additional protections for enforcement after a lease is assigned and provide greater clarity and transparency regarding lessee obligations.

In 226.34, the Department added a new provision making clear that NEPA and the National Historic Preservation Act (NHPA) continue to apply within

Osage County. These are not new legal requirements and do not create new responsibilities over what is already required. However, the Department determined it was necessary to expressly recognize these responsibilities in the Rule given confusion within Osage County with respect to the Agency's and lessees' duties under NEPA and NHPA. The Department also added an express requirement that, where applicable, requires the lessee to submit certain information to aid the Agency in meeting its obligations under NEPA and NHPA.

The Department amended Section 226.52 to allow for the permanent abandonment of a well upon a showing that the well is no longer producing in paying quantities, rather than a showing of its lack of further profitable production of oil, because the standard for showing that a well is no longer producing in paying quantities is more objective, less administratively burdensome to determine, and consistent with the standard applied with respect to Indian leases outside of Osage County.

## V. Comments on the Proposed Rule and Responses

### A. Overview/General

*Several commenters stated that it was not necessary to change the regulations and that the proposed changes to the regulations would make oil and gas operations in Osage County more cumbersome and costly to the industry because the burden is being put entirely on the lessees.*

During the negotiated rulemaking it was explained that the United States was sued by the Osage for breach of trust with respect to management and administration of the Osage minerals estate. The United States settled with the Osage for \$380 million and, as part of the settlement, agreed to engage in a negotiated rulemaking to revise the regulations governing Osage in order to improve the management and administration of the minerals estate. Further, not all of the regulations are being revised. To the extent that some of the regulations are revised, the Department acknowledges that there may be some additional upfront costs to ensure compliance with the regulations. However, the regulations are necessary to improve management and administration of the Osage mineral estate. Overall, given the Osage tribal trust litigation and resulting settlement, the Department had to balance the need to ensure that the regulations fulfill the United States trust responsibility to the

Osage with some potential increased costs to industry. Moreover, this Rule brings Osage closer in line to how oil and gas operations are regulated on other Indian and Federal lands and reflects the availability of new technology and improved industry standards since the regulations were initially promulgated.

*Some commenters stated that the proposed regulations should not be approved because the Bureau is already short-staffed and has no budgetary resources to handle the additional work and explained that the proposed changes will threaten oil lessees and have negative impacts on Osage headright owners quarterly payments.*

These comments do not relate to the rule but to internal agency operations that are outside the scope of the rulemaking. However, the Osage Agency developed a staffing plan in 2013 to address concerns regarding lease enforcement and compliance issues. The Osage Agency requested additional funding as part of its Fiscal Year (FY) 2014 and 2015 budgets, which will be incorporated into its base funding for the FY 2016 budget cycle. The Osage Agency has also created 13 additional positions for inspections, enforcement and lease compliance, lease management and oil and gas accounting. While compliance with the regulations may result in some additional upfront costs to both industry and the Bureau, the majority of the new regulations address shortfalls that resulted in the Osage's lawsuit against the United States for breach of trust related to mismanagement of the Osage minerals estate, including royalty collection, auditing, accounting, record keeping, inspections and lease compliance. There was also no evidence presented to show that finalization of the rule would negatively impact royalty payments, rather the rule has increased protections for ensuring royalty collection and provisions to ensure that lessees are calculating royalty in a manner that minimizes third party manipulation.

*Some commenters suggested that management and enforcement of regulations governing surface use and lease violations is key.*

These comments relate to agency operations and implementation and do not relate to any particular regulation. The Department agrees that management and enforcement of the regulations is key and has worked over the last few years to address staffing concerns and budgetary limitations at the Osage Agency.

*Numerous commenters suggested that the Department restart the negotiated rulemaking process and include all*

*affected parties as part of the Negotiated Rulemaking Committee. Some of these commenters suggested that the actual process of the rulemaking normally takes 2 years to ensure that all interested parties may be properly notified of the proposed rule changes, be given adequate time to comment and understand how new regulations will impact private citizens. Whereas, commenters stated that in this circumstance the rule making was pushed through in a little over seven months resulting in a lack of due process and a one-sided nature of the proposed rules.*

The Department does not believe it is necessary to restart the negotiated rulemaking process. Formation of the Negotiated Rulemaking Committee was first announced in the **Federal Register** on June 18, 2012, and the final Committee was announced on July 31, 2012. All meetings of the Committee were published in the **Federal Register** at least thirty (30) days in advance, as well as, posted at the Osage Agency and the Osage Minerals Council offices. Throughout the process, the Committee provided extensive opportunity for public comment during meetings and also welcomed written comment between meetings. Issues raised during that process included, but were not limited to, the benchmark index, bonding fees and requirements, and commencement fees. Other matters were also discussed across multiple meetings, recorded in meeting summaries, and proposals to the regulations were adjusted where the Committee determined it appropriate, in multiple drafts of the regulations during that process. The administrative record shows, through the meeting summaries from the Committee meetings, that the Committee not only provided substantial time for public comment, but the Committee also engaged extensively with commenters in dialogue. Committee members asked questions and explored options with the commenter, and sought to reach an accommodation or revision where appropriate. Overall, the Committee provided 21 public comment sessions totaling some 18.25 hours of public comment during the eight meetings over its August 2012 to April 2013 process. On April 2, 2013, the Committee met for its final meeting and concurrence on a proposed package of revised regulations was reached between the Federal caucus and Osage caucus.

*The Department received numerous form letters generally opposing the regulations and suggesting that making the lessees within Osage County comply with Bureau of Land Management (BLM)*

regulations will make Osage lose its appeal as a one-stop shop and asserting that the regulations will lengthen the drilling permitting process, diminish the Osage minerals estate and impact income generated.

The Department acknowledges that some of the new provisions in the regulations are modeled after existing Federal regulations governing oil and gas on other Indian and Federal lands governed by BLM. However, under the rule, BLM is not delegated with the responsibility for oil and gas operations within Osage County. Rather, BIA has that responsibility. Additionally, it is relevant to note that some commenters noted their disagreement with the form letters submitted opposing the proposed regulations.

*At least one commenter requested that the Department amend the rules so that they properly recognize the State of Oklahoma's primacy and exclusive role in environmental regulation of oil and gas exploration and production activities in Osage County as well as the State's right to regulate the waters within its borders. The commenter asserted that the State is better equipped to design, administer and enforce laws and regulations related to oil and gas development.*

The United States holds the Osage mineral estate in trust pursuant to the Act of June 28, 1906 § 3, 34 Stat. 539, 543–44, amended in relevant part by Act of March 2, 1929, 45 Stat. 1478 (extending restricted trust status of mineral estate to 1959); Act of June 24, 1938, 52 Stat. 1034 (extending restricted trust status of mineral estate to 1983); Act of Oct. 21, 1978, 92 Stat. 1660 (extending restricted trust status of mineral estate in perpetuity). Thus, the United States, through the Department, has a non-delegable fiduciary obligation to manage the mineral estate for the benefit of the Osage. It is relevant to note that one commenter disputed the assertion that the State is better equipped to address oil and gas leasing in Osage County and explains that the Osage Nation and the United States have more experience and knowledge in administering and enforcing oil and gas leases in Osage County. The first lease in Osage County was developed in 1896, eleven years before creation of the State, and the United States has regulated and managed the Osage mineral estate since 1896.

*At least one commenter objected to references to "reservation lands" in Osage County and asserts that the reservation was disestablished in Osage Nation v. Irby, 597 F.3d 1117 (10th Cir 2010).*

This is a legal issue outside the scope of the rulemaking. The Department does not need to address the impacts, if any, of the *Irby* case in order to revise these regulations. The United States holds the Osage mineral estate in trust and the Secretary has authority under the Act of June 28, 1906, § 3, 34 Stat. 539, as amended, to promulgate regulations to manage and administer the mineral estate, and this Rule is being promulgated pursuant to that authority.

*At least one commenter requests that the Department and the Osage Minerals Council enter into a cooperative agreement with the State of Oklahoma to delegate responsibility for management and administration of oil and gas operations to the State.*

This comment does not relate to the revised regulations and is outside the scope of the rulemaking process. It is relevant to note that one commenter disagreed with the request for a cooperative agreement that gives the State administrative jurisdiction in Osage County and cites, 25 U.S.C. 1a & 9, noting that Congress granted authority over Indian Affairs to the President. This commenter also cited 25 CFR 1.4(a), for the proposition that the President, acting on his authority, has specifically excluded States from exercising jurisdiction over Indian property, including Indian water rights; and further cited legal precedent for the proposition that the Department cannot delegate authority to a State without tribal consent and the Osage Nation has not consented to such jurisdiction or delegation. *See Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation v. Bd. Of Oil and Gas Conservation of the State of Montana*, 792 F.2d 782 (9th Cir. 1986).

*At least one commenter suggested that the rule should reflect the separate and unique relationships (a) between the Department of the Interior, and the Osage headright holders, Osage Mineral Estate, and the Osage Minerals Council under the 1906 Act; and (b) between the Department and the Osage Nation under the 2004 Act.*

This comment does not relate to the revised regulations and is outside the scope of the rulemaking process. The United States holds the Osage mineral estate in trust under the Act of June 28, 1906, § 3, 34 Stat. 539, as amended, and the revised regulations only pertain to the United States' responsibilities to the Osage as defined in that Act. The 2004 Act, Public Law 108–431, 118 Stat. 2609 (Dec. 3, 2004) speaks to tribal membership issues for purposes other than those defined by the 1906 Act.

*At least one commenter suggested that the proposed rule likely violates*

*Executive Orders 12866 and 13175 because it adversely affects the Nation and its members. The proposed rule also has tribal implications and requires the Bureau to incur new costs that require consultation with the Nation. There is no evidence that the Bureau has consulted with the Nation.*

Pursuant to the Osage Tribal Trust Settlement, the Bureau is required to consult twice annually with the Osage Minerals Council, the duly elected governing body within the Osage Nation that oversees the Osage mineral estate. Throughout the Negotiated Rulemaking Process, the Bureau held its required consultations to discuss the rulemaking process and other issues with the Osage Minerals Council. During those meetings a tribal representative of the Nation was invited and present. Additionally, the Negotiated Rulemaking Committee was comprised of duly appointed members of the Osage Minerals Council.

*At least one commenter requested that the Bureau make more information available to surface owners and the public with respect to operations within Osage County, including but not limited to freshwater aquifer maps, well location maps, mineral lease-holder maps and contact information, and lease inspection reports. The commenter suggested that lessees should be required to report the amount and type of chemicals used in any hydraulic fracturing operation to [www.fracfocus.org](http://www.fracfocus.org).*

These comments are not within the scope of this rulemaking. However, as an operational matter, the Bureau is exploring opportunities to make oil and gas operations more transparent by possibly developing a Web site that would contain pertinent information, consistent with the Freedom of Information Act requirements, with regards to oil and gas activities within the Osage County.

*At least one commenter suggested that the Department commit to regularly publish monthly statistical data, provide headright holders with detailed statements regarding operational and royalty data, provide all relevant data to the Minerals Council, and develop an accessible and auditable database.*

This comment is outside the scope of the rulemaking. The Osage Agency regularly provides detailed information regarding the Osage mineral estate to the Osage Minerals Council on a regular basis and, consistent with the Freedom of Information Act, headright holders may request information relating to the Osage mineral estate from the Osage Agency.

*At least one commenter suggested that the mineral estate be independently audited under the auspices of the Department's Office of Inspector General and that the audit results be provided to headright holders.*

This comment is outside the scope of the rulemaking process. The Department notes, however, that the Office of Inspector General (OIG) issued a publicly available report on the Osage Agency in October 2014 (No. CR-EV-BIA-0002-2013). That report states that the Osage Agency needs to institute substantial changes to improve the management and administration of the Osage mineral estate, and further provides that many of the OIG's proposed recommendations and concerns will be addressed upon finalization of this rule.

*Some commenters requested that STRONGER should be invited to do an audit of the Osage Agency and provide recommendations for transparency, accountability and enforcement, as well as to strengthen regulations.*

This comment is outside the scope of the rulemaking. Moreover, STRONGER is an organization that focuses on State, not Federal, reviews of oil and gas regulations and best management practices. As noted in response to other comments, the Department's OIG has recently performed an audit of the Osage Agency and has issued a public report providing specific recommendations to improve management and administration of the Osage mineral estate. That report notes that many of the areas in which improvement is needed will be addressed upon finalization of this rule, and other issues are being addressed operationally. In addition, the Negotiated Rulemaking Committee was comprised of a team of experts in all fields of Federal oil and gas operations (BLM, Office of Natural Resource Revenue (ONRR), BIA, and the Office of Indian Energy and Economic Development) to evaluate Osage Agency operations and to make recommendations for improving the management and administration of the Osage mineral estate.

*At least one commenter suggested that the Department of the Interior provide for full end-to-end accounting to headright holders of withdrawals to the Osage mineral estate, royalty payments made, expenses withdrawn, interest earned and quarterly disbursements to headright holders.*

This comment is outside of the scope of the rulemaking; however, the Department provides the Osage Minerals Council with a periodic statement, at least on a quarterly basis,

that provides information regarding the source, type, and status of the funds in the mineral estate account, the beginning and ending balance for the period reported, all gains and losses in the account and all receipts and disbursements for the account.

*At least one commenter suggested that in any provision where the regulations require consultation with the Osage Minerals Council, such references should be replaced with "approval by the Osage Minerals Council."*

The Secretary, not the Osage Minerals Council, has been delegated the authority to manage the Osage mineral estate by Congress. Thus, while the Bureau is willing to consult with the Osage Minerals Council on matters relating to the Osage mineral estate, it must retain its ability to take corrective actions against lessees that are in violation of the regulations, including termination of the lease after consultation with the Osage Minerals Council (Sections 226.25(c), 226.62(b)-(c), 226.63(c), 226.67, and 226.70). In addition, the Department must retain the discretion to make changes to the regulations in the future.

*At least one commenter has requested that the reference to "for the benefit of the Osage" needs to be changed to "for the benefit of the Osage shareholder/headright owner."*

The phrase commented on is in the Executive Summary of the Rule that was proposed in the **Federal Register** on August 28, 2013, and is not a comment relating to the rule.

#### *B. Comments Related to Section 226.1*

*At least one commenter suggested that the definition of "headright holders" be amended to reflect the distinction that Congress has made between (a) the Osage Mineral Estate and its headright holders and (b) the Osage Nation.*

The rule does not define "headright holders" and the Department does not believe it is necessary to define this term because it is defined in the 1906 Act. Moreover, the distinction made by the commenter is not relevant to the rule. The rule only relates to the Osage mineral estate as defined in the 1906 Act and not to other purposes.

*At least one commenter suggested that the definition of the "Osage Minerals Council" be amended to reflect the Council's role as the elected representative of the Osage headright holders, composed of headright holders, and vested with authority to enter leases and take other actions related to the mineral estate.*

The Department believes the current definition of Osage Minerals Council in the Rule is consistent with this comment and reflects that the Osage Minerals Council is a duly elected governing body within the Osage Nation.

*At least one commenter sought clarification on the definition of "Other Marketable Product" because it is unclear whether language "for which there is a market" refers to a local market or any national or international market. For example, simply because carbon-dioxide may be selling in Montana, does not mean there is a willing buyer or market for an Osage lessee.*

The Department does not believe that there is a need to further expand the definition. "[F]or which there is a market" was intended to be left sufficiently broad to mean any market which there is a demand that makes it economically feasible to develop the non-hydrocarbon.

*At least one commenter suggested that the definition of "royalty" be amended to reflect the many diverse types of payments made by lessees included in the draft regulations, save for tank fees and fees to arbiters.*

Royalty is not defined in the definitions section of the rule, but is defined by the amount a lessee must pay on the amount of oil, gas, or other marketable product sold in accordance with Sections 226.18 through 226.23. Other fees paid under the regulations are for administrative costs or expenses.

*At least one commenter suggested that the definition of "Superintendent" be amended to reflect the ability of the Superintendent to delegate authority only to employees of the Bureau and enumerate an extensive set of duties and responsibilities.*

The Department does not believe that this level of specificity is required or necessary. The 1906 Act delegated to the Secretary of the Interior the responsibility to manage and administer the Osage mineral estate and such delegations are governed by applicable authority, including the Departmental Manual. If the Secretary delegates a specific duty to the Superintendent, the Superintendent may only further delegate that responsibility in accordance with the Departmental Manual. Further, to the extent that the Secretary delegates certain responsibilities to the Superintendent, those delegations may be changed by the Secretary, and this authority is expressly retained in the definition of "Superintendent" in Section 226.1.

*At least one commenter suggested that the provision allowing the*

*Superintendent to delegate her authority needs to be clarified; it could be read to allow the Superintendent to delegate to the Osage Nation, which includes non-headright owners.*

No changes were made in response to this comment. The question of the Superintendent's authority to delegate is not controlled by the regulation but is an independent question of Federal authority. The Superintendent can only make delegations consistent with applicable authorities including Departmental Manuals.

*At least one commenter suggested that the term "surface owner" be defined in the regulations as "any person, firm, corporation or other entity that owns the surface of the land on which oil and gas development is proposed or occurs."*

In response to this comment, a definition of "surface owner" was added to Section 226.1 to include "any person or entity that owns a surface estate within Osage County, irrespective of whether the surface estate is held in fee, restricted fee or trust status."

*With respect to the definition of "waste of oil or gas or other marketable product" (226.1), one commenter suggested clarification, noting that even using a reasonable and prudent operating standard, subcategory (1) "a reduction in quantity or quality of product from a reservoir" may prove so vague and open to interpretation that it will be both unworkable and subject to disagreement whenever such a claim is made.*

The definition of "waste of oil or gas or other marketable product" must be read in conjunction with Section 226.21, which specifies who makes a determination regarding royalty payments for lost or avoidably wasted materials. Section 226.21 allows the lessee to submit information in support of his/her position that gas was not wasted or avoidably lost before a finding is made. This provision ensures that the Superintendent has all relevant information from the lessee before making a final decision. In addition, during the Negotiated Rulemaking when this provision was discussed by the Committee and the public, it was noted that the Superintendent's decision is subject to appeal under 25 CFR part 2.

*At least one commenter noted that references to the "Osage Nation" in the rule diminish the rights of the headright owners because the Nation includes non-headright holders. The commenter also stated that the Osage Tribe (under the 1906 Act) is not the same as the Osage Nation today.*

The reference to the Osage Nation in the definition of Osage Minerals Council

is an accurate reference because the Osage Minerals Council is a duly elected governing body within the larger Osage Nation. Only Osage headright holders are eligible to vote for candidates for the Osage Minerals Council.

#### *C. Comments Related to Section 226.3*

*At least one commenter stated that the BLM regulations and on-shore oil and gas orders are onerous and costly to comply with and lessees don't know how to navigate them. This commenter suggested that it cost them over \$87,400 for a drilling permit in Kay County, Oklahoma, and that following BLM requirements will make the decision to drill more cost-based rather than potential-based.*

Section 226.3 allows the Bureau, in consultation with the Osage Minerals Council, to adopt BLM onshore oil and gas orders, notices to lessees or related onshore oil and gas regulations, but does not require adoption. Prior to adoption, the Bureau must comply with the Administrative Procedure Act. This rule does adopt two BLM onshore oil and gas orders that relate to the measurement of gas in Section 226.63(a), and hydrogen sulfide in Section 226.60(f), but neither of these relate to the drilling permit process. Moreover, while Section 226.34 (previously numbered Section 226.16), which relates to drilling permits, was amended to expressly provide that National Environmental Policy Act and the National Historic Preservation Act apply, those statutes are already applicable within Osage County. The amendment only makes clear that lessees must submit certain environmental information to assist the agency in complying with those laws. To the extent that the comment could be interpreted to imply that Section 226.60 (previously numbered Section 226.36) is revised to add requirements regarding well safety, those requirements were adopted from the BLM regulations, but do not impact the drilling permit process. It is also relevant to note that the rule does not become effective until 60 days after publication and the Bureau is working on a plan to educate lessees in Osage County regarding the changes to the regulations to ensure compliance and understanding of any new requirements before the rules go into effect.

*At least one commenter suggested that all seven of the BLM's current onshore orders be adopted immediately and that future onshore orders be adopted automatically by the Bureau without consultation with the Osage Minerals Council.*

The Negotiated Rulemaking Committee reviewed all of the BLM's onshore orders and after much discussion and public comment only recommended adopting Orders 5 and 6. However, the Committee recommended, and the final rule adopts the recommendation, that the Bureau be expressly provided the authority to adopt other onshore oil and gas orders in the future. The requirement that the Bureau consult with the Osage Minerals Council prior to any such future adoption is consistent with Executive Order 13175 on tribal consultation. In addition, the Bureau must comply with the Administrative Procedure Act in adopting any future onshore oil and gas orders.

#### *D. Comments Related to Section 226.4*

*At least one commenter suggested that in Section 226.4(a)(10), the Superintendent's responsibilities with respect to protection of the environment, public health, and safety need to be expanded and strengthened.*

The rule already adequately addresses this comment, however, an additional change was made to Section 224.44(e) to further address this and other comments related to safety and the environment. For example, in addition to Section 226.4(a)(10), the rule has specific protections against hydrogen sulfide gas in Section 226.60(f), which was added during the negotiated rulemaking process to address concerns from the public regarding the existence of hydrogen sulfide within Osage County. Section 226.44 also provides additional requirements with respect to the lessee's obligations for preventing pollution and an additional provision was added for safety, to require fences around pits and tanks and that removal and remediation of tank and pit sites occur immediately after completion of operations. Section 225.45 provides additional requirements with respect to other environmental responsibilities. These are just some of the provisions that ensure lessees take steps to protect the environment and ensure public health and safety.

*At least one commenter opposed Section 226.4(b) of the proposed rule because it allows oral orders, which could risk creating additional uncertainty in the supervision of operations and could be misinterpreted and/or unclear. It was suggested that a written order clearly identifying specific violations, necessary corrective actions, and the time for compliance would ensure full compliance and create a record in the event of an enforcement action or surface owner lawsuit.*

The Department agrees that written orders are preferable and has removed

all references in the rule allowing oral orders so that it is clear that written orders must be issued.

*Some commenters suggested that the Bureau should inspect oil and gas leases at least once annually and that the Bureau should promptly address and more frequently inspect non-compliant leases. It was suggested that there is a general lack of day-to-day oversight and that most ranches have old scars or current pollution issues associated with oil and gas production and saltwater spills. Commenters also suggested posting information regarding inspections like the BLM does because it allows landowners and the public to see when wells are inspected and violations reported.*

To the extent that these comments relate to the rule, they are already addressed by the rule. In Section 226.4(c), leases with a history of noncompliance must be reviewed at least once annually. The Bureau has also established a toll-free 24 hour hotline (855) 495-0373 for reporting spills or accidents and a tracking system has been created to ensure that all calls are responded to in a timely manner and other officials are notified as appropriate. The Bureau has also discussed creating a Web site for the Osage Agency where it can post the results of investigations and other information related to oil and gas operation in Osage County. However, this is being done outside the rulemaking and any information posted must be reviewed for compliance with the Freedom of Information Act. Additionally, the Office of Inspector General (OIG) issued a publicly available report on the Osage Agency in October 2014 (No. CR-EV-BIA-0002-2013) that discovered some of the same concerns, but many of the OIG's proposed recommendations and concerns will be addressed upon finalization of this rule. The Bureau is also making a number of operational changes that are discussed in that report in order to strengthen the management and administration of the Osage mineral estate.

*At least one commenter suggested that a new subsection should be added to Section 226.4 to require the Superintendent to adopt rules prohibiting Osage mineral headright holders from working in the lease inspection division of the Bureau to avoid conflicts of interest.*

Congress has recognized that Indian tribes and their members should have direct involvement in federal programs enacted for their benefit. Under 25 U.S.C. 472, Congress recognized that Indians should be involved in the day-

to-day operations affecting them and the Bureau of Indians Affairs must apply Indian preference to positions open in the Osage Agency. The Department is not persuaded by the assertion that Osage headright holders who may be employed by the Osage Agency will refuse to enforce regulations simply to advance their alleged personal self-interests. In any event, employees are accountable to their supervisors and ultimately to the Secretary. If there are issues with non-compliance, members of the public may contact the Department to report such violations.

#### *E. Comments Related to Section 226.5*

*At least one commenter suggested that Section 226.5(c) be revised to require the Superintendent to notify the surface owner beneath whose land minerals are leased.*

This comment is adequately addressed in the rule. The Negotiated Rulemaking Committee agreed in response to similar public comments raised in the negotiated rulemaking process that surface owners should have access to information regarding whether an oil and gas lease covers their surface estate. Thus, as proposed and adopted in the final rule, Section 226.5(c) requires that the Superintendent post at the Agency, within 30 days following approval of a lease, a legal description of the mineral estate that was leased. This ensures that surface owners have access to information regarding lands leased, while reducing the burden of the Osage Agency in locating and notifying each individual surface owner.

#### *F. Comments Related to Section 226.6*

*At least one commenter suggested that in Section 226.6(a), regulatory language be included clarifying that a lessee that surrenders its lease is still liable for plugging, abandonment, and reclamation obligations associated with the lease area.*

In response to this and other comments concerning abandoned and unplugged wells, the Department has added a paragraph (c) to Section 226.6, to require the Superintendent to ensure that the lessee has either plugged all wells and reclaimed the surface, in accordance with the regulations, or show in writing that upon surrender the future liability for all wells located within the lease or portion of the lease to be surrendered has been transferred to another party.

#### *G. Comments Related to Section 226.8*

*Some commenters suggested that the terms of an oil and gas agreement should be given primacy so that the regulations recognize that in the event*

*of a conflict between the regulations and an oil and gas agreement, the terms of the oil and gas agreement control. These commenters expressed a lack of clarity in the intent behind Section 226.8 and proposed to make clear whether 226.8 includes a pre-existing lease. One such commenter requested leaving existing leases as they are (highest posted price) and only making new leases subject to NYMEX, stating that otherwise there will be legal challenges.*

The Department does not believe a change in the rule is needed to address this comment. Section 226.8 has only been renumbered in the rule (previously numbered as Section 226.7). That provision specifies that amendments or changes to the regulations cannot change the terms of pre-existing approved leases with respect to the term of the lease, rate of royalty, rental or acreage, unless otherwise approved of by the parties and the Superintendent. Thus, the rate of royalty in pre-existing approved leases will not change as a result of the rule, but the provision describing how royalty is calculated (*i.e.*, NYMEX at Cushing), could properly apply to pre-existing leases. This rule could also affect such matters as lease operations and maintenance requirements, reporting requirements, and other aspects of pre-existing leases other than the key lease terms specified in Section 226.8.

#### *H. Comments Related to Section 226.9*

*Some commenters noted that the proposed rule requires each lessee to pay a new and unique bond for the development of the Osage minerals estate and does not include recognition or acceptance of already established and sufficiently protective nationwide bonds regularly posted by lessees. These commenters suggested that not allowing a nationwide bond would be completely atypical and singularly applicable to the Osage Agency and could hinder development.*

The Department agrees with this comment and has added the provision allowing nationwide bonds back into Section 226.9 of the rule.

*Several commenters objected to the increase in the amount of bonding required and asserted that requiring bonding at \$5,000 per well is unaffordable. Some argued that lessees will have to plug wells because they won't be able to afford bonding or that the new amount will tie up capital available to the lessee to develop production.*

The Department disagrees with this comment and in reviewing the record has found that there is a need for increased bonding. The Department

found that the Committee looked at the actual cost to plug wells and tried to find a balance between covering the cost of plugging a well while, at the same time, not overly burdening lessees. The original bonding amounts were based on a quarter section and did not correspond in any way to plugging and remediation costs related to wells, which must be done on a per well basis. The new regulation ties bonding to the number of wells and caps the per well bonding requirement at 25 wells for all leases, corresponding more directly to the fact that plugging costs are incurred on a per well basis. While some commenters requested that the Department include an allowance for nationwide bonding, none of public comments justified an alternative bonding amount. Thus, the Department found that overall, the Committee recommendation was reasonable and reduces administrative costs because the per well bonding streamlines implementation. The Department also found it necessary to maintain per well bonding requirements in light of a recent report on the Osage Agency issued by the Department OIG, which discussed and noted the historical failure to plug wells in Osage County and the need to ensure that this problem is addressed in the future.

*Some commenters argued that limiting bonding to \$5,000 per well for up to 25 wells is inadequate to ensure sufficient remediation and recommended no less than \$5,000 for shallow wells (less than 3,000 feet in depth) and \$10,000 for deep wells (deeper than 3,000 feet) and deletion of any cap. Some of these commenters requested that the per-well bonding amount should 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.*

The Department believes that the rule sufficiently balances the need for increased bonding with the fact that bonding is only for insurance purposes and does not eliminate the lessee's obligations to plug abandoned wells and remediate surface lands in coordination with surface owners. Bonding is only intended to provide assurances to the Bureau that the lessee has incentive to plug a well and is not intended to create complete upfront funding for the plugging of a well at an unknown time in the future. Nor is bonding intended to cover surface remediation. To the extent that a surface owner is unsatisfied with remediation on the part of a lessee, he or she may seek damages in accordance with Sections 226.40–41, or pursue any other legal remedies available to him or her. The Department

found that the Committee considered, but rejected after substantial public comment in opposition, the notion to require bonding at 125 percent the cost of plugging a well.

*Some commenters requested that a final rule provide a grandfather provision for bonds on existing leases that would also apply to any new leases that the same lessee may acquire.*

The Department has concluded that it is necessary to make changes to bonding with Osage County and there have been historical problems with adequate bonding in Osage County as found in the recent report issued by the OIG in October 2014. The Department found that the issue of bonding was discussed throughout the negotiated rulemaking process and that members of the Committee and the public noted that the current rate of bonding does not relate at all to the fact that costs for plugging occur on a per well and not per lease basis. Moreover, members of the public have commented that they believe there is a problem throughout Osage County with abandoned and unplugged wells and current bonding rates were not sufficient to address or encourage remedying these issues. Thus, the Department believes that it is reasonable to adopt the revised bonding amounts proposed by the Negotiated Rulemaking Committee to better relate bonding to the cost of plugging a well and incentivize lessees to plug wells that will no longer be used so that they can get a release of their bond. The rule also provides new provisions for ensuring that the Bureau releases bonds in a timely manner.

*Some commenters asserted that most insurance companies won't write oil and gas lease bonds now and the new regulation will make it more difficult.*

The Department does not believe that the rule will make it more difficult to obtain oil and gas lease bonds. Moreover, while the amount of bonding has increased, the rule caps the amount of the increased bond to a maximum of 25 wells. The rule allows for different ways to acquire a bond, including the ability to obtain a surety bond that meets the requirements of the rule, and the Department has further revised the rule to allow nationwide bonds, which are accepted elsewhere on other Indian and Federal lands. While the Department understands that there may be some lessees that for various reasons may not be able to get a bond, the Negotiated Rulemaking Committee discussed that some of the issues related to those failures were due in part to defaults caused by particular lessees and are not attributable to the cost of bonding. Bonding is a requirement

throughout the oil and gas industry and those who want to engage in oil and gas operations must expect to be required to provide assurance that they will properly plug and reclaim their well sites.

*Some commenters asserted that bonding at \$5,000 per well is unaffordable and will cause small lessees to go out of business because most wells are either not able to produce enough to cover the bonding amount or are inactive and pose no threat to the environment.*

For many of the reasons addressed in other responses to comments on bonding, no additional changes are necessary in response to this comment. In addition, the unused and unplugged or abandoned wells do pose a threat to the environment such as possible pollution of fresh water formations due to migration of oil, gas, saltwater and other substances. For example, abandoned wells can provide pathways for oil, gas or brine-laden water to contaminate groundwater supplies or to travel up to the surface due to the deterioration of the casing or surface equipment deterioration or malfunction. If the production is insufficient to cover the cost of bonding, the Department is concerned that the production will also be insufficient to cover the cost of plugging and reclamation. Thus the increase in surety amounts will help ensure the operator's diligence in plugging and abandoning and reclaiming the surface.

*At least one commenter suggests that there should be a ceiling to the bonding requirement, like the State of Oklahoma's cap at \$25,000 per lessee.*

This comment is already addressed by the rule, which does provide a cap for bonding in Section 226.9(c) at \$5,000 per well for a maximum of 25 wells per lessee for all leases held within Osage County. Additionally, in response to public comment, the rule was further revised to allow nationwide bonding.

*At least one commenter suggested that the cap on bonding amounts should be eliminated from the regulations.*

The Department disagrees with this comment because it is generally accepted within the oil and gas industry that bonding is for insurance purposes and is not intended to cover the entirety of the costs associated with plugging and remediation of every well site, rather bonding provides an incentive to perform plugging and remediation of well sites and screens out unreliable lessees who fail to perform these duties because lessees that default on their responsibilities will not be able to get a bond in the future.

*At least one commenter suggests bonding should follow the Oklahoma Energy Resources Board model used in the rest of the State of Oklahoma.*

No changes to the rule are necessary with respect to this comment. The Oklahoma Energy Resources Board (OERB) does not bond or plug wells. The OERB is a State-incorporated surface restoration agency that lessees in the State of Oklahoma voluntarily contribute to for remediation and reclamation of abandoned well sites at no cost to surface owners. The Bureau has met with OERB and confirmed that OERB has historically been willing to operate within Osage County and currently works with surface owners and the Bureau for Remediation within Osage County in accordance with its normal process and procedures. The goal of the regulation is to prevent orphan wells that will further burden OERB and the responsible operators who fund it.

*Some commenters noted that they are generally pleased with the proposed regulations but noted their concerns with plugging wells. Specifically, commenters stated that bonding needs to be more proactive and well sites remediated because the proposed regulations do not address current abandoned wells and, rather than plugging the wells, lessees often just pass wells to the next lessee when they assign or sell their lease.*

This is an issue that cannot entirely be addressed in the regulations, which govern on-going oil and gas operations. The Department recognizes that there is an issue with respect to abandoned wells within Osage County and works with the Osage Minerals Council to address these issues. The Osage Minerals Council has contracted with the Bureau to take over the function of plugging orphaned or abandoned wells and currently operates the program within Osage County. In addition, as mentioned in previous responses, OERB operates in Osage County to remediate the surface area around orphaned or abandoned wells that have been plugged. To the extent that this issue can be remedied in the future by the rule, the Department has increased bonding to more closely relate to costs associated with plugging a well and reclamation (on a per well basis) to provide an incentive to ensure lessees properly plug and abandon wells and has also added a provision, Section 226.6(c), requiring that before a lease can be surrendered or partially surrendered, the lessee retains any past liability incurred within the lease or partial lease to be surrendered, and must show that he has either properly

plugged and abandoned all wells and/or that another party is taking full legal liability for the wells within the lease or partial lease to be surrendered. In addition, a new provision was added as Section 226.29(a)(i), clarifying that the assignment is subject to the continuing obligations of the assignor to meet its plugging and abandonment obligations, and a new Section 226.29(a)(ii) was added making clear that the assignee retains all responsibility for all unplugged wells under the lease or partial lease assigned.

*To address the abandoned well issue within Osage County, one commenter suggested that a company fund be established whereby lessees would pay in the value of 2 barrels of oil per year for each active well less than 4,500 feet and 3 barrels of oil for wells less than 7,500 feet and the fund would be used to plug abandoned wells.*

The Department does not believe this is an issue within the scope of the rulemaking. The regulations govern on-going oil and gas operations. To the extent that there are historical issues with respect to abandoned wells and well sites, the Department can explore with the Osage Minerals Council whether or not a voluntary fund could be established to address the historical issues. The Department also reiterates that as stated in responses to other comments, OERB does operate within Osage County to remediate abandoned well sites and the Osage Minerals Council currently operates the program for plugging abandoned wells.

#### *I. Comments Related to Section 226.14*

*Numerous comments were received objecting to the termination for non-production in Section 226.14(e). Commenters suggested that the timeframe for termination for non-production needs to be increased and/or kept at one year and not 90 days. One commenter noted that if a particular well produces very little, it is necessary to have the time to evaluate the upper and lower potential of the well regarding future oil and gas opportunities, as well as the ability to shut the well in for short periods when the price of the oil or gas becomes uneconomical to produce at that well without the lease being terminated. Another noted that the 90-day requirement will prevent companies from purchasing tracts because they will not have time to put the tracts into production. One commenter suggests that a more reasonable requirement would be a 180 day period, with notice to the Superintendent that the lessee needs an extension 20 days prior to the expiration of the 180 day period. Some*

*commenters noted that people have other full time jobs and can't get work done quickly and it sometimes takes a few months to get work done. Another commenter stated that the one-year termination provision has been working fine and it is expensive to hire people to fix problems and lessees don't always have the money. Some commenters noted that oftentimes equipment is backordered or weather causes delay and they wouldn't be able to comply with the 90-day requirement.*

In response to comments, the Department has further revised the rule to change the time period for termination for non-production from 90 days to 120 days and require that requests for extension of time be submitted at least 20 days prior to expiration of the 120-day period, but given the additional time for non-production and the need to reduce administrative burdens in enforcing this provision, the Department deleted the provision allowing the Superintendent to waive the 20 days advance notice requirement. For clarification purposes, the Department also added a standard for extending temporary suspensions to require good cause. The Department found that there was substantial discussion on this issue during the negotiated rulemaking and the Osage representatives on the Committee were opposed to allowing nonproduction for periods of 180 days or more. Although the Osage representatives on the Committee also rejected a 120-day timeframe during the negotiated rulemaking process, the Department had to balance the concerns of the Osage representatives with the concerns of the lessees regarding operation contingencies and its ability to administratively manage leases for nonproduction. The Department did not view as relevant, concerns that a lessee may have another job that inhibits his or her ability to produce within a particular timeframe or concerns that a particular lessee may not be able to afford equipment or staff because Section 226.14(c) states that all lessees have an obligation to diligently develop their lease. The Department also found that concerns regarding the ability to put a well into production were misplaced because Section 226.14(e) only contemplates termination for nonproduction after the primary term of the lease when the lessee is expected to begin production.

*At least one commenter suggested that lessees aren't in a rush to do business in Osage County and the Bureau needs to encourage lessees to keep their properties up, not terminate them.*

No response is necessary to this comment because it is not substantive and does not provide any recommendations.

*At least one commenter objected to 226.14(e) on the basis that some wells only produce one barrel per day and oil will not be picked up for sale within 90 days or for at least six months, and under this provision this producing well would be considered non-producing because no sale took place within 90 days and that is unfair.*

This comment misinterprets Section 226.14(e), which does not provide that wells that are producing in paying quantities would be terminated for nonproduction within the prescribed timeframe. It is understood that sales are intermittent in nature and that a well may be producing but that a sale may not occur within 90 or 120 days. So long as the lessee reports production, the lease will continue, it is only the failure to produce, not the failure to sell, that terminates a lease under this provision. The regulations, however, expressly provide that all lessees have an obligation to diligently develop their leases as set forth in Section 226.14(c).

*A commenter stated that the requirement to drill on every quarter section in order to hold a lease exposes lessee to excessive financial risk and causes excessive impacts to the land and wildlife. Leases should instead be structured to allow focused drilling.*

This comment does not accurately characterize Section 226.14(a). Section 226.14(a) requires a lessee to place a well in production within the land embraced by a lease within 12 months of the date of approval of the lease, or as otherwise provided for in the lease terms, but does not require a lessee to drill in every quarter section. A lease may encompass an entire quarter section or a larger land area. Lessees are required to act prudently in addition to diligently developing the mineral estate. The rule also includes provisions to ensure that lessees conduct all operations in a manner that protects other natural resources, environmental quality, life and property. See Section 226.33.

*At least one comment was received suggesting that the factors in Section 226.14, governing when the Superintendent may impose restrictions as to time of drilling and rate of production, should be expanded to encompass environmental, public health and safety concerns, and the interests of the Osage Tribe, because activity should not unduly interfere with surface uses.*

The Department disagrees with this comment. The Osage mineral estate is

held in trust by the United States and was reserved by the United States for the purpose of mineral development. The rule also does not change the basic premise of law that a surface estate is subservient to a dominant mineral estate. The rule recognizes that a lessee is permitted to use as much of the surface estate that is reasonable for operations. See Section 226.37. Thus, the regulations provide limitations on size of drilling sites (Section 226.38(a)(3)) and require that lessees conduct operations to protect other natural resources and environmental quality, life and property (Sections 226.33(a)(2)–(3) & 226.45), and require lessees to take certain steps to prevent pollution (Section 226.44). At the same time, lessees have an affirmative obligation to diligently produce a lease (Sections 226.14(c) & 226.33(a)(4)) in accordance with the overall statutory and regulatory framework. In the event that a lessee is violating the regulations, the Superintendent has authority to take actions to remedy the violations (Sections 226.67 & 226.68).

#### J. Comments Related to Section 226.15

*At least one commenter objected to 226.15 with respect to drainage asserting that drilling offset wells to prevent drainage is not necessary because the Nation owns all the minerals in Osage County. Drilling offset wells would not only require considerable time, resources and expense, but this unnecessary drilling could adversely affect environmental damage. It was suggested that the Bureau should consider removing this section entirely or narrowing its scope to clarify the conditions where offset wells are necessary and also ensure that there is an appeal process to protect against arbitrary decision making.*

Under the 1906 Act, the mineral estate is held in trust by the United States for the benefit of the Osage. However, the drainage provision in the Rule is intended to ensure diligent development of all lease sites because not all leases have the same royalty rate. Thus, if a lessee holds multiple leases next to each other, the drainage provision will ensure that the lessee is not able to focus drilling only the lease site that has a lower royalty rate to the detriment of the Osage. However, to further clarify the provision and reduce the burden on lessees, subsection (b) was revised to clarify that drainage does not occur if the lessee can show that it could not produce a paying quantity of oil or gas “for a reasonable profit”, rather than “in paying quantities.” Usually “in paying quantities” only means enough to recover day to day

operational costs. Subsection (d) was also amended to clarify that an assignee is responsible for drainage even if it would not be economic, at the time of assignment, to drill an offset well, to ensure that the Osage are protected if a lease is assigned. The Department also notes that 226.16(d)(1) is intended to clarify that a well drilled to protect against drainage must be in continuous production and the obligation to pay compensatory royalty can be revived if the protective wells cease production.

#### K. Comments Related to Section 226.18

*Several commenters suggested that measuring oil royalties based on NYMEX pricing is unattainable and that it is unfair to require lessees to pay a royalty based on a price they cannot obtain. One commenter suggested that NYMEX will gouge small lessees and others suggested that NYMEX will hurt Osage shareholders. A few commenters suggested, rather than NYMEX, royalty rates should be commensurate and competitive with those found in the region and in similar places around the country. One commenter suggested that only if the rule required lessees to be paid NYMEX prices would it be fair. Another noted that it is okay to use market center price as a reference point, but the market center price must be adjusted for location and quality. Another stated that because many wells in Osage County are stripper wells and produce low volumes and are only profitable under the existing regulations, NYMEX would harm profitability and shorten production life of leases, and suggested instead that royalty should be based only on the price paid to lessees, allowing the competitive marketplace to set the prices. One commenter noted that NYMEX will cost as much or more than \$3 per barrel more than what is being paid now.*

In the Osage Tribal Trust Settlement, the Department agreed to engage in a negotiated rulemaking and, among other things, identify appropriate revisions to the methods for calculating royalty for oil and gas. The Negotiated Rulemaking Committee reviewed various indices to utilize for calculating royalty. The Committee sought a price benchmark that (1) was appropriate for oil sold in Osage County, (2) accurately reflected the oil market in Oklahoma, (3) was widely published, and (4) independent. The committee found that NYMEX was the only benchmark that met all four criteria. After public comment, the Committee decided to propose NYMEX at Cushing, Oklahoma, as the index for calculating oil royalties. The Bureau had the ONRR review and evaluate NYMEX

at Cushing to determine whether it was an appropriate market center for Osage County. The ONRR's report recommends using NYMEX at Cushing based on its review and analysis of price data from Osage County and the surrounding area coupled with ONRR's experience using different index prices for Federal oil valuation. Specifically, ONRR found that NYMEX is widely used and accepted by the industry and is representative of the value of oil and gas received on and near Osage County. ONRR also found that because Osage County is so close to Cushing, Oklahoma, adjusting NYMEX for location is unnecessary. The rule, in Section 226.19 (gravity adjustment table) also provides for adjustments to NYMEX based on the quality of the oil. The Department also found that during the public comment process in the negotiated rulemaking meetings virtually no alternative indices for royalty valuation of oil were suggested by the public, other than keeping the highest posted price. The Department found that the Committee explained to the public that a change in royalty was needed because some on the Committee did not believe that the highest posted price was protective of the trust beneficiary and that highest posted price was subject to manipulation and did not protect the trust beneficiary from non-arms-length transactions. The Department is required to establish regulations concerning Indian oil valuation based on its federal trust responsibility to act in the best interests of the Indian beneficiary, including a duty to maximize revenue for Indian tribes and Indian mineral beneficiaries. The Department also found that during the negotiated rulemaking, a staff member to the Committee noted that in his view since 1994, the highest posted price was often below sale prices for many lessees and, as a result, Osage headright holders were not always receiving the full royalty amount that they were due. In conjunction with the Report from the ONRR and the recommendations from the Committee, the Department has determined that utilizing NYMEX at Cushing, Oklahoma to calculate royalty payments for oil protects the interests of head right holders and is not overly administratively burdensome to implement or enforce.

*A commenter suggested that the oil royalty benchmark be established at the highest rate that the market will bear on the basis of the sale of West Texas Intermediate (WTI) crude, not NYMEX futures contracts. Similarly, a commenter suggested the gas royalty*

*benchmark be established at the highest rate that the market will bear. Both would allow leases to be competitively bid or negotiated to acquire the maximum ultimate economic recovery.*

The Department agrees that there is merit to the use of WTI as the pricing benchmark for Osage oil. That was considered during the sub-committee evaluation of the various benchmark options. Use of WTI was ultimately rejected by the Committee because it would require location differential pricing and transportation adjustments that did not satisfy the request for simplicity and the need to minimize administrative burdens. Furthermore, WTI did not mirror the Oklahoma market as well as NYMEX settlement at Cushing. Benchmarks based on weighted average prices of arms-length transactions in a given market area are generally considered a fair representation of market value. Terms that require "the highest rate the market will bear" are, by their very nature, dismissive of transactions that occur below that threshold. As such, they would be unfair to parties that are able to negotiate satisfactory arms-length agreements below "the highest rate the market will bear." Pricing based on such terms would not be considered fair market value.

*Several commenters requested that a transportation allowance for trucking or piping oil to Cushing should be factored into the calculations when the lessee uses the Cushing posted price in accordance with Section 226.18(b)(1). Some of these commenters stated that transportation allowances are also appropriate when, under Section 226.18(b)(2), a lessee sells oil in a location other than Cushing and the actual sales price exceeds the Cushing price because of the transportation costs incurred by the lessee. Other commenters suggested that transportation costs need to be taken into account because of the economic fact that there is a cost involved if you want to sell oil.*

The Bureau had the ONRR review and evaluate NYMEX at Cushing, Oklahoma, to determine whether it was an appropriate market center for Osage County. The ONRR's report recommends using NYMEX at Cushing based on its review and analysis of price data from Osage County and ONRR's experience in using this process for Federal oil valuation. The ONRR also found that because Osage County is so close to Cushing, Oklahoma, adjusting NYMEX for location is unnecessary. The ONRR recommended against allowing transportation deductions and noted that eliminating transportations

deductions would: (1) Increase revenue to the Osage, (2) reduce litigation costs to the Tribe and industry, (3) provide certainty to the industry and assure more contemporaneous compliance and (4) reduce administrative costs to the Federal government and the industry. Based on those recommendations and the Bureau's desire to reduce administrative costs while at the same time fulfilling its trust responsibility, the Department decided against allowing transportation allowances. The Department also found that there was discussion of whether to allow transportation allowances during the negotiated rulemaking, but the Committee also chose not to allow for such deductions for a variety of reasons, including the difficulty in developing a simple formula and the administrative burdens of enforcing accurate transportation deductions.

*One commenter noted that under Section 226.18(c), for royalty taken in kind, a lessee can be required to supply free storage for a period of 60 days, and this subsection should provide that if the lessor elects to exercise this right, the lessee should be indemnified or held harmless for losses of such oil by causes beyond the lessee's control.*

Section 226.18(c) was previously numbered as Section 226.11(a)(3), and has not been revised through this rulemaking. No further changes are necessary to this provision at this time and the Department has not been provided with sufficient information to reasonably support a change.

#### *L. Comments Related to Section 226.19*

*One commenter requested that Section 226.19 be clarified to provide that the Superintendent must comply with the rulemaking notice and comment process before the Superintendent may publish new gravity adjustments "based on substantial evidence, that market conditions so warrant."*

No changes are necessary in response to this comment because actions of the Department must comply with the Administrative Procedure Act. Moreover, it is uncertain whether or not the Superintendent would publish new gravity adjustments in the future or what process the Superintendent would follow to do so. If and when that occurs in the future, any final decision may be challenged in accordance with the Administrative Procedure Act.

*One commenter suggested that the Department of the Interior should not allow any exceptions or deductions that are not specifically permitted by the 1906 Act or other applicable laws.*

It is unclear whether this commenter was referring to deductions for oil (Section 226.19) or gas (Section 226.20). Regardless, the only deduction allowance for royalty paid on oil is based on a gravity adjustment. See Section 226.19. No deductions are allowed for royalties paid on residue gas produced on a lease, and the only deduction allowed for royalties on natural gas are the “reasonable cost for processing not to exceed 50 percent of actual sales value of natural gas liquids produced from the lease (including drip condensate).” See Section 226.20(c).

#### M. Comments Related to Section 226.20

One commenter noted that 226.20(a), which provides that royalties would be assessed and measured before water vapor is removed from the gas and the gas is in a marketable condition, and asserts that this would artificially inflate meter volumes without increasing the volume of gas produced.

The Department is confused by this comment because nowhere does 226.20 state that gas volumes must be determined prior to removing water vapor. It is assumed that the commenter was actually referring to 226.20(b). The requirement in 226.20(b) was added to prohibit adjustment to the measured volume of gas for assumed water vapor content. This requirement does not prohibit the physical removal of water vapor or placing the gas into marketable condition prior to measurement, however. We agree with the commenter that the wording was unclear and have changed the wording in 226.20(b) to clarify this and have also added specific technical requirements that were previously missing to address calculating the heating volume of gas to aid the lessee in complying with this section.

One commenter stated that Section 226.20(c) establishes a dual accounting system, but the use of a dual accounting system to calculate gross proceeds is an issue that is more properly addressed and negotiated by the Nation and the lessee in the lease document at the time it is signed. Empowering the Superintendent to change this calculation system on such short notice introduces substantial uncertainty into the calculation of royalties, discouraging prospective lessees from entering into agreements with the Nation.

The Department disagrees with this comment. The Department did find that the reference for dual accounting in the proposed rule (30 CFR 1206.173) was incorrect and has added the correct reference (30 CFR 1206.180(a)–(b)). However, the purpose of the provision

is so that if the actual reasonable cost of processing as required by this section cannot be determined, the lessee is required to perform the accounting for comparison (dual accounting) as outlined in 30 CFR 1206.180(a)–(b). On other Indian and Federal lands outside of Osage County, approval for the alternative methodology rests with ONRR, not the tribe. In Osage County, unless otherwise delegated, ensuring compliance with those same provisions is now vested in the Superintendent because this rule makes them applicable to Osage. In all cases, the application of alternative methodologies for accounting are directly tied to the lack of transparency of processing costs and an inability to determine those costs for allowance purposes. The requirement does not interfere with any agreements the lessee has or will make.

One commenter asserted that Section 226.20 requires a double royalty to be paid where gas produced from one well is used for lift purposes on another well—solely because it passes the point of metering on both wells—and disagreed with this, noting that it is widely accepted that gas used on-site for beneficial purposes of the lease is not royalty-bearing and this proposal would run counter to that principle.

Section 226.20 requires only that all gas removed from the lease be metered before removal and subject to a royalty of not less than 20 percent, unless otherwise approved. That regulation ensures that the Osage get royalty for any gas moved off the lease site, even if it is used for operations at another location. The regulation does not prohibit gas developed from a lease site from being used for operations on the same lease site. On the other hand, Section 226.63 does require that all gas be measured in accordance with BLM Onshore Oil and Gas Order 5, to ensure that all gas that is required to be measured is properly accounted for, but royalty payments on gas are controlled by Sections 226.20, 226.21 & 226.22.

A commenter expressed support for the attempt to provide for a royalty on residual and other marketable products and urged that the meaning of the relevant calculation be made clear.

The Department is not certain it understands this comment, but notes that the determination of royalty on other marketable products is explained in Section 226.23, which is a provision that was contained in the prior regulations, but revised in the final rule to clarify that royalty due on other marketable products is in addition to any royalty that may be due on oil and gas in accordance with the regulations.

#### N. Comments Related to Section 226.25

At least one commenter suggested that the due date for royalty payments doesn't need to be changed to accommodate any entity other than the Bureau.

The due date for royalty was changed to make it consistent with the date that royalty payments are due to the ONRR, in the event that the Secretary delegates royalty collections and audits to ONRR to aid the Bureau in its management and administration of the Osage mineral estate. ONRR has the capacity to provide assistance to the Bureau without the Bureau having to duplicate services that ONRR already provides on other Indian and Federal lands.

#### O. Comments Related to Section 226.27

At least one commenter objected to Section 226.27(a)(2), which requires the Superintendent to approve all division order and sales contracts before production may “be removed from the leased premises.” It was suggested that this provision would impose a substantial administrative burden on the Bureau when they already face backlogs and uncertain funding.

Section 226.27(a)(2) was not substantively changed through this rulemaking, but was renumbered (from Section 226.14(a) in the old regulations to Section 226.27(a)(2)) and reformatted for readability only. Issues relating to staffing and funding are also outside the scope of this rulemaking, although the Bureau has worked with the Osage Agency over the last few years to address budget shortfalls and staffing needs.

#### P. Comments Related to Section 226.29

At least one commenter objects to the provision in Section 226.29(a) that requires lease assignments to be approved by both the Superintendent and the Osage Minerals Council because no procedure or standard is specified for obtaining those approvals or appealing the decisions. It is also not clear what happens if there is a disagreement between the Superintendent and the Minerals Council.

The regulations have always required lease assignments to be approved by both the Osage Minerals Council and the Superintendent. This rule does not change that requirement, but deletes the provision allowing lessees to assign separate horizons because the Department found, in reviewing the rule, that such assignments do not generally occur at Osage and when they did, they were so administratively burdensome that the Agency could not

monitor those assignments. As a general matter, the Minerals Council is the entity that enters into and approves all leases and assignments in accordance with their governing authority and procedures. Once the Minerals Council approves a lease or lease assignment, it is submitted to the Superintendent for federal review and approval. Any final decision of the Superintendent is governed by 25 CFR part 2 and the Administrative Procedure Act.

*Q. Comments Related to Section 226.33*

*One commenter requested that there should be additional restrictions to protect natural resources and public safety and the restrictions should provide sufficient detail to allow lessees to comply and the Bureau to enforce. The commenter also suggested that best management practices should be developed to protect wildlife and other natural resources.*

This comment is already addressed in Section 226.33 of the final rule, which requires that lessees conduct all operations in a manner that protects other natural resources and environmental quality and protects life and property while also balancing those responsibilities with the requirement to maximize production of oil, gas and other marketable products. Sections 226.44–226.45 also provide additional protections for the prevention of pollution and environmental concerns and were added in response to similar concerns raised during the negotiated rulemaking process. To the extent that the commenter desires the Bureau to develop best management practices outside the regulations, those comments are beyond the scope of the rulemaking. However, the Bureau is currently engaged in a process with the U.S. Environmental Protection Agency (EPA) to revise and update an existing Osage Lessees Manual that addresses environmental protection and response, including best management practices. The Osage Minerals Council, Osage Nation, State of Oklahoma, lessees, and surface owners were involved in the public listening sessions as part of that process. Moreover, the rule does not replace other applicable environmental laws or regulations and EPA is responsible for overseeing certain aspects of oil and gas operations within Osage County.

*R. Comments Related to Section 226.34*

*One commenter noted that the Bureau should not approve a lease, installation, permit or other activity until an environmental impact assessment has been completed and any issues have been resolved. To that end, the Bureau*

*should regularly consult with Federal, State, and local wildlife agencies to reduce conflicts between wildlife conservation and oil and gas production.*

Notwithstanding the regulations, the Bureau is required to ensure compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* Further, Section 226.5(d) makes clear that before approval of each oil and/or gas lease and activities and installations associated therewith must be assessed and evaluated for its environmental impact. Although the Bureau already undertakes environmental reviews before approving certain actions, Section 226.34 has been further amended to expressly note that the NEPA is part of the environmental compliance review and must be completed before the Superintendent may grant authority under a lease to conduct certain operations.

*S. Comments Related to Section 226.35*

*At least one commenter suggested that Section 226.35 as written appears to reverse the ancient rule that the surface estate is subservient to the subsurface/mineral estate, thereby giving the surface owner a veto over mineral development. In particular, paragraph (b) only provides that the Superintendent will endeavor to bring the parties to terms so that a lessee may develop on a restricted homestead and this is different than allowing the lessor to enter upon surface lands and utilize subsurface rights and would delay development. Additionally, paragraph (c) provides that when no agreement between a surface owner and lessee can be reached for surface usage, the Minerals Council can make a final binding decision, but this paragraph does not include a requirement that the Minerals Council recognize the legal subservience of a surface owner's right or take into account the reasonableness of the lessee's request, or apply standard methods of valuation to the interests being adjudicated. This commenter notes that it is also unclear what appeals rights a lessee has to such determinations.*

Section 226.35 (previously numbered 226.17) was not substantively changed in the rule. References to the "Osage Tribal Council" to the "Osage Minerals Council" were changed because the Osage Tribal Council no longer exists and it is the Osage Minerals Council that oversees the Osage Mineral Estate. Moreover, Section 226.35 governs the use of restricted homestead and not all surface lands within Osage County. The Bureau has a unique role with respect to operations that occur on a restricted

homestead and this section ensures that the appropriate procedures are followed to enable the Bureau to participate in a decision impacting the restricted homestead in order to protect the restricted surface owner to which the United States has a trust responsibility, but those provisions do not change the legal principles related to the surface and subsurface mineral estate that are applicable in Osage County.

*T. Comments Related to Section 226.36*

*One commenter stated that Section 226.36 should also require that no operations may begin until the lessee can meet and negotiate in good faith with the surface owner to ensure the health and safety of the lessee and the health and safety of others using the State's wildlife management area.*

No change has been made in response to this comment. Section 226.36 only relates to commencement of operations, and Section 226.33 of the rule provides that lessees are required to comply with all applicable laws and regulations, including protecting natural resources and environmental quality, and life and property during their operations. To the extent a surface owner believes that a lessee is engaged in operations that are harmful to the health and safety of humans, such actions should be reported immediately to the proper authorities and the Bureau maintains a 24-hour hotline for such purposes.

*One commenter disagreed with provision allowing the Superintendent to set routes of ingress and egress in Section 226.36(b)(2) if no agreement between lessee and surface owner can be made and suggests using an unbiased alternative decision maker.*

In response to comments, we have further revised Section 226.36(b)(2) to allow both the surface owner and the lessee to meet with and submit information regarding such routes before a final determination is made. This will allow for the consideration of relevant parties before making a determination, which provides added protection for all parties.

*At least one comment was received noting that it is not clear how Section 226.36(b), requiring the lessee to meet with the surface owner or his/her representative, is met when there are tracts with multiple or numerous surface owners. The commenter proposes that the Bureau qualify that this provision is met by meeting with the majority owner(s).*

No change has been made in response to this comment. A particular lease could include multiple tracts of land that are owned by different surface owners and the owners of each surface

estate must be separately met with to ensure proper notice and due process.

#### *U. Comments Related to Section 226.37*

Some commenters suggested requiring lessees to meet prior to operations and enter into a written surface use agreement to address, among other things: (a) Identify and limit the size and locations of well pads, roads, pipelines and power lines; (b) govern the timing and scope of operations to minimize disturbance to landowner's operations; and (c) outline reclamation and clean up obligations. In addition, some of these commenters suggested that lessees should adhere to BLM best practices and that any dispute should be governed by arbitration.

Section 226.36(a) already requires the lessee to notify or attempt to notify surface owners prior to commencement of certain operations and Section 226.36(b) requires that lessee request a meeting with surface owners to provide information regarding location of wells, route of ingress and egress and contact information for damage claims. In response to comments, however, the Department has added a requirement to Section 226.36(b)(2), which requires that in the event that the surface owner and lessee cannot agree on a route of ingress or egress, both the surface owner and the lessee will be notified by the Superintendent and provided with an opportunity to meet and/or to submit any information in conjunction with that process. In addition, Section 226.37, governing use of surface lands, already provides standards for surface use without the need for an additional requirement of surface use plans between the surface owner and lessee. The rule has always implicitly provided that the lessee and surface owner should work together regarding locations of well pads, roads, pipelines and electric lines and expressly provides a process for the routing of rights-of-ways including, for example, pipelines and electric lines, in the event that the surface owner and lessee cannot agree on a particular route. However, in response to comments, the Department has also added a requirement to Section 226.37(a) (similar to Section 226.36(b)(2)) to provide that the Superintendent will notify or attempt to notify both the surface owner and lessee and provide them with an opportunity to meet and/or to submit any information in conjunction with that process. In addition, Section 226.38 provides limitations regarding the size of drilling sites that lessees must follow in conducting operations.

A commenter suggested that Section 226.37(c) should also include a clause

*specifying the lessee's operational obligations be expanded beyond "workmanlike manner" to include avoiding waste, degradation of environmental quality, avoidable nuisance, threats to public safety and health.*

The rule sufficiently addresses this comment without requiring a change to Section 226.37(c). Section 226.37 governs the use of surface lands generally, but is not the only provision in the regulation regarding a lessee's duties and obligations. Section 226.33(a)(2)–(3) already requires that that the lessee conduct operations in a manner that protects other natural resources and environmental quality and that protects life and property. Section 226.44 further specifies requirements that lessees must follow to prevent pollution, and Section 226.45 delineates lessee's other environmental responsibilities. In addition, Section 226.46 provides that a lessee must perform all operations and maintain equipment in a safe and workmanlike manner and take all precautions necessary to provide adequate protection for the health and safety of life and the protection of property.

#### *V. Comments Related to Section 226.38*

Some comments were received objecting to the amount of commencement money in Section 226.38 as grossly inadequate and stating it should be significantly increased to fairly compensate landowners for immediate and long term impacts and loss of land as a result of well pads, roads, pipelines, power lines, tanks and other infrastructure and operations.

Commencement money is not intended to compensate surface owners for all damages to land as a result of oil and gas operations. Rather, it is intended to provide an upfront payment to surface owners that will be credited towards future damages. The rule has a process in Section 226.40, by which surface owners may seek additional damages. A number of commenters also raised concerns that increased commencement fees would be overly burdensome to smaller lessees. However, the commencement fees are intended to provide all surface owners, regardless of whether the lessee is a small or large producer, with the same up front compensation for the initial use of surface lands. During the rulemaking the Committee heard from many surface owners that the amount of commencement money was inadequate to the surface cover damage the surface. Thus, there is a need to balance these concerns while ensuring that surface owners are treated equally and receive

some measure of compensation before they are able to recover damages for actual impacts to the surface as a result of oil and gas operations. An increase in commencement fees in conjunction with the ability of surface owners to continue to recover full damages strikes this balance.

At least one commenter suggested that no geophysical, geologic exploration or surveying or staking activities be allowed without the lessee entering into a written agreement with the surface owner regarding seismic activities.

Section 226.38 governs commencement of operations and provides that a lessee may commence operations, including seismic activities, once the commencement fees are paid in accordance with that section. This section in particular, has been revised from the previous regulations to increase the fees in response to surface owner comments during the negotiated rulemaking process, but the majority of the section was not revised. The Department found that there was discussion during the negotiated rulemaking with respect to the concept of requiring some kind of a surface use agreement before operations could begin, but ultimately the Committee did not propose that approach. Based on the record, the Department believes the rule contains sufficient standards governing the use of surface lands (Sections 226.36(b) & 226.37), including provisions aimed at ensuring that surface owners are notified of operations (Section 226.5(c); Section 226.36; 226.38(b)) and have the opportunity to participate in the process where applicable. See e.g., Section 226.37(a). In addition, the rule continues to allow surface owners to seek compensation for damages caused by operations and provides an arbitration process to settle disputes between surface owners and lessees. See Section 226.40.

Some comments were received requesting that the Bureau recognize that a surety performance bond is generally required by the surface owner prior to conducting oil and gas activities—a requirement that is applicable in the State of Oklahoma under State law.

Oil and gas operations within Osage County are governed by federal law, including the 1906 Act and its implementing regulations. Under the rule, Section 226.38 requires commencement fees, rather than a surety performance bond, be paid to surface owners before operations may begin. During the negotiated rulemaking in response to public comment, the

Committee agreed to propose increases in the amount of commencement money due and this rule adopts those recommendations. Moreover, the regulations have always provided that the lessee and surface owner must negotiate settlement of damages after commencement of operations and these provisions remain unchanged in the final rule.

*At least one comment was received objecting to the increase commencement fees in Section 226.38(a) on the basis that it will only destroy small lessees who work in an old oil field.*

No evidence was submitted to support this comment. Further, this issue was discussed during the Negotiated Rulemaking Committee and this change was made in response to surface owner complaints regarding damages and lessee complaints regarding access. In particular, the Negotiated Rulemaking Committee explained that the increase in the commencement fee from \$300 to \$2,500 was made because \$300 is an outdated amount and is creating development issues between the surface owners and lessees, as evidenced by the recurring issue in Osage County of surface owners blocking lessee access to lease sites because they believe the commencement fees are insufficient. Thus, the Committee increased the commencement fee to \$2,500 to help mitigate this issue and believed it is a fair amount that would be applied to future damages, while at the same time balancing concerns of surface owners who are concerned about immediate damages to their surface estate. Committee members agreed that this fee should be paid before beginning operations, not at the time of permitting.

#### *W. Comments Related to Section 226.39*

*A commenter suggested that Section 226.39, re: tank fees, be folded into the commencement money provision at Section 226.38(a).*

Commencement money is not intended to cover fees for the siting of tanks. At the time that a lessee commences operations, he or she may not know how many tanks will be sited on the well site. Section 226.39 provides that when a tank is sited on a well site, the lessee will pay the requisite fees in accordance with that section. This provision ensures that the surface owner will be compensated for the siting of a tank at the time they are placed on a well site, while allowing the lessee to begin operations after the payment of commencement fees and before he or she may know how many tanks will be placed at the well site.

#### *X. Comments Related to Section 226.40*

*One commenter noted that in his/her view, Section 226.40(a), regarding compensation to surface owners for damages encompassing "all other surface damages as may be occasioned by operations," is open-ended and could result in needless confrontations or litigation. The commenter suggests narrowing the provision to provide for damages to "growing crops [and] any improvements on the lands."*

Section 226.40(a) was not changed substantively from the prior regulations (original 226.20(a)). Moreover, this comment contradicts the purpose of the damage provisions in the rule, which are intended to be broad enough to cover any claims for damages that a surface owner may have against a lessee. The provision is not intended to take a position on whether a particular claim for damages does or does not have merit, but allows for such issues to be worked out between the surface owner and the lessee.

#### *Y. Comments Related to Section 226.41*

*At least one commenter suggested that damage claims should be settled by the terms of surface use agreements and then, secondarily, by arbitration in Section 226.41.*

For the reasons stated in responses to other comments, the rule does not require a surface use agreement. The rule does provide for a surface owner to be compensated for damages as a result of operations and arbitration may be sought if issues between the surface owner and lessee cannot be resolved. Nothing in the rule prohibits the surface owner and lessee from discussing issues related to operations early in the process to minimize disagreements.

#### *Z. Comments Related to Section 226.45*

*Some commenters raised concerns that the proposed regulations fail to protect the land, environment, public health and safety and property rights of surface owners and suggested language to expand environmental protections.*

This comment was addressed during the negotiated rulemaking and there is no need to further revise the rule. In response to similar public comments during the negotiated rulemaking, the Committee proposed, and the Department is enacting in the final rule, several new provisions aimed specifically at protection of the land, environment, and public health and safety. Those provisions include, for example, clarifying and specifying the lessee's environmental responsibilities and obligations while conducting operations (Section 226.45), adding

compliance with BLM Onshore Oil and Gas Order 6 regarding H<sub>2</sub>S safety (Section 226.60(f)), adding requirements for ensuring well safety (Section 226.60(b)–(e)), site security (Section 226.65), and safety standards for lessee operations and equipment (Section 226.46). Moreover, the regulations have always had provisions regarding damages to surface lands and an arbitration process for resolving disputes that remain in the rule. It is relevant to note that one commenter specifically noted that the proposed rule does provide protections for the surface owner, for example, Section 226.38 requires lessees to remit a \$2,500 commencement fee for each well drilled which is credited to the final settlement, and is an increase from the past rule of only \$300. In addition, the payment of commencement fees does not affect the surface owner's ability to seek additional monies for damages and Section 226.40 allows a surface owner to seek additional monies for damages. Specifically, Section 226.41 provides for an impartial arbitrator to resolve issues and allows for arbitration awards to be challenged in a court of competent jurisdiction. Lastly, all Osage leases require the lessee to conduct operations consistent with a prudent operator standard and failure to abide by that standard or regulations specifically aimed at protecting the environment can subject the lease to termination under Sections 226.67 and 226.68.

#### *AA. Comments Related to Section 226.46*

*A commenter suggested that a specific reference in Section 226.46 be made to prohibit leaving REDA cable on the ground.*

The Department agrees that there is a need to address this issue, and has further revised Section 226.46 to include a provision requiring lessees to comply the National Electric Code with regard to the running and maintenance of electrical lines to ensure that minimum standards are required.

#### *BB. Comments Related to Section 226.47*

*A commenter suggested that in Section 226.47, the granting of easements for wells off the leased premises be at the consent of surface owners as well as the Osage Minerals Council.*

The Department disagrees with this comment. However, the Department does agree that a surface owner should be able to submit information as part of the process and has revised Section 226.47 to provide that the Superintendent will notify or attempt to

notify the affected surface owner(s) and provide an opportunity to meet and/or submit information before an easement is granted.

*CC. Comments Related to Section 226.48*

*Several comments were received asserting that all of the surface water within Osage County belongs to the State of Oklahoma, so all permits for surface and groundwater should be stopped.*

Section 226.48 governs the use of surface water and was not substantively changed as part of this rule. The ownership of surface water is a legal question that does not need to be, and cannot be, resolved as part of this rulemaking process.

*Several comments were received suggesting that Section 226.48 in its current form authorizes the unpermitted use of surface water in Osage County and, in effect, the regulation purports to preempt the State of Oklahoma's regulatory authority. These comments propose amending Section 226.48 to state that Oklahoma law applies to all uses of water within Osage County. These commenters also suggest that all use of water must be permitted by the State, including use in oil and gas exploration, production or other operations otherwise shortages could occur for those using the same water source pursuant to an Oklahoma Water Resources Board permit.*

As noted above, Section 226.48 governs the use of surface water and was not substantively changed as part of this rule. The ownership of surface water is a legal question that does not need to be, and cannot be, resolved as part of this rulemaking process. Comments were also received expressly disputing any comments asserting that all water use is subject to State law and this commenter notes that the Osage Nation's ownership and regulatory control of reserved waters within Osage County is a historical fact and without question, which is made clear by the creation of the Osage Reservation in 1872 and the Osage Mineral Estate in 1906. This comment further supports leaving Section 226.48 unchanged; moreover Section 226.48 was originally codified in 1974 and has remained unchanged for over 40 years.

*DD. Comments Related to Section 225.53*

*A commenter suggested that a lessee's permanent improvements and personal property should be removed from the site when a well is abandoned, that there should be an upper limit of perhaps three years up to which wells*

*can be "shut in," and that the lessee should remediate a site within 90 days of well plugging.*

These comments are adequately addressed in the rule to the extent necessary. Section 226.53(a) makes clear that any permanent improvements become the property of the surface owner and the only portion of that provision that was deleted was the exception for permanent improvement to become part of the surface when termination of a lease is for something other than cause, because it did not make sense to have such an exception as a legal matter. To the extent that a surface owner has been damaged by the siting of a permanent improvement, the regulations have always contemplated that the surface owner would seek damages in accordance with the damages provisions. Section 226.53(a) also already requires that a lessee remove all personal property within 90 days of termination of the lease. And, Section 225.53(c) requires that a lessee must plug all wells that are to be abandoned and Section 225.53(d)(4) requires that within 90 days of plugging the well, the lessee must clean up the premises around the well.

*EE. Comments Related to Section 226.56*

*One commenter requested that the Bureau ensure that well records and subsurface data required to be reported in Section 226.56 be made accessible in a database to the public and be accurate to ensure that groundwater is properly protected. The commenter suggests that all new wells should be logged and the electronic logs should be required and incorporated into the database.*

This comment is outside the scope of the regulations and relates to the internal procedures for how the Bureau should store information required to be submitted under the regulations and how such information is or can be disseminated to the public. However, Section 226.60(e) already requires the lessee to protect freshwater from contamination and the Bureau will further consider this comment as it considers the development of a Web site for information related to oil and gas operations within Osage County and evaluates the information that could be posted for the benefit of the public consistent with the Freedom of Information Act.

*FF. Comments Related to Section 226.57*

*A commenter suggested that in Section 226.57, minimum setbacks between oilfield activities and boundary lines of leased land, public roads, watering places, and dwellings, granaries, and barns be increased.*

This rule did not change Section 226.57 and it remains substantively the same as in the current regulations (previously found at Section 226.33). The Department also found a lack of information submitted in conjunction with this comment justifying the need to have an across the board minimum setback beyond 300 feet of the leased land boundary and 200 feet of public highways, established watering places, dwellings, granaries and barns. Moreover, it is relevant to note that Section 226.57 provides minimum setbacks and the lessee and surface owner may further discuss the need for an increase in the setback in any particular circumstance.

*GG. Comments Related to Section 226.59*

*A commenter suggested that the Bureau should undertake a comprehensive review and update of its freshwater data/maps and, until then, surface casing should be required to a depth 200 feet below that recommended by the Bureau's current data/maps.*

This comment does not relate directly to the rule and no change to the rule is necessary. Section 226.59 specifies that the lessee must take certain precautions to prevent damage or pollution to freshwater. The Department agrees that the Bureau should endeavor to work with the best available data regarding freshwater data and maps applicable in Osage County and it will work with the United States Geological Survey and EPA to ensure that it has the most up to date information. The Bureau must review and approve operations consistent with the best available information it has available and it would be arbitrary to require all surface casings to go to a depth greater than 200 feet irrespective of the data and information available to the Bureau. Instead, Section 226.59 gives the Superintendent broad authority to take necessary steps to protect fresh water or other mineral bearing formations depending on particular circumstances. For example, in some instances depending on the hydrology in a particular area, the Superintendent may require surface casing to a depth greater than 200 feet. In other areas within Osage County, the hydrology may be such that freshwater and other mineral bearing formations are adequately protected if surface casing are set at a depth less than 200 feet. Nothing in the rule prohibits a person or entity from submitting for consideration by the Superintendent, information relating to the depth of nearby residential water wells that may require setting the depths for a particular well deeper than

shown on the best available maps that the Bureau has on file.

*Some commenters suggested that, in Section 226.56(a) and/or 226.59, lessees be mandated to report freshwater well drilling data to the Bureau and the Oklahoma Water Resources Board, that the Bureau require water well testing within 2,000 feet of oil or gas wellbores, and that lessees be required to keep cement well logs for all cement jobs across the freshwater zone.*

This rule did not change Section 226.59 and it remains substantively the same (previously found at Section 226.35). Further, Section 226.59 gives the Superintendent broad authority to address these types of concerns on a case by case basis because the regulations allow the Superintendent to take necessary steps to protect fresh water or other mineral bearing formations depending on the particular circumstances.

#### *HH. Comments Related to Section 226.60*

*A commenter suggested that well control requirements in Section 226.60 are insufficient and that, instead, BLM Onshore Oil and Gas Order No. 2 should be substituted.*

No further revision to Section 226.60 is necessary in response to this comment. Section 226.60 was recommended by the Negotiating Rulemaking Committee in an attempt to balance the need to have additional safeguards for maintaining well control and the Committee specifically reviewed and examined BLM rules and procedures. The Department found that that section combines existing language from the regulations with language from BLM regulations governing well control. For example, paragraph (a) is text from the old regulations, but paragraphs (b) through (e) were adopted consistent with BLM regulations regarding well control. The Department believes that these new provisions provide additional protections to ensure well control that have not been in place before in Osage County. Moreover, if appropriate, under Section 226.3, in accordance with the Administrative Procedure Act the Bureau can adopt BLM's Onshore Oil and Gas Order No. 2 in the future.

*Several commenters raised concerns regarding the venting of hydrogen sulfide gas at any level, and the flaring of hydrogen sulfide in excess of 10 parts per million. Some of these commenters suggested that if short term flaring must be slowed, the lessee should be required to use the best current flaring technology for the oil and gas industry, and any flaring of natural gas should be done in a manner to eliminate the*

*visibility of the flame and a produced light using a closed-combustion chamber system. Other commenters suggested using current best industry standards for flaring following American Petroleum Institute guidelines and utilizing "clean burn variable tip flare" technology.*

These comments are adequately addressed in Section 226.60(f) of the rule and no further change is necessary. Section 226.60(f) requires compliance with BLM Onshore Oil and Gas Order No. 6. This Order identifies the Bureau of Land Management's requirements and minimum standards of performance expected from operators when conducting operations involving oil or gas that is known or could reasonably be expected to contain hydrogen sulfide (H<sub>2</sub>S) or which results in the emission of sulfur dioxide (SO<sub>2</sub>) as a result of flaring H<sub>2</sub>S. This Order also identifies the gravity of violations, probable corrective action(s), and normal abatement periods. In addition, the Bureau has been working with EPA to develop an Environmental Compliance Manual for Osage County and has received comments from the public to include in that manual best management practices, including best practices for venting and flaring hydrogen sulfide gas.

#### *II. Comments Related to Section 226.62*

*A commenter suggested that the Department should require more detailed and timely reporting in both the final rule and in OMB-approved forms. This reporting would be offset by the Department requiring routine inspections of all withdrawals from tank batteries and contemporaneous recordation of all of the appropriate data, periodic facility inspection, and spot inspection for compliance. The commenter also recommended that inspections be performed by qualified Bureau officers; that periodic, random, and risk-based inspections be performed; and that the Bureau inspect all oil withdrawals.*

The rule contains mechanisms that allow the Bureau to more efficiently perform inspections. For example, in Section 226.62(c), lessees are required to give notice to the Superintendent before a purchaser is notified to remove a tank of oil to allow Bureau employees to perform periodic and random inspections to ensure accountability. In addition, under Section 226.63(c), a lessee must provide 48 hour notice before a lessee calibrates or adjusts gas meters. Osage County is approximately 1.5 million acres and the Bureau cannot inspect all oil withdrawals or be at every gas meter calibration, but the

notification system is intended to provide a better system that will enable Bureau employees to plan where they should be on any given day to ensure that field inspections include areas where tanks are ready to be picked up by lessees or meters will be calibrated. The Department has determined that the additional burden on the public of requiring more detail or increased frequency in reporting under the Paperwork Reduction Act is not clearly justified by any potential benefit. To the extent that the commenter suggests that Bureau employees be trained, such comments are outside the scope of the rulemaking. However, the Departmental employees must meet certain qualifications before they are hired by the Bureau and field inspectors are participating in the BLM's PET certification training.

#### *JJ. Comments Related to Section 226.63*

*Some comments were received suggesting that wells on a lease already have a meter at the well or near the wellhead and requiring installation of meters at other locations is unnecessary.*

The Negotiated Rulemaking Committee made the recommendation to adopt the standards in On-Shore Oil and Gas Order 5 because the regulations were too vague and did not provide guidance to lessees for the measurement of gas. This has resulted in lessees utilizing different standards for the measurement of gas, which has caused concern with respect to proper accounting of gas production and proper payment of royalties for gas. Ensuring proper measurement of gas was also an issue in the tribal trust litigation against the United States and was one of the issues that the Committee was tasked with addressing in this rulemaking. Adoption of On-Shore Oil and Gas Order 5, in Section 226.63, now specifies uniform standards consistent with how gas is measured on all other Indian and Federal lands. In particular, On-Shore Oil and Gas Order 5 requires lessees to measure gas on the lease, unit, unit participating area or communized area and that any measurements at locations off the lease, unit, unit participating area, or communized area must be approved by the Superintendent. To the extent that a lessee already has installed meters on their lease consistent with On-Shore Oil and Gas Order 5, no changes will be required. However, the Department believes this change is necessary to bring uniformity throughout Osage County in the measurement of gas and ensure that it is fulfilling its trust responsibility to the beneficiaries of the Osage mineral estate.

*Some comments were received suggesting that the requirement in Section 226.62(c) to call the Bureau prior to running a tank of oil seems to serve no purpose. It was noted that if the intent is to inspect more runs, then the tribe will need to employ more inspectors, if there is no intent to inspect then this is another futile exercise in useless record keeping.*

The requirement that a lessee give notice to the Superintendent before a tank of oil is removed by a purchaser was added by the Negotiated Rulemaking Committee to specifically address concerns that the Bureau needs to more efficiently inspect and monitor operations within Osage County in order to verify accuracy of tank sales. Given that Osage County consists of 1.5 million acres, the Department agrees with the Committee that requiring notice will enable it to better assess where field inspectors need to be on any given day to maximize the number of inspections that can be done, rather than sending out field inspectors to random locations in the hopes of finding tanks that are full and will be picked up, as is the current practice. The Bureau has also created more positions for inspectors within Osage County to address staffing shortfalls. During discussions on this topic in the Negotiated Rulemaking, it was noted that lessees have to make calls to inform a purchaser that a tank is ready and the Department determined that the burden of calling the Bureau in addition to the purchaser seemed minimal.

*At least one commenter suggested that if the Bureau wants compliance with the current regulations, it would request more funds to install electronic monitoring of tanks.*

This comment is outside the scope of and does not relate to the rulemaking, rather it concerns internal budgetary operations.

#### *KK. Comments Related to Section 226.65*

*Some commenters noted that importing the requirements for site security plans that the BLM requires on other Indian and Federal lands will be too labor-intensive to afford for small lessees within Osage County.*

The Department received numerous comments regarding public safety concerns around well sites from surface owners and found that the site security plan requirements were added by the Committee to specifically address these concerns. Site security plans are not intended to be costly or labor intensive and are generally required for oil and gas operations on all other Indian and Federal lands.

*Several commenters noted that in their view, the new requirement for site security plans is duplicative of the SPCC Plans required by the EPA.*

The SPCC plans are required by the EPA and are submitted to the EPA only to prevent a spill of oil into navigable waters or shorelines, whereas site security plans are required by the Bureau and submitted for all oil and gas operations to proactively address a multitude of public safety concerns. For these reasons, the site security plans are not duplicative of the SPCC Plans. The site security plans will help promote lessee compliance with EPA's requirement for SPCC plans regarding oil spills, because lessees will have information more readily available from the site security plans to assist them in completing an SPCC Plan.

*Some commenters suggested that the requirement in site security plans requiring that all valves have seals is "ridiculous," "arbitrary" and "totally impracticable" and that lessees can't keep records for six years. Others noted that most lessees don't have the manpower or time to comply with this requirement and it would add costs that could force early abandonment.*

No evidence has been presented regarding estimated increased costs in relation to this comment. The United States has a legal obligation to maintain records regarding operations for which it is responsible. The Department must be able to go back for at least six years and collect documents and data related to operations because the statute of limitations for damage claims on behalf of or against the Department is six years. Furthermore, the Department finds it relevant that on all other Indian and Federal lands, the United States requires lessees adhere to minimum site security standards for oil and gas operations. The requirements in Section 226.65 were added in response to concerns from surface owners regarding well site safety, as well as, from the members of the Osage Minerals Council, who were concerned with ensuring accountability of oil and gas production. In response to these concerns, the provisions in Section 226.65(b) were added to provide a minimum standard for ensuring accountability regarding oil and gas operations. The rule is intended to bring Osage County in line with minimum requirements that are used on all other Indian and Federal lands. Section 226.65 mirrors the standard applicable to other Indian and Federal lands for oil and gas operations that is found in the BLM's regulations. In particular the Department finds paragraph (b) addressed concerns from the Osage Minerals Council relating to ensuring

that there are uniform safeguards regarding accountability for oil and gas production within Osage County and it provides transparency and ensures that lessees are all following a minimum standard. Additionally, the Department has discovered through the negotiated rulemaking process and public comments that there are genuine concerns regarding well site safety and the new requirement in Section 226.65(c) will help with transparency and ensure that lessees have a uniform standard to comply with and are aware of their responsibilities.

*At least one commenter noted that site security plans will not stop stealing in Osage County.*

This comment does not suggest any changes to the rule. However, the Department's intended purpose of Section 226.65(b) is to provide a minimum standard to aid in accountability of oil and gas production and Section 226.65(c) adds new protections regarding site security that have not previously been required of all lessees.

*Some commenters suggested that surface owners should be consulted regarding site security and proposed site security plans should be included in surface use agreements.*

The Osage mineral estate is unique in that the entire subsurface is held in trust by the United States for the benefit of the Osage Tribe. Notwithstanding that, the public, including surface owners, were able to participate in the Negotiated Rulemaking process and the Committee added the site security provisions to the regulations in direct response to surface owner concerns. In addition, the Department has never required surface use agreements in Osage County, but there are provisions for the surface owner to work with the lessees and collect damages for use of surface lands. The Department encourages surface owners and lessees to work together to address issues related to surface lands.

#### *LL. Comments Related to Section 226.66*

*A commenter suggested that lessees be required to report accidents, fires, theft, vandalism, and environmental accidents to the Superintendent, the surface owner(s), and law enforcement (in case of theft) within one business day of discovery.*

In response to this comment, the Department has further revised Section 226.66 (previously numbered 226.41) to require that, in addition to requiring lessees to report fires, theft, and vandalism, lessees also report environmental accidents to the Superintendent and within one business

day after discovery provide notice to local law enforcement agencies and internal company security. The revisions also require the lessee to provide or attempt to provide notice to the surface owner or the current resident/occupant in writing by U.S. mail of any such incidents.

*MM. Subpart F (226.67 to 226.70)*

*One commenter recommended including a requirement that all sums due be paid to the Bureau.*

This comment is outside the scope of the regulatory process. The Anti-Deficiency Act, 31 U.S.C. 1341, requires that fees and penalties be transmitted to the United States Treasury. Absent specific legislation to the contrary, the Osage Agency must comply with the Anti-Deficiency Act and remit fees and penalties to the United States Treasury.

*Some commenters noted that fines in Subpart F of the Rule should be paid to the shareholder/headright owner and not the Bureau of Indian Affairs.*

The Bureau does not keep fines that are collected, but is required to transmit those to the United States Treasury in accordance with the Anti-Deficiency Act.

*Some commenters suggested that heavy fines will make Osage a less attractive place.*

Fines are not mandatory, but are only imposed when a lease is not operating in accordance with the regulations. Fines are intended to deter violations and encourage lessees to comply with the regulations.

*A commenter suggested that a penalty of \$1,000/day should be levied for environmental pollution.*

The Department has decided not to change the fines and penalties section of the rule and the fines and penalties as stated in the prior regulations remain intact, unless otherwise set forth in a lease. To further encourage lessees to comply with the regulations, the Department has, however, deleted the provision in 226.67 allowing the Osage Minerals Council to waive late fees.

*NN. Abandoned Wells*

*Some comments regarding abandoned wells, abandoned pump-jacks and exposed pipes on land noted that these conditions cause damage and a hazard and stated that the existing requirements to clean-up abandoned wells needs to be enforced.*

To the extent that these comments can be addressed by the rule, the Department has further revised Section 226.46 to include a provision requiring lessees to comply with the National Electric Code with regard to the running and maintenance of electrical lines to

ensure that minimum standards are required. If surface owners or others have concerns regarding exposed pipes or other health and safety issues they may contact the Bureau through its reporting hotline at 1-855-495-0373. Surface owners can contact OERB at 1-800-664-1301 and consistent with their process, OERB can remediate abandoned well sites in Osage County.

**V. Procedural Requirements**

*A. Regulatory Planning and Review (E.O. 12866 and 13563)*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations and provide greater notice and clarity to the public.

*B. Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*C. Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises because the rule is limited to management and administration of the Osage mineral estate.

*D. Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*E. Takings (E.O. 12630)*

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable "taking." A takings implication assessment is therefore not required.

*F. Federalism (E.O. 13132)*

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*G. Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation, and is written in clear language and contains clear legal standards.

*H. Consultation With Indian Tribes (E.O. 13175)*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets. This rule was developed by negotiated rulemaking with representatives of the affected tribe.

*I. Paperwork Reduction Act*

This rule includes information collections requiring approval under the

Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* These information collections have not been approved previously because the last update to 25 CFR 226 was prior to amendments to the PRA subjecting these information collection requirements to OMB approval. In the **Federal Register** of August 28, 2013, the Department published the proposed rule and invited comments on the proposed collection of information. The Department submitted the information collection request to the Office of Management and Budget (OMB) for review and approval. The OMB did not approve this collection of information, but instead, filed comment. In filing comment on this collection of information, OMB requested that, before publication of the final rule, the Department provide all comments on the recordkeeping and reporting requirements in the proposed rule, the Department's response to these comments, and a summary of any changes to the information collections. We did not receive any public comments regarding the information collection burden estimates in response to publication of the proposed rule in the **Federal Register**; however, some of

the comments on the rule related to information collections in sections 226.65 and 226.66. In response to comments on 226.66, the final rule specifies that reports of theft must occur within one business day of discovery, rather than "promptly" and the final rule adds a requirement to notify the surface owner under this section. The new requirement to notify the surface owner resulted in a small increase in the number of responses (14,436, as compared to the proposed estimate of 14,414) and hour burden (21,954, as compared to the proposed estimate of 21,932).

OMB has approved the information collections in this final rule and assigned it OMB Control No. 1076–0180. This approval will expire on 03/31/2018. Questions or comments concerning this information collection should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

*OMB Control Number:* 1076–0180.

*Title:* Leasing of Osage Reservation Lands for Oil and Gas Mining, 25 CFR 226.

*Brief Description of Collection:* This part contains leasing procedures and

requirements and rental, production, and royalty requirements for leasing the reservation lands of the Osage Nation for oil and gas mining. The Secretary must perform the information collection requests in this part to obtain the information necessary to complete leasing transactions and monitor leased property. Responses to these information collection requests are required to obtain a benefit (*e.g.*, commercial transactions).

*Type of Review:* New information collection.

*Respondents:* Indians, businesses, and tribal authorities.

*Number of Respondents:* 965.

*Frequency of Collection:* On occasion.

*Estimated Hours per Response:* Ranges from 15 minutes to 8 hours (see table below).

*Estimated Total Annual Responses:* 14,436.

*Estimated Total Annual Burden Hours:* 21,954.

*Non-Hour Cost Burden:* \$496.

The table showing the burden of the information collection is included below for your information.

Section	Information collection	Respondents	Annual responses	Hourly burden per response	Total annual hourly burden
226.5 .....	Lessee must submit completed lease form .....	160	160	0.5	80
226.9 .....	Lessee must submit bonds .....	160	160	0.5	80
226.13 .....	Corporate lessee must submit evidence of its officers' authority to execute papers and a copy of its Articles of Incorporation.	150	150	0.25	* 38
226.26, 226.27(a) .....	Lessee must provide certified monthly reports covering operations and on value of all oil/gas used off premises for development and operation.	700	8,400	0.5	4,200
226.27(b) .....	Purchaser of oil or gas to furnish statement of gross barrels of oil or gross Mcf of gas sold and sales price per barrel or gross Mcf during the preceding month.	45	540	0.5	270
226.28 .....	Submit agreement to unitize or terminate unitization of oil or gas leases to Secretary.	1	1	1	1
226.29 .....	Submit assignment or transfer of lease to Secretary.	500	500	0.5	250
226.34(b), 226.52 .....	Lessee must submit applications on BIA forms for well drilling, treating, or workover operations, removing casing from well. Application to shut down or plug well, with justification.	600	600	8	4,800
226.36 .....	Lessee must notify and request meeting with surface owners by certified mail, provide copy to Superintendent, and provide info at meeting.	160	160	1	160
226.40, 226.41 .....	Any person claiming an interest in the leased tract or in damages must provide a statement showing the claimed interest.	1	1	1	1
226.43 .....	Drivers must carry documentation showing the amount, origin and intended first purchaser of the oil or gas or marketable product.	60	60	0.5	30
226.45(d) .....	Lessee must submit a contingency plan, when required.	160	160	5	800

Section	Information collection	Respondents	Annual responses	Hourly burden per response	Total annual hourly burden
226.54 .....	Lessee must keep a full and correct account of all operations, receipts, and disbursements and make reports thereof, as required, make available for inspection, and maintain for 6 years.	700	700	1	700
226.56 .....	Lessee must keep records of drilling, re-drilling, deepening, repairing, treating, plugging or abandonment of all wells and furnish reports as required in manner and method specified by Superintendent.	700	700	1	700
226.56 .....	Lessee must transmit to Superintendent applicable information of completion of operations on any well on BIA forms; a copy of electrical, mechanical or radioactive log, or other types of survey of well bore, and core analysis of well.	700	700	8	5,600
226.56 .....	Upon request, Lessee must furnish plat of wells in manner, form, and method prescribed by Superintendent.	700	700	2	1,400
226.65 .....	Lessee must maintain site security plan, including facility diagram.	700	700	4	2,800
226.66 .....	Lessee must report accidents, fires, vandalism including an estimate of the volume of oil involved and notify surface owner.	22	44	1	44
	<b>Total .....</b>	<b>.....</b>	<b>14,436</b>	<b>.....</b>	<b>21,954</b>

*J. National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. It is categorically excluded from further review under 43 CFR 46.210(i) because these are regulations “whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process either collectively or case by case.” No extraordinary circumstances exist that would require greater NEPA review.

*K. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

**List of Subjects in 25 CFR Part 226**

Indians—lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, revises part 226 in Title 25 of the Code of Federal Regulations to read as follows:

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

Sec.

- 226.1 Definitions.
- 226.2 What requirements govern?

**Subpart A—Leasing Procedure**

- 226.3 What orders and notices can BIA issue?
- 226.4 What responsibilities does the Superintendent have?
- 226.5 What are the requirements for lease sales and approvals?
- 226.6 How does a lessee surrender a lease?
- 226.7 What forms of payment are acceptable?
- 226.8 How do changes in the current regulations impact leases?
- 226.9 What are the bonding requirements for leases?
- 226.10 Can the Superintendent increase the amount of the bond required?
- 226.11 When can the Superintendent release a bond?
- 226.12 What forms are made a part of the regulations?
- 226.13 What information must a corporation submit?

**Subpart B—Rental, Production and Royalty**

**Rental, Drilling and Production Obligations**

- 226.14 What are the requirements for rental, drilling, and production?
- 226.15 What are the lessee’s obligations regarding drainage?
- 226.16 What can the Superintendent do when drainage occurs?

**Lease Term**

- 226.17 What is the term of a lease?

**Royalty Payments**

- 226.18 What is the royalty rate for oil?
- 226.19 How is the gravity adjustment calculated?
- 226.20 How is the royalty on gas calculated?

- 226.21 Who determines royalty on lost or wasted minerals?
- 226.22 What is the minimum royalty payment for all leases?
- 226.23 What royalty is due on other marketable products?
- 226.24 What purchase options does the Federal Government have?
- 226.25 How are royalty payments made?
- 226.26 What reports are required to be provided?
- 226.27 Can a lessee enter into royalty payment contracts and division orders?

**Unit Leases, Assignments and Related Instruments**

- 226.28 When is unitization allowed?
- 226.29 How are leases assigned?
- 226.30 Are overriding royalty agreements allowed?
- 226.31 When are drilling contracts allowed?
- 226.32 When can an oil lease and a gas lease be combined?

**Subpart C—Operations**

- 226.33 What are the general requirements governing operations?
- 226.34 What requirements apply to commencement of operations on a lease?
- 226.35 How does a lessee acquire permission to begin operations on a restricted homestead allotment?
- 226.36 What kind of notice and information is required to be given surface owners prior to commencement of drilling operations?
- 226.37 How much of the surface may a lessee use?
- 226.38 What commencement money must the lessee pay to the surface owner?
- 226.39 What fees must lessee pay to a surface owner for tank siting?

- 226.40 What is a settlement of damages claimed?
- 226.41 What is the procedure for settlement of damages claimed?
- 226.42 What are a lessee's obligations for production?
- 226.43 What documentation is required for transportation of oil or gas or other marketable product?
- 226.44 What are a lessee's obligations for preventing pollution?
- 226.45 What are a lessee's other environmental responsibilities?
- 226.46 What safety precautions must a lessee take?
- 226.47 When can the Superintendent grant easements for wells off leased premises?
- 226.48 A lessee's use of water.
- 226.49 What are the responsibilities of an oil lessee when a gas well is drilled and vice versa?
- 226.50 How is the cost of drilling a well determined?
- 226.51 What are the requirements for using gas for operating purposes and tribal uses?

#### Subpart D—Cessation of Operations

- 226.52 When can a lessee shutdown, abandon, and plug a well?
- 226.53 When must a lessee dispose of casings and other improvements?

#### Subpart E—Requirements of Lessees

- 226.54 What general requirements apply to lessees?
- 226.55 When must a lessee designate process agents?
- 226.56 What are the lessee's record and reporting requirements for wells?
- 226.57 What line drilling limitations must a lessee comply with?
- 226.58 What are the requirements for marking wells and tank batteries?
- 226.59 What precautions must a lessee take to ensure natural formations are protected?
- 226.60 What are a lessee's obligations to maintain control of wells?
- 226.61 How does a lessee prevent waste of oil and gas and other marketable products?
- 226.62 How does a lessee measure and store oil?
- 226.63 How is gas measured?
- 226.64 When can a lessee use gas for lifting oil?
- 226.65 What site security standards apply to oil and gas and other marketable product leases?
- 226.66 What are a lessee's reporting requirements for accidents, fires, theft, and vandalism?

#### Subpart F—Penalties

- 226.67 What are the penalties for violations of lease terms?
- 226.68 What are the penalties for violation of certain operating regulations?

#### Subpart G—Appeals and Notices

- 226.69 Who can file an appeal?
- 226.70 Are the notices by the Superintendent binding?
- 226.71 Information collection.

**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, terms have the meanings set forth in this section.

*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.

*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.

*Condensate* means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

*Drainage* means the migration of hydrocarbons, inert gases, or associated resources caused by production from other wells.

*Gas lessee* means any person, firm, or corporation to whom a gas mining lease is made under the regulations in this part, or an authorized representative.

*Gas well* means any well that:

- (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.

*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 or other marketable product.

*Marketable condition* means a condition in which lease products are

sufficiently free from impurities and otherwise so conditioned that a purchaser will accept them under a sales contract typical for the field or area.

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

*Natural gas liquids (NGLs)* means those gas plant products consisting of ethane, propane, butane, or heavier liquid hydrocarbons.

*Notice to lessees (NTLs)* means 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.

*Oil and gas lessee* means any person, firm, or corporation to whom an oil and gas mining lease is made under the regulations in this part, or an authorized representative.

*Oil lessee* means any person, firm, or corporation to whom an oil mining lease is made under the regulations in this part, or an authorized representative.

*Oil well* means any well that produces one barrel or more of crude petroleum oil for each 15,000 standard cubic feet of raw natural gas.

*Onshore oil and gas order* means a formal order issued or adopted by the Director of the Bureau of Indian Affairs, which implements and supplements the regulations in this part.

*Osage Minerals Council* means the duly elected governing body of the Osage Nation or Tribe of Indians of Oklahoma vested with authority to enter into leases or take other actions on oil and gas mining and other marketable products pertaining to the Osage mineral estate.

*Other marketable product* means a non-hydrocarbon product, including but not limited to helium, nitrogen, and carbon-dioxide, for which there is a market.

*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.

*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.

*Raw natural gas or gas* means gas produced from oil and gas wells,

including all natural gas liquids before any treating or processing.

*Secretary* means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

*Superintendent* means the Superintendent of the Osage Agency, Pawhuska, Oklahoma, or the Superintendent's 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.

*Surface owner* means any person or entity that owns a surface estate within Osage County, irrespective of whether the surface estate is held in fee, restricted fee or trust status.

*Waste of oil or gas or other marketable product* means any act or failure to act by the lessee that the Superintendent finds was not necessary for proper development and production and that 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.

#### **§ 226.2 What requirements govern?**

All oil and gas activities or activities related to development of other marketable products conducted in Osage County are subject to:

- (a) The regulations in this part;
- (b) Lease terms;
- (c) Orders of the Superintendent; and
- (d) All other applicable laws, regulations, and authorities.

#### **Subpart A—Leasing Procedure**

##### **§ 226.3 What orders and notices can BIA issue?**

(a) In accordance with applicable laws and regulations, the Bureau of Indian Affairs (BIA), after consultation with the Osage Minerals Council where appropriate, is authorized to:

- (1) Issue and make effective in Osage County oil and gas orders or notices to lessees (NTLs); or
- (2) Adopt onshore oil and gas orders, NTLs, or related oil and gas regulations issued by the Bureau of Land Management.

(b) Adoptions by the Bureau of Indian Affairs remain in effect according to their terms and cannot be modified by any action of the Bureau of Land Management unless the Director issues further orders to that effect in accordance with the Administrative Procedure Act where applicable.

##### **§ 226.4 What responsibilities does the Superintendent have?**

(a) The Superintendent is authorized and directed to:

- (1) Approve unitization, communitization, gas storage and other contractual agreements;
- (2) Assess compensatory royalty;
- (3) Approve suspensions of operations or production, or both;
- (4) Approve and monitor lessee proposals for drilling, development or production of oil and gas and any other marketable product;
- (5) Perform administrative reviews;
- (6) Impose monetary assessments or penalties;
- (7) Provide technical information and advice relative to oil and gas and any other marketable product development and operations;
- (8) Approve, inspect, and regulate the operations that are subject to the regulations in this part;
- (9) Require compliance with lease terms, with the regulations in this title and all other applicable regulations and laws; and
- (10) Require that all operations be conducted in a manner which protects natural resources and environmental quality, protects life and property, and 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 unless otherwise approved by the Superintendent.

(b) The Superintendent may issue written orders to govern specific lease operations. Before approving operations on a leasehold, the Superintendent must determine that the lease is in effect, that acceptable bond coverage has been provided, and that the proposed plan of operations is sound.

(c) The Superintendent must establish procedures to ensure that each lease site which has a documented history of noncompliance with applicable provisions of law or regulations, lease terms, orders or directives be inspected at least once annually.

(d) The Superintendent must establish procedures to ensure that each lease site which has a documented history of noncompliance with applicable provisions of law or regulations, lease terms, orders or directives be inspected at least once annually.

##### **§ 226.5 What are the requirements for lease sales and approvals?**

(a) The steps in a lease sale are as follows:

- (1) A written application, together with any nomination fee, for tracts to be offered for lease shall be filed with the Superintendent.
- (2) The Superintendent, with the consent of the Osage 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/her good faith and ability to comply with all provisions of the notice of sale.

(3) A successful bidder must deposit with the Superintendent within 5 business days following the sale, a cashier's check, money order, or 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 are subject to acceptance by the Osage Minerals Council and approval by the Superintendent.

(4) Within 20 days after being notified, the successful bidder must submit to the Superintendent the balance of the bonus, a \$75 filing fee, and a completed lease form.

(i) The Superintendent may extend the deadline for submitting the completed lease form, but no extension will be granted for remitting the balance of monies due.

(ii) The deposit will be forfeited for the use and benefit of the Osage mineral estate if any of the following occur:

(A) The bidder fails to pay the full consideration by the required deadline; or

(B) The bidder fails to file the completed lease by the required deadline or extension thereof; or

(C) The lease is rejected, pursuant to subsection 5, through no fault of the Osage Minerals Council or the Superintendent.

(5) The Superintendent may reject a lease made on an accepted bid, upon satisfactory evidence of collusion, fraud, or other irregularity in connection with the notice of sale.

(b) The Superintendent may approve leases made by the Osage Minerals Council in conformity with the notice of sale, regulations in this part, bonds, and other instruments required.

(c) Within 30 calendar days following approval of a lease, the Superintendent shall post at the Agency, a legal description of the mineral estate that was leased.

(d) Prior to approval by the Superintendent, each oil and/or gas lease shall be assessed and evaluated for their environmental impact in accordance with Bureau regulations implementing the National Environmental Policy Act and other applicable laws.

(e) The lessee accepts a lease with the understanding that a mineral not covered by the lease may be leased separately.

(f) No lease, assignment thereof, or interest therein will be approved to any employee or employees of the

Government and no such employee is permitted to acquire any interest in a corporation or other business entity holding a lease of the Osage mineral estate.

(g) The Osage Minerals Council may utilize the following procedures among others, in entering into a lease:

(1) A lease may be entered into through competitive bidding as outlined in paragraph (a)(2) of this section, negotiation, or a combination of both;

(2) The Osage Minerals Council may request the Superintendent undertake the preparation, advertisement and negotiation of leases; and/or

(3) The Osage Minerals Council may request the Superintendent 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.

(h) The Superintendent may approve any lease made by the Osage Minerals Council.

**§ 226.6 How does a lessee surrender a lease?**

(a) The lessee may, with the approval of the Superintendent and payment of a \$75 filing fee, surrender all or any portion of any lease, have the lease cancelled as to the portion surrendered and be relieved from all future obligations and liabilities.

(b) If the lease, or portion, being surrendered is owned in undivided interests by more than one party, then the following requirements apply:

(1) All parties must join in the application for cancellation;

(2) If the lease has been recorded, then the lessee must execute a release and record the same in the proper office;

(3) Surrender does not entitle the lessee to a refund of the unused portion of rental paid in lieu of development, nor does it relieve the lessee and his or her sureties of any obligation and liability incurred prior to the surrender;

(4) When there is a partial surrender of any lease and the acreage to be retained is less than 160 acres, the surrender is effective only with consent of the Osage Minerals Council and approval of the Superintendent.

(c) The Superintendent cannot approve the surrender or partial surrender of a lease until a determination has been made that all wells have either been properly plugged and abandoned, and/or the future legal liability for plugging and abandoning wells within the lease or partial lease to be surrendered has been assumed in writing by another financially responsible party.

**§ 226.7 What forms of payment are acceptable?**

Sums due under a lease contract and/or the regulations in this part must be paid in the manner and method specified by the Superintendent, unless otherwise specified in these regulations. Such sums constitute a prior lien on all equipment and unsold oil on the leased premises.

**§ 226.8 How do changes in the current regulations impact leases?**

Leases issued pursuant to this part are 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 operates to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties and approved by the Superintendent.

**§ 226.9 What are the bonding requirements for leases?**

Lessees shall furnish surety bonds or personal bonds acceptable to the Superintendent as follows:

(a) The per-well "Bonding Amount" shall be \$5,000.

(b) A surety bond or personal bond equal to the Bonding Amount must be filed at the time an Application for Permit to Drill is approved and/or the lessee acquires liability for existing wells on a lease.

(c) A lessee must at all times maintain on file with the Superintendent surety bonds and/or personal bonds in an amount equal to the Bonding Amount times the number of wells on the lessee's leases, up to a maximum of 25 wells.

(d) To meet the 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).

(e) Personal bonds must be accompanied by at least one of the following:

(1) A 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 must explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party.

(2) A cashier's check.

(3) A certified check.

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond.

Negotiable Treasury securities must be accompanied by a proper conveyance to the Superintendent of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease.

(5) An 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 are subject to the following conditions:

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

(ii) The letter of credit must 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 must be collected by the Superintendent if not replaced by other suitable bond or letter of credit at least 30 calendar days before its expiration date;

(iii) The letter of credit must 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 must be at least 1 year following the date it is filed; and

(v) The letter of credit must 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 calendar days prior to the originally stated or any extended expiration date.

(f) In lieu of a surety or personal bond required under this section, a bond in the penal sum of \$150,000 may be filed with the Superintendent for full nationwide coverage of all leases to which the Lessee is or may become a party.

**§ 226.10 Can the Superintendent increase the amount of the bond required?**

(a) 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 when the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the Superintendent.

(b) 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.

**§ 226.11 When can the Superintendent release a bond?**

Within 45 calendar days of receiving written notice from a lessee that a well has been plugged or a lease has expired, the Superintendent must release the bond upon confirming that:

(a) The well has been properly plugged and the well site has been reclaimed, or the lease site has been reclaimed;

(b) All property has been removed (unless otherwise agreed to in writing by the surface owner).

**§ 226.12 What forms are made a part of the regulations?**

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

**§ 226.13 What information must a corporation submit?**

(a) If the applicant for a lease is a corporation, it must file evidence of authority of its officers to execute papers; and with its first application it must 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 must be furnished within a reasonable time.

**Subpart B—Rental, Production and Royalty**

**Rental, Drilling and Production Obligations**

**§ 226.14 What are the requirements for rental, drilling, and production?**

(a) Oil leases, gas leases, and combination oil and gas leases. Unless the lessee completes and places in 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 will terminate unless rental at the rate of not less than \$3 per acre for an oil or gas lease, or not less than \$6 per acre for a combination oil and gas lease, is paid at the beginning of the first year of the lease.

(1) 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.

(2) The lease will terminate as of the due date of the rental unless such rental is received by the Superintendent on or before said date.

(3) The completion of a well producing in paying quantities will, for so long as such production continues, relieve the 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 will be due on the next anniversary date of the lease. Rental must 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.

(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 has commenced within the term thereof, or for the purpose of enabling the lessee to obtain a market for his/her oil and/or gas production.

(c) Irrespective of whether the lessee has drilled or paid rental, the Superintendent in his/her discretion may order further development of any leased acreage or a specific horizon in any lease term if, in his/her opinion, a prudent lessee would conduct further development. A prudent lessee will diligently develop the minerals underlying the leasehold. The Osage Minerals Council has 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 will evaluate the request and may require additional information be submitted by the lessee and the Osage Minerals Council before making a final determination.

(d) If the lessee refuses to comply with an order by the Superintendent to diligently develop its leasehold as a result of a determination under paragraph (c) of this section, the refusal

will be considered a violation of the lease terms and said lease will be terminated as to the acreage or horizon the further development of which was ordered, after any appeal of an order. The Superintendent will promptly notify the lessee of such termination.

(e) 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 120 consecutive calendar days is thereby terminated by operation of law, effective immediately. The Superintendent will notify the lessee of such termination.

(1) The Superintendent has the authority before termination to approve in writing a temporary suspension of operations tolling the 120-day period for a specified number of days, due to force majeure, other hardship, or other extenuating circumstance.

(2) Any request for a temporary suspension of operations must be made in writing to the Superintendent at least 20 calendar days prior to the expiration of the 120-day period in which the lease has not produced in paying quantities.

(3) The Superintendent, for good cause, may extend in writing the time of any temporary suspension of operations.

(4) The Superintendent must provide a copy of any decision under this paragraph (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 has 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 calendar days the Superintendent must 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 the Superintendent judges these restrictions to be necessary or proper for the protection of the natural resources of the leased land and the interests of the Osage mineral estate. The 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.

**§ 226.15 What are the lessee's obligations regarding drainage?**

(a) Where lands in any leases are being drained of their oil or gas content by wells outside the lease, the lessee must 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) of this section 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 paying quantity of oil or gas from a protective well on the lease for a reasonable profit above the cost of drilling, completing and operating 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 owns any interest in the draining well or lease, upon completion of drill stem, production, pressure analysis, or flow tests of the draining well.

(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 on which the Superintendent has determined that the assignor was required to take action under paragraph (a) of this section is liable for paying compensatory royalties associated with production occurring on and after the date the assignment or transfer is approved by the Superintendent.

**§ 226.16 What can the Superintendent do when drainage occurs?**

(a) 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.

(b) 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) The 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 that provide limited time frames in which to drill; and
- (6) Weather conditions.

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

(d) 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 the wells remain in continuous production;
- (2) The draining well stops producing; or
- (3) The lessee relinquishes its interest in the lease.

**Lease Term**

**§ 226.17 What is the term of a lease?**

Leases issued under this part are for a primary term as established by the Osage 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.

**Royalty Payments**

**§ 226.18 What is the royalty rate for oil?**

(a) The lessee must deliver to the Superintendent a royalty on production removed or sold from the lease, that proportion specified in the notice of sale (but not less than 20 percent) of the amount or value of the oil determined under paragraph (b) of this section.

(b) Unless the Osage Minerals Council, with approval of the Superintendent, elects to take the royalty in kind, the settlement value per barrel is the greater of:

(1) 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 § 226.19. The applicable average NYMEX daily price of oil at Cushing, Oklahoma and gravity adjustment scale will be available from the Superintendent upon request, on or before the fifth day of the month following production; or

(2) The actual selling price for the transaction as adjusted for gravity.

(c) Should the lessor, with approval of the Secretary, elect to take the royalty in kind, the lessee must furnish free storage for royalty oil for a period not to exceed 60 calendar days from date of production after notice of such election.

**§ 226.19 How is the gravity adjustment calculated?**

(a) The gravity adjustment of Average Daily NYMEX Price of oil at Cushing, Oklahoma under § 226.18(b)(1) is a deduction from the price per barrel, as follows:

If the gravity of the oil is . . .	the rate is . . .	for each . . .
(1) At or between 40.0 and 44.9 degrees .....	zero.	
(2) At or between 35.0 and 39.9 degrees .....	\$0.02 .....	degree or fraction thereof below 40.0.
(3) Below 35.0 degrees .....	\$0.10 plus an additional \$0.015	one-tenth of one degree below 35.0.
(4) Above 44.9 degrees .....	\$0.015 .....	for each one-tenth of one degree above 44.9.

(b) 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.

**§ 226.20 How is the royalty on gas calculated?**

(a) All gas removed from the lease from which it is produced must be metered before removal unless

otherwise approved by the Superintendent and be subject to a royalty of not less than 20 percent of the gross proceeds of the gas. Unless the Osage Minerals Council, with approval of the Superintendent, elects to take the royalty in kind, gross proceeds must be

calculated under paragraph (b) of this section; except that the Superintendent may direct (and the Osage Minerals Council may request that the Superintendent direct) any lessee, upon no less than 30 calendar days notice, to calculate gross proceeds at the higher royalty value of paragraph (b) or paragraph (c) of this section.

(b) Under this paragraph, gross proceeds of the gas must be determined by multiplying the measured volume of gas at the well (Mcf), times the heating volume of the gas (MMBtu/Mcf), times the index price of the gas (\$/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/or is not otherwise available, the price must be calculated in a comparable manner to be determined by the Superintendent. The heating value of the gas shall be calculated in accordance with American Petroleum Institute MPMS Chapter 14, Section 5, and shall be reported under the following conditions: Dry (no water vapor), real, gross, and adjusted pressure of 14.73 psi and a temperature of 60 degrees Fahrenheit. If any lessee supplies gas produced from one lease for operation and/or development of any other lease, including another lease held by the same lessee, the royalty calculated under this section must be paid on all gas so used.

(c) Under this paragraph, gross proceeds of the gas will be 100 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 minus the actual, reasonable cost of processing not to exceed 50 percent of the actual sales value of the natural gas liquids (including drip condensate). If the actual reasonable cost of processing cannot be obtained, upon approval by the Superintendent, the lessee may determine such cost in accordance with the alternative methodology and procedures in 30 CFR 1206.180(a) or (b). 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 are allowed.

**§ 226.21 Who determines royalty on lost or wasted minerals?**

Royalty is due on all oil and gas wasted or avoidably lost, the volume and quality of which will be determined by the Superintendent after taking into consideration information provided by the lessee, but resolving all doubts about

volume and quality in favor of the lessor.

**§ 226.22 What is the minimum royalty payment for all leases?**

Minimum royalty will be owed in the event the royalty paid from producing leases during any year is less than the annual rental specified for the lease. Minimum royalty is due and payable at the end of the lease year in an amount equal to the annual rental less the amount paid in royalty on production.

(a) After the primary term, the lessee must submit with his/her payment evidence that the lease is producing in paying quantities.

(b) The Superintendent is authorized to determine whether the lease is actually producing in paying quantities or has terminated for lack of such production.

(c) Payment for any underpayment not made within the time specified is subject to a late charge at the rate of not less than 1½ 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.

**§ 226.23 What royalty is due on other marketable products?**

A royalty on other marketable products must be paid at the rate of not less than 20 percent of the actual sales value of the other marketable products sold, in addition to any other royalty due on oil or gas.

**§ 226.24 What purchase options does the Federal Government have?**

Any of the executive departments of the United States Government have the option to purchase all or any part of the oil produced from any lease at not less than the price as defined in § 226.18.

**§ 226.25 How are royalty payments made?**

(a) Royalty payments due may be paid by either the purchaser or the lessee, provided that the lessee must provide a written agreement to the Superintendent if the purchaser has agreed to be the responsible party for making royalty payments.

(b) All payments are due 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, payments are due on the first business day of the succeeding month. All payments must cover the sales of the preceding month.

(c) Failure to make such payments subjects the responsible party as provided in paragraph (a) of this section to a late charge at the rate of not less

than 1½ percent for each month or fraction thereof until paid.

**§ 226.26 What reports are required to be provided?**

The lessee must furnish certified monthly reports 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, 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.

(a) Reports covering oil production must 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.

(b) Reports covering gas production must 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, residue gas, natural gas liquids, and condensate.

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

(d) The Superintendent must provide 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 will require lessees to provide to the Osage Minerals Council copies of run tickets.

(e) Failure to remit reports subjects the lessee to further penalties as provided in § 226.67 and § 226.68 and subjects any royalty payment contract or division order to termination.

**§ 226.27 Can a lessee enter into royalty payment contracts and division orders?**

(a) The lessee may enter into division orders or contracts with the purchasers of oil, gas, or derivatives therefrom that will provide for the purchaser to make payment of royalty in accordance with

§ 226.25. The following requirements apply in these cases:

(1) The division orders or contracts do not relieve the lessee from responsibility for the payment of the royalty should the purchaser fail to pay.

(2) No production may be removed from the leased premises until a division order and/or contract and its terms are approved by the Superintendent:

(3) The Superintendent may grant temporary permission to run oil or gas from a lease pending the approval of a division order or contract.

(4) The lessee must 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.

(5) The lessee is responsible for the correct measurement and reporting of all oil and/or gas taken from the leased premises.

(b) The lessee must require the purchaser of oil and/or gas from its lease or leases to furnish the Superintendent, 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.

#### **Unit Leases, Assignments and Related Instruments**

##### **§ 226.28 When is unitization allowed?**

The Osage Minerals Council and the 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.

(a) The cooperative or unit agreement is subject to the regulations in this part and applicable laws governing the leasing of the Osage mineral estate.

(b) Any agreement between the parties in interest to terminate a unit or cooperative agreement as to all or any portion of the lands included must be submitted to the Superintendent for his/her approval.

(c) Upon approval of unit termination under paragraph (b) of this section, the leases included under the cooperative or unit agreement will be restored to their original terms.

(d) 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 under this part may be required to join a unit development plan affecting the leased lands by the Superintendent with the consent of the Osage Minerals Council. This plan must adequately protect the rights of all parties in interest, including the Osage mineral estate.

##### **§ 226.29 How are leases assigned?**

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 furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions thereof.

(a) The lessee must assign either his/her entire interest in a lease or legal subdivision thereof, or an undivided interest in the whole lease: Provided, however, that the Superintendent may approve an assignment that covers only a portion of a lease with the consent of the Osage Minerals Council. Approval by the Superintendent of a lease assignment or transfer of an interest in a lease or legal subdivision, is subject to the following:

(1) After the Superintendent approves the assignment or transfer, the lessee who made the assignment will continue to be responsible, jointly and severally with the assignee, for lease obligations that accrued before the approval date, whether or not they were identified at the time of the assignment or transfer. This includes paying compensatory royalties for drainage. It also includes responsibility for plugging wells and abandoning facilities that were drilled, installed, or used before the effective date of the assignment or transfer.

(2) The assignee agrees to comply with the terms of the original lease as it applies to the rights that were acquired. Among other obligations, the assignee must plug and abandon all unplugged wells, reclaim the lease site, and remedy all environmental problems in existence that a purchaser exercising reasonable diligence should have known at the time of the transfer. The assignee must also maintain a bond in accordance with these regulations.

(b) If a lease is divided by the assignment of an entire interest in any part, each part will become a separate lease and the assignee is bound to comply with all the terms and conditions of the original lease.

(c) A fully executed copy of the assignment must be filed with the Superintendent within 30 calendar days

after the date of execution by all parties. If requested within the 30-day period, the Superintendent may grant an extension of 15 calendar days.

(d) A filing fee of \$75 must accompany each assignment.

##### **§ 226.30 Are overriding royalty agreements allowed?**

Agreements creating overriding royalties or payments out of production are not considered as an interest in a lease as such term is used in § 226.29. 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 is not required with respect thereto, but nothing in any such agreement modifies any of the obligations of the lessee under its 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.

(a) The existence of agreements creating overriding royalties or payments out of production, whether or not actually paid, will not be considered in justifying the shutdown or abandonment of any well.

(b) 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 § 226.29.

##### **§ 226.31 When are drilling contracts allowed?**

The Superintendent is authorized to approve drilling contracts with a stipulation that such approval does not in any way bind or require the Department to approve subsequent assignments that may be contemplated or provided for in the particular drilling contract approved by the Department. Approval merely authorizes entry on the lease for the purpose of development work.

##### **§ 226.32 When can an oil lease and a gas lease be combined?**

A lessee 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.

#### **Subpart C—Operations**

##### **§ 226.33 What are the general requirements governing operations?**

(a) The lessee must 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 that:

(1) Ensures the proper handling, measurement, disposition, and site security of leasehold production;

(2) Protects other natural resources and environmental quality;

(3) Protects life and property; and

(4) 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.

(b) The lessee must 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 must 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 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 has the same right to enter upon or travel across any lease site as the lessee.

**§ 226.34 What requirements apply to commencement of operations on a lease?**

(a) No operations are permitted upon any tract of land until a lease covering such tract is approved by the Superintendent. The Superintendent may, however, grant authority to any party under such lease, consistent with the regulations in this part that he or she deems proper, to conduct geophysical and geological exploration work.

(b) The lessee must submit applications on forms to be furnished by the Superintendent and secure approval before:

(1) Well drilling, treating, or workover operations are started on the leased premises.

(2) Removing casing from any well.

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

(d) Prior to approving any operations under this section, the Superintendent will determine whether an environmental assessment or other information is required to comply with applicable laws such as the National Environmental Policy Act. If an environmental assessment is deemed necessary, the Superintendent will notify the lessee that it must submit a

draft environmental assessment, which will be reviewed and evaluated by the Superintendent before deciding whether to prepare an Environmental Impact Statement or issue a Finding of No Significant Impact. The Superintendent will also notify the lessee of any other information that must be submitted, such as cultural resources survey reports/archeological surveys when needed to comply with the National Historic Preservation Act and the Secretary's Standards and Guidelines for Archeology and Historic Preservation.

**§ 226.35 How does a lessee acquire permission to begin operations on a restricted homestead allotment?**

(a) The 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/her homestead, the Superintendent will cause an examination of the premises to be made with the allottee and lessee or his/her representative. Upon finding that the interests of the Osage 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 must be presented by all parties before the Osage Minerals Council, and the Council will make its recommendations. Such recommendations will 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 Nation will represent him.

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

**§ 226.36 What kind of notice and information is required to be given surface owners prior to commencement of drilling operations?**

(a) The lessee must notify or attempt to notify the surface owner in one general written notification sent by certified mail with a copy to the

Superintendent that it plans to begin conducting the following activities over the term of its lease: Archeological or biological surveys, or staking of wells.

(b) No operations of any kind may commence until the lessee or its authorized representative meets with the surface owner or his/her representative. The lessee must request the meeting in writing by certified mail and provide a copy of the letter to the Superintendent. Unless waived by the Superintendent or otherwise agreed to between the lessee and surface owner, such meeting must be held at least 10 calendar days prior to the commencement or any operations. At such meeting lessee or its authorized representative must comply with the following requirements:

(1) Indicate the location of the well or wells to be drilled.

(2) Arrange for a route of ingress and egress. Upon failure to agree on a route of ingress and egress, said route will be set by the Superintendent after the Superintendent has notified or attempted to notify both the surface owner and lessee in writing of their opportunity to meet and submit information for consideration before a final decision is made.

(3) Furnish to said surface owners the name and address of the party or representative upon whom the surface owner must 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 § 226.41.

(4) Where the drilling is to be on restricted land, the lessee or its authorized representative must meet with and provide the information in paragraphs (b)(1)–(3) of this section to the Superintendent.

(5) When the surface owner or its representative cannot be contacted at the last known address or has not accepted a meeting request within 30 calendar days of receipt of the request, the Superintendent is required to authorize lessee, in writing, to proceed with operations.

**§ 226.37 How much of the surface may a lessee use?**

The lessee or its authorized representative has 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.

(a) If the lessee and surface owner are unable to agree as to the routing of pipelines, electric lines, etc., said routing will be set by the Superintendent after the Superintendent has notified or attempted to notify both the surface owner and lessee in writing of their opportunity to meet and submit information for consideration before a final decision is made.

(b) The right to use water for lease operations is established by § 226.48.

(c) The lessee must conduct its operations in a workmanlike manner, commit no waste and allow none to be committed upon the land, nor permit any avoidable nuisance to be maintained on the premises under its control.

**§ 226.38 What commencement money must the lessee pay to the surface owner?**

(a) Before commencing actual exploration and/or development, the lessee must pay or tender to the surface owner commencement money in the amount of \$25 per shot hole for explosive source (for the acquisition of Single Fold (100 per cent Seismic)), or \$400 per linear mile for surface source data acquisition. For the purpose of conducting a 3D seismic survey, the lessee must pay commencement money in the amount of \$10 per acre occupied during the time the survey is conducted. The lessee must also pay commencement money in the amount of \$2500 for each well.

(1) After payment of commencement money the lessee will be entitled to immediate possession of the drilling site.

(2) Commencement money will not be required for the redrilling of a well which was originally drilled under the current lease.

(3) A drilling site must be held to the minimum area essential for operations and not exceed one and one-half acres in area unless authorized by the Superintendent.

(4) Commencement money is a credit toward the settlement of the total damages.

(5) Acceptance of commencement money by the surface owner does not affect its right to compensation for damages as described in § 226.40, occasioned by the drilling and completion of the well for which it was paid.

(6) 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.

(b) Where the surface is restricted land, commencement money must be paid to the Superintendent for the landowner. All other surface owners must be paid or tendered such commencement money directly.

(1) Where such surface owners are neither residents of Osage County, nor have a representative located therein, such payment must be made or tendered to the last known address of the surface owner at least 5 calendar days before commencing drilling operation on any well.

(2) If the lessee is 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 refuses to accept the same, the lessee must deposit such amount with the Superintendent by check payable to the Bureau of Indian Affairs. The Superintendent must thereupon advise the owner of the surface of the land by mail at his/her last known address that the commencement money is being held for payment to him upon his/her written request.

**§ 226.39 What fees must lessee pay to a surface owner for tank siting?**

The lessee must pay fees for each tank sited at the rate of \$500 per tank, except that:

(a) No payment is due for a tank temporarily set on a well location site for drilling, completing, or testing; and

(b) The sum to be paid for a tank occupying an area more than 2500 square feet will be agreed upon between the surface owner and lessee or, on failure to agree, the same will be determined by arbitration as provided by § 226.41.

**§ 226.40 What is a settlement of damages claimed?**

(a) The lessee or its authorized representative or geophysical permittee must 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 will be credited toward the settlement of the total damages occasioned by the drilling and completion of the well for which it was paid. Such damages must 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 the lessee or its authorized representative and surface owner are unable to agree concerning damages, the same will be

determined by arbitration as provided by § 226.41.

(b) Surface owners must 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 owners.

(c) In settlement of damages on restricted land, all sums due and payable must 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 damages to an interest in any leased tract, must furnish to the Superintendent a statement in writing showing its claimed interest. Failure to furnish such statement will constitute a waiver of notice and estop said person from claiming any part of such damages after the same has been disbursed.

**§ 226.41 What is the procedure for settlement of damages claimed?**

Where the surface owner or his/her lessee suffers damage due to the oil and gas operations and/or marketing of oil or gas by lessee or its authorized representative, the procedure for recovery is as follows:

(a) The party or parties aggrieved will, as soon as possible after the discovery of any damages, serve written notice to lessee or its authorized representative.

The written notice must describe 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. This requirement does not 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, the lessee or its authorized representative must try to adjust the claim with the party or parties aggrieved within 20 calendar 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 must be submitted to the Superintendent for approval. If the settlement agreement concerning the restricted property is approved by the Superintendent, payment must be made to the Superintendent for the benefit of said claimant.

(c) If the parties fail to adjust the claim within the 20 calendar days

specified, then within 10 calendar days thereafter each of the interested parties must appoint an arbitrator who immediately upon their appointment must agree upon a third arbitrator. If the two arbitrators fail to agree upon a third arbitrator within 10 calendar days, they must immediately notify the parties in interest. If said parties cannot agree upon a third arbitrator within 5 calendar days after receipt of such notice, the Superintendent will appoint the third arbitrator.

(d) As soon as the third arbitrator is appointed, the arbitrators must 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 calendar days they will render their decision as to the amount of the damage due. The arbitrators will be disinterested persons. The fees and expenses of the third arbitrator must be borne equally by the claimant and the lessee or its authorized representative. Each lessee or its authorized representative and claimant must pay the fee and expenses for the arbitrator appointed by him.

(e) When an act of an oil or gas lessee or its authorized representative results in injury to both the surface owner and his/her lessee, the parties aggrieved must join in the appointment of an arbitrator. Where the injury complained of is chargeable to more than one oil or gas lessee, or its authorized representative, all such chargeable lessees or representatives must 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 must be in writing and served forthwith upon the parties in interest. Each party has 90 calendar 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 the lessee or its authorized representative, he/she must pay the same, together with interest at an annual rate established for the Internal Revenue Service from date of award, within 10 calendar days after the expiration of said period for filing an action.

(g) The lessee or its authorized representative must 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.

**§ 226.42 What are a lessee's obligations for production?**

(a) The lessee must 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 stock tanks for sale; or

(2) Pumped into a stock tank without treatment and measured for sale in the same manner as from any sales tank in accordance with applicable orders and notices.

(c) In the absence of prior approval from the Superintendent, no oil may be pumped into a pit except in an emergency. Each such pumping occurrence must be reported to the Superintendent and the oil promptly recovered in accordance with applicable orders and notices.

**§ 226.43 What documentation is required for transportation of oil or gas or other marketable product?**

(a) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, must 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.

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

(c) 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 produced from or allocated to any such lease site, to determine whether the driver possesses proper documentation for the load of oil.

(d) 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 produced from or allocated to a lease site, to determine whether the driver possesses proper documentation for the load of oil.

**§ 226.44 What are a lessee's obligations for preventing pollution?**

(a) All lessees, contractors, drillers, service companies, pipe pulling and salvaging contractors, or other persons, must 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 pollution and the migration of oil, gas, salt water, or other substance from one stratum into another, including any fresh water bearing formation.

(b) Pits for drilling mud or deleterious substances used in the drilling, completion, recompletion, or workover of any well must be constructed and maintained to prevent pollution of surface and subsurface fresh water. These pits must 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, user, or the Superintendent gives consent to the contrary. Immediately after completion of operations, pits must be emptied, reclaimed, and leveled unless otherwise requested by surface owner or user.

(c) Drilling pits must be adequate to contain mud and other material extracted from wells and must 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, may be constructed, enlarged, reconstructed or used without approval of the Superintendent. Unlined earthen pits may not be used for the 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, must be collected into a pit lined with plastic of at least 30 mil or a metal or fiberglass tank and maintained separately from above-mentioned drilling fluids to allow for separate disposal. These pits or tanks must 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 or the Superintendent gives consent to the contrary. Immediately after completion of operations, tanks must be removed and any pits must be emptied, reclaimed, and leveled unless otherwise requested by surface owner.

**§ 226.45 What are a lessee's other environmental responsibilities?**

(a) The lessee must conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality. The lessee must comply with the pertinent orders of the Superintendent 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.

(b) The lessee must exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements.

(1) All produced water must be disposed of by injection into the subsurface, in approved pits, or by other methods which have been approved by the Superintendent.

(2) Upon the conclusion of operations, the lessee must reclaim the disturbed surface in a manner approved or prescribed by the Superintendent.

(c) All spills or leakages of oil, gas, other marketable products, produced water, toxic liquids, or waste materials, blowouts, fires, personal injuries, and fatalities must be reported by the lessee to the Superintendent as soon as discovered, but not later than the next business day.

(1) The lessee must exercise due diligence in taking necessary measures, subject to approval by the Superintendent, to control and remove pollutants and to extinguish fires.

(2) A lessee's compliance with the requirements of the regulations in this part does not relieve the lessee of the obligation to comply with other applicable laws and regulations.

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

(e) The lessee's liability for damages to third parties is governed by applicable law.

**§ 226.46 What safety precautions must a lessee take?**

The lessee must perform operations and maintain equipment in a safe and workmanlike manner, including compliance with National Electrical Code for the installation, running, maintenance and use of all electric lines. The lessee must take all precautions necessary to provide adequate protection for the health and safety of life and the protection of property. Such precautions do not relieve the lessee of the responsibility for compliance with other pertinent

health and safety requirements under applicable laws or regulations.

**§ 226.47 When can the Superintendent grant easements for wells off leased premises?**

The Superintendent, with the consent of the Osage Minerals Council, may grant commercial and noncommercial easements for wells off the leased premises to be used for purposes associated with oil and gas production; provided that the Superintendent notifies or attempts to notify both the surface owner and lessee in writing of their opportunity to meet with and submit information for consideration before a final decision is made. Rents payable to the Osage mineral estate for such easements must be in an amount agreed to by Grantee and the Osage Minerals Council, subject to the approval of the Superintendent. The Grantee is responsible for all damages resulting from the use of such wells and settlement for any damages must be made as provided in § 226.41.

**§ 226.48 A lessee's use of water.**

The lessee or his/her contractor may, with the approval of the Superintendent, use water from streams and natural water courses to the extent that such use does not diminish the supply below the requirements of the surface owner from whose land the water is taken. Similarly, the lessee or his/her contractor may use water from reservoirs formed by the impoundment of water from such streams and natural water courses, if such use does not exceed the quantity to which they originally would have been entitled had the reservoirs not been constructed. The lessee or his/her contractor may install necessary lines and other equipment within the Osage mineral estate to obtain such water. Any damage resulting from such installation must be settled as provided in § 226.41.

**§ 226.49 What are the responsibilities of an oil lessee when a gas well is drilled and vice versa?**

Prior to drilling, an oil or gas lessee must notify the other lessees of its intent to drill. When an oil lessee in drilling a well encounters a formation or zone having indications of possible gas production, or the gas lessee in drilling a well encounters a formation or zone having indication of possible oil production, the lessee must immediately notify the other lessee and the Superintendent. The lessee drilling the well must obtain all information that a prudent lessee would utilize to evaluate the productive capability of such formation or zone.

(a) Gas well to be turned over to gas lessee. If an oil lessee drills a gas well, it must, without removing from the well any of the casing or other equipment, immediately shut the well in and notify the gas lessee and the Superintendent.

(1) If the gas lessee does not, within 45 calendar days after receiving notice and determining the cost of drilling, elect to take over such well and reimburse the oil lessee the cost of drilling, including all damages paid and the cost in-place of casing, tubing, and other equipment, the oil lessee must immediately confine the gas to the original stratum. The disposition of such well and the production therefrom will then be subject to the approval of the Superintendent.

(2) If the oil lessee and gas lessee cannot agree on the cost of the well, the Superintendent will apportion the cost between the oil and gas lessees.

(b) Oil well to be turned over to oil lessee. If a gas lessee drills an oil well, then it must immediately, without removing from the well any of the casing or other equipment, notify the oil lessee and the Superintendent.

(1) If the oil lessee does not, within 45 calendar days after receipt of notice and cost of drilling, elect to take over the well, it must immediately notify the gas lessee. From that point, the Superintendent must approve the disposition of the well, and any gas produced from it.

(2) If the oil lessee chooses to take over the well, it must pay to the gas 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 oil lessee and the gas lessee cannot agree on the cost of the well, the Superintendent will apportion the cost between the oil and gas lessees.

(c) Lands not leased. If a gas lessee drills 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 must be reimbursed by the oil or gas lessee for the cost of drilling said well, including all damages paid and the cost of in-place casing, tubing, and other equipment. If the lessee does not elect to take over said well as provided above, the disposition of such well and the production therefrom will be determined by the Superintendent. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost will be apportioned between

the oil and gas lessee by the Superintendent.

**§ 226.50 How is the cost of drilling a well determined?**

The term “cost of drilling” as applied where one lessee takes over a well drilled by another, includes all reasonable, usual, necessary, and proper expenditures. A list of expenses mentioned in this section must be presented to proposed purchasing lessee within 10 calendar 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 will be determined by the Superintendent.

**§ 226.51 What are the requirements for using gas for operating purposes and tribal uses?**

All gas used in accordance with this section must first be odorized and treated in accordance with industry standards for safe use.

(a) *Gas to be furnished to oil lessee.* The lessee of a producing gas lease must furnish the oil lessee sufficient gas for operating purposes at a rate to be agreed upon, or on failure to agree, the rate will be determined by the Superintendent. Provided, that the oil lessee must at his/her own expense and risk, furnish and install the necessary connections to the gas lessee’s well or pipeline. All such connections must be reported in writing to the Superintendent.

(b) *Use of gas by Osage Tribe.* (1) Gas from any well or wells must be furnished to any Tribal-owned building or enterprise at a rate not to exceed the price being received or offered by a gas purchaser, less royalty. This requirement is 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 Nation will be determined by the Superintendent based on prices being paid by purchasers in the Osage mineral estate. The Osage Nation is to furnish all necessary materials and labor for such connection with the lessee’s gas system. The use of such gas is at the risk of the Osage Nation at all times.

(2) Any member of the Osage Nation residing in Osage County and outside a corporate city is entitled to the use at his/her own expense of not to exceed 400,000 cubic feet of gas per calendar year for his/her principal residence at a rate not to exceed the amount paid by a gas purchaser plus 10 percent. This requirement is 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 will be determined by the Superintendent. Gas delivered to Tribal members is not royalty free. The Tribal member is to furnish all necessary material and labor for such connection to the lessee’s gas system, and must maintain his/her own lines. The use of such gas is at the risk of the Tribal member at all times.

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

**Subpart D—Cessation of Operations**

**§ 226.52 When can a lessee shutdown, abandon, and plug a well?**

No well may be permanently abandoned until it is no longer producing oil and/or gas in paying quantities and such a showing has been demonstrated to the satisfaction of the Superintendent. The lessee may not shut 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 must be submitted to the Superintendent on forms furnished by the Superintendent.

(a) An application for authority to permanently shut down or discontinue the use or operation of a well must set forth the justification, 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 is subject to the approval of the Superintendent.

(b) Prior to permanent abandonment of any well, the oil lessee or the gas lessee, as the case may be, must offer the well to the other for his/her 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 calendar days after receipt thereof will be deemed a rejection of the offer. If, after indicating acceptance, the two parties cannot agree on the terms of the offer within 30 calendar days, the disposition of such well will be determined by the Superintendent.

(c) The Superintendent is authorized to shut in a lease when the lessee fails to comply with the terms of the lease, the regulations, and/or orders of the Superintendent.

**§ 226.53 When must a lessee dispose of casings and other improvements?**

(a) Upon termination of a lease, permanent improvements, unless otherwise provided by written agreement with the surface owner and filed with the Superintendent, remain a part of said land and become the property of the surface owner upon termination of the lease. This rule does not apply to personal property, including but not limited to, tools, tanks, pipelines, pumping and drilling equipment, derricks, engines, machinery, tubing, and the casings of all wells. When any lease terminates, all such personal property must be removed within 90 calendar days or such reasonable extension of time as may be granted by the Superintendent. Otherwise, the ownership of all casings reverts to the lessor and all other personal property and permanent improvements to the surface owner. This should not be construed to relieve the lessee of responsibility for removing any such personal property or permanent improvements from the premises if required by the Superintendent and restoring the premises as nearly as practicable to the original state.

(b) Upon termination of lease for cause. When there has been a termination for cause, the lessor is 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 must be promptly plugged as prescribed in writing by the Superintendent. Applications to plug must include a statement affirming compliance with § 226.52 and must set forth reasons for plugging, a detailed statement of the proposed work, including the kind, location, and length of plugs (by depth), plans for mudding and cementing, testing, parting and removing casing, and any other pertinent information. The lessee must submit a written application for authority to plug a well.

(d) The lessee must 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 must be used to fill the hole from bottom to top.

(1) If a satisfactory agreement is reached between the lessee and the surface owner, subject to the approval of the Superintendent, the lessee may condition the well for use as a fresh

water well and must so indicate on the plugging record.

(2) The manner in which plugging material will be introduced and the type of material used is subject to the approval of the Superintendent.

(3) Within 10 calendar days after plugging, the lessee must file with the Superintendent a complete report of the plugging of each well.

(4) When any well is plugged and abandoned, the lessee must, within 90 calendar days, clean up the premises around such well to the satisfaction of the Superintendent.

### Subpart E—Requirements of Lessees

#### § 226.54 What general requirements apply to lessees?

(a) The lessee must comply with all orders or instructions issued by the Superintendent. The Superintendent or his/her representative may enter upon the leased premises for the purpose of inspection.

(b) The lessee must keep a full and correct account of all operations, receipts, and disbursements and make reports thereof, as required.

(c) The lessee's books and records must be available to the Superintendent for inspection.

(d) The lessee must maintain and preserve records for 6 years from the day on which the 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 must be maintained until the lessee is released in writing from the obligation to maintain the records.

#### § 226.55 When must a lessee designate process agents?

(a) Before actual drilling or development operations are commenced on leased lands, the lessee or assignee, if not a resident of the State of Oklahoma, must 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 notify the Superintendent of the name and post office address of the representative appointed.

(b) Where several parties own a lease jointly, the parties must designate one representative or agent whose duties are to act for all parties concerned.

(c) The lessee must appoint a substitute to serve in his/her stead in the event of the incapacity or absence from the State of Oklahoma of such

designated local or resident representative. In the absence of such representative or appointed substitute, any employee of the lessee upon the leased premises or person in charge of drilling or related operations thereon will be considered the representative of the lessee for the purpose of service of orders or notices as herein provided.

#### § 226.56 What are the lessee's record and reporting requirements for wells?

(a) The lessee must keep accurate and complete records of the drilling, redrilling, deepening, repairing, treating, plugging, or abandonment of all wells. These records must show:

(1) All the formations penetrated, the content and character of the 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;

(2) The record of drill-stem and other bottom hole pressure or fluid sample surveys, temperature surveys, directional surveys, and the like;

(3) The materials and procedure used in the treating or plugging of wells or in preparing them for temporary abandonment; and

(4) Any other information obtained in the course of well operation.

(b) The lessee must 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 furnish such reports as required in the manner and method specified by the Superintendent.

(c) Within 10 calendar days after completion of operations on any well, the lessee must transmit to the Superintendent:

(1) All applicable information on forms furnished by the Superintendent;

(2) A copy of the electrical, mechanical or radioactive log, or other types of surveys of the well bore; and

(3) The core analysis obtained from the well.

(d) The lessee must also submit other reports and records of operations as may be required and in the manner, form, and method prescribed by the Superintendent.

(e) The lessee must measure production of oil, gas, other marketable product, and water from individual wells at reasonably frequent intervals to the satisfaction of the Superintendent.

(f) Upon request and in the manner, form and method prescribed by the Superintendent, the lessee must 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.

#### § 226.57 What line drilling limitations must a lessee comply with?

The lessee may not drill within 300 feet of the boundary line of leased lands, or 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 will subject the lessee to termination of the lease and/or plugging of the well.

#### § 226.58 What are the requirements for marking wells and tank batteries?

The lessee must clearly and permanently mark all wells and tank batteries in a conspicuous place with the number, legal description, operator's name, lessee's name and telephone number, and must take all necessary precautions to preserve these markings.

#### § 226.59 What precautions must a lessee take to ensure natural formations are protected?

The lessee must, 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.

#### § 226.60 What are a lessee's obligations to maintain control of wells?

(a) In drilling operations in fields where high pressures, lost circulation, or other conditions exist which could result in blowouts, the lessee must install an approved gate valve or other controlling device 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 must take all necessary precautions to keep each well under control at all times, and must utilize and maintain materials and equipment necessary to insure the safety of operating conditions and procedures.

(c) *Vertical drilling.* The lessee must 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 reported promptly to the Superintendent. In these cases, a directional survey is required.

(d) *High pressure or loss of circulation.* The lessee must 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 must 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 must be conducted by the lessee using procedures and practices approved or prescribed by the Superintendent.

(f) The lessee must conduct activities in accordance with the standards and procedures set forth in Bureau of Land Management Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations.

**§ 226.61 How does a lessee prevent waste of oil and gas and other marketable products?**

(a) The lessee must conduct all operations in a manner that will prevent waste of oil and gas and other marketable products and must not wastefully utilize oil or gas or other marketable products.

(b) The Superintendent has 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.

(c) For purposes of this section, waste 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, gas or other marketable product.

**§ 226.62 How does a lessee measure and store oil?**

(a) All production run from the lease must 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 must be provided by the lessee and must be located on the leasehold unless otherwise approved by the Superintendent. The lessee must furnish

to the Superintendent a copy of 100-percent capacity tank table for each tank. Meters and installations for measuring oil must be approved.

(b) The lessee must ensure that each Lease Automatic Custody Transfer (LACT) meter is inspected, calibrated, and adjusted at least twice in each calendar year. Each inspection, calibration, and adjustment must be separated by a period of not less than five months. The lessee must give the Superintendent at least 48 hours prior notice of all LACT meter inspections, calibrations, and adjustments. The Superintendent has the right to witness, unannounced, all LACT meter inspections, calibrations, and adjustments. The lessee must fully cooperate with such witnessing. If the Superintendent is not present, then he may request records relating to all LACT meter inspections, calibrations, and adjustments. Repeated failures to comply with this subparagraph will render the lease subject to termination after consultation with the Osage Minerals Council.

(c) When a tank of oil is ready for removal by the purchaser, the lessee must ensure that the Superintendent is informed of that fact before the purchaser is so informed via an electronic or telephonic method established by the Superintendent for reporting pursuant to this subparagraph. Repeated failures to inform the Superintendent will render the lease subject to termination after consultation with the Osage Minerals Council.

(d) The Superintendent has the right to witness all gaugings, unannounced, on each lease. The lessee must fully cooperate with such gaugings and repeated failures to comply will render the lease subject to termination after consultation with the Osage Minerals Council.

**§ 226.63 How is gas measured?**

(a) All gas required to be measured must be measured in accordance with the standards, procedures, and practices set forth in Bureau of Land Management Onshore Oil and Gas Order No. 5, Measurement of Gas. To the extent that Onshore Oil and Gas Order 5 conflicts with any provision of these regulations, these regulations control.

(b) All gas, required to be measured, must be measured by orifice meter unless otherwise agreed to in writing by the Superintendent. All gas meters must be approved by the Superintendent and installed at the expense of the lessee or purchaser at such places as may be agreed to in writing by the Superintendent. For computing the volume of all gas produced, sold or

subject to royalty, the standard of pressure is 14.65 pounds to the square inch, and the standard of temperature is 60 degrees F. All measurements of gas must be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized in writing by the Superintendent.

(c) The lessee must ensure that each meter is inspected, calibrated, and adjusted at least twice in each calendar year. Each inspection, calibration and adjustment must be separated by a period of not less than five months apart. The lessee must give the Superintendent at least 48 hours prior notice of all meter inspections, calibrations, and adjustments. The Superintendent has the right to witness, unannounced, all meter inspections, calibrations, and adjustments. The lessee must fully cooperate with such witnessing. If the Superintendent is not present, he may request records relating to all meter inspections, calibrations, and adjustments. Repeated failures to comply with this subparagraph will render the lease subject to termination after consultation with the Osage Minerals Council.

**§ 226.64 When can a lessee use gas for lifting oil?**

The lessee must not use raw natural gas from a distinct or separate stratum for the purpose of flowing or lifting oil, except where the 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.

**§ 226.65 What site security standards apply to oil and gas and other marketable product leases?**

(a) *Definitions.* The following definitions apply to terms used in this section.

*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 must 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 as being in the sales phase.

*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 must comply with the following minimum standards to assist in providing accountability for oil or gas production:

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

(2) Each LACT system must employ meters that have non-resettable totalizers. There may not be any by-pass piping around the LACT. All components of the LACT that are used for volume or quality determinations of the oil must 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 must be effectively sealed.

(3) There must not be any 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 must 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 must be effectively sealed as near the storage tank as possible.

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

(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 the lessee must maintain such facilities in compliance with the plan. For new facilities, notice must be given that it is subject to a specific existing plan, or a notice of a new plan must be submitted, no later than 60 days after completion of construction or first production, whichever is earlier, and on that date the facilities must 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 must retain the plan and 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 must include the location and normal business hours of the office where the plan will be maintained. Upon request, plans must be made available to the Superintendent.

(3) The plan must 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.

(d) *Site facility diagrams.* (1) Facility diagrams are required for all facilities which are used in storing oil/condensate. Facility diagrams must be filed within 60 calendar 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 8½" 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 must accurately reflect the actual conditions at the site and must, 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 must indicate which valves must be sealed and in what position during the production or sales phase. The diagram must 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.

#### **§ 226.66 What are a lessee's reporting requirements for accidents, fires, theft, and vandalism?**

Lessees must make a complete report to the Superintendent of all accidents environmental or otherwise, 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 must include an estimate of the volume of oil involved. Lessees also are expected to report such thefts within one business day to local law enforcement agencies, internal company security. Lessees must also notify or attempt to notify the surface owner or his/her designated agent in writing by U.S. mail of any such incident covered under this section.

#### **Subpart F—Penalties**

##### **§ 226.67 What are the penalties for violations of lease terms?**

Unless otherwise set forth in a lease, violations of any of the terms or conditions of any lease or of the regulations in this part will subject the lease to termination by the Superintendent, or Lessee to a fine of not more than \$500 per day for each day of such violation or noncompliance with the orders of the Superintendent, or to both such fine and termination of the lease. Fines not received within 10 business days after notice of the decision will be subject to late charges at the rate of not less than 1½ percent per month for each month or fraction thereof until paid.

##### **§ 226.68 What are the penalties for violation of certain operating regulations?**

Unless otherwise set forth in a lease, in lieu of the penalties provided under § 226.67, penalties may be imposed by

the Superintendent for violation of certain sections of the regulations of this part as follows:

(a) For failure to obtain permission to start operations required by § 226.34(a), \$50 per day.

(b) For failure to file records required by § 226.56, \$50 per day until compliance is met.

(c) For failure to mark wells or tank batteries as required by § 226.58, \$50 per day for each well or tank battery.

(d) For failure to construct and maintain pits as required by § 226.44(b)–(d), \$50 for each day after operations are commenced on any well until compliance is met.

(e) For failure to comply with § 226.60 regarding control of wells, \$100 per day.

(f) For failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well, as required by §§ 226.34(b)–(c) and 226.49, \$200 per day.

(g) For failure to properly care for and dispose of deleterious fluids as provided

in § 226.44(e), \$500 per day until compliance is met.

(h) For failure to file plugging reports as required by § 226.53(d) and for failure to file reports as required by § 226.26, \$50 per day for each violation until compliance is met.

(i) For failure to perform or start an operation within 5 calendar 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.

#### **Subpart G—Appeals and Notices**

##### **§ 226.69 Who can file an appeal?**

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.

##### **§ 226.70 Are the notices by the Superintendent binding?**

Notices and orders issued by the Superintendent to the representative are binding on the lessee. The Superintendent may in his/her discretion increase the time allowed in his/her orders and notices.

##### **§ 226.71 Information collection.**

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0180. Response is required to obtain or retain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: May 4, 2015.

**Kevin K. Washburn,**

*Assistant Secretary—Indian Affairs.*

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