

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

(i) *Casinghead gas* means gas produced from an oil well as a consequence of oil production from the same formation.

(j) *Natural gas* means any fluid, either combustible or noncombustible, recovered at the surface in the gaseous phase and/or hydrocarbons recovered at the surface as liquids which are the result of condensation caused by reduction of pressure and temperature of hydrocarbons originally existing in a reservoir in the gaseous phase.

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

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

(m) *Gas well* means any well which:

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

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

[39 FR 22254, June 21, 1974, as amended at 41 FR 50648, Nov. 17, 1976; 43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

LEASING PROCEDURE, RENTAL AND ROYALTY

§ 226.2 Sale of leases.

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

(b) The Superintendent, with the consent of the Osage Tribal Council, shall

publish notices for the sale of oil leases, gas leases, and oil and gas leases to the highest responsible bidder on specific tracts of the unleased Osage Mineral Estate. The Superintendent may require any bidder to submit satisfactory evidence of his good faith and ability to comply with all provisions of the notice of sale. Successful bidders must deposit with the Superintendent on day of sale a check or cash in an amount not less than 25 percent of the cash bonus offered as a guaranty of good faith. Any and all bids shall be subject to the acceptance of the Osage Tribal Council and approval of the Superintendent. Within 20 days after notification of being the successful bidder, and said bidder must submit to the Superintendent the balance of the cash bonus, a \$10 filing fee, and the lease in completed form. The Superintendent may extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting the balance of moneys due. If the bidder fails to pay the full cash consideration within said period or fails to file the completed lease within said period or extension thereof, or if the lease is rejected through no fault of the Osage Tribal Council or the Superintendent, 25 percent of the cash bonus bid will be forfeited for the use and benefits of the Osage Tribe. The Superintendent may reject a lease made on an accepted bid, upon evidence satisfactory to him of collusion, fraud, or other irregularity in connection with the notice of sale. The Superintendent may approve oil leases, gas leases, and oil and gas leases made by the Osage Tribal Council in conformity with the notice of sale, regulations in this part, bonds, and other instruments required.

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

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

(e) No lease, assignment thereof, or interest therein will be approved to any employee or employees of the Government and no such employee shall be

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permitted to acquire any interest in leases covering the Osage Mineral Estate by ownership of stock in corporations having leases or in any other manner.

(f) The Osage Tribal Council may utilize the following procedures among others, in entering into a mining lease. A contract may be entered into through competitive bidding as outlined in §226.2(b), negotiation, or a combination of both. The Osage Tribal Council may also request the Superintendent to undertake the preparation, advertisement and negotiation. The Superintendent may approve any such contract made by the Osage Tribal Council.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 226.3 Surrender of lease.

Lessee may, with the approval of the Superintendent and payment of a \$10 filing fee, surrender all or any portion of any lease, have the lease cancelled as to the portion surrendered and be relieved from all subsequent obligations and liabilities. If the lease, or portion being surrendered, is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation: *Provided*, That if this lease has been recorded, Lessee shall execute a release and record the same in the proper office. Such surrender shall not entitle Lessee to a refund of the unused portion of rental paid in lieu of development, nor shall it relieve Lessee and his sureties of any obligation and liability incurred prior to such surrender: *Provided further*, That when there is a partial surrender of any lease and the acreage to be retained is less than 160 acres or there is a surrender of a separate horizon, such surrender shall become effective only with the consent of the Osage Tribal Council and approval of the Superintendent.

[43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 226.4 Form of payment.

Sums due under a lease contract and/ or the regulations in this part shall be paid by cash or check made payable to

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the Bureau of Indian Affairs and delivered to the Osage Agency, Pawhuska, Oklahoma 74056. Such sums shall be a prior lien on all equipment and unsold oil on the leased premises.

§ 226.5 Leases subject to current regulations.

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

§ 226.6 Bonds.

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

(a) A bond on Form D shall be filed with each lease submitted for approval. Such bond shall be in an amount of not less than \$5,000 for each quarter section or fractional quarter section covered by said lease: *Provided, however*, That one bond in the penal sum or not less than \$50,000 may be filed on Form G covering all oil, gas and combination oil and gas leases not in excess of 10,240 acres to which Lessee is or may become a party.

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

(c) A bond on Form H shall be filed in an amount of not less than \$5,000 covering a lease acquired through assignment where the assignee does not have a collective bond on form G or nationwide bond, or the corporate surety does not execute its consent to remain bound under the original bond given to secure the faithful performance of the terms and conditions of the lease.

(d) The right is specifically reserved to increase the amount of bonds prescribed in paragraphs (a) and (c) of this section in any particular case when the Superintendent deems it proper. The

nationwide bond may be increased at any time in the discretion of the Secretary.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8135, Feb. 28, 1978; 43 FR 11815, Mar. 22, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

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

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

§ 226.8 Corporation and corporate information.

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

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

§ 226.9 Rental and drilling obligations.

(a) Oil leases, gas leases, and combination oil and gas leases. Unless Lessee shall complete and place on production a well producing and selling oil and/or gas in paying quantities on the land embraced within the lease within 12 months from the date of approval of the lease, or as otherwise provided in the lease terms, or 12 months from the date the Superintendent consents to drilling on any restricted homestead selection, the lease shall terminate unless rental at the rate of not less than \$1 per acre for an oil or gas lease, or not less than \$2.00 per acre for a combination oil and gas lease, shall be paid before the end of the first year of the lease. The lease may also be held for the remainder of its primary term without drilling upon payment of the specified rental annually in advance, commencing with the second lease year. The lease shall terminate as of

the due date of the rental unless such rental shall be received by the Superintendent, or shall have been mailed as indicated by postmark on or before said date. The completion of a well producing in paying quantities shall, for so long as such production continues, relieve Lessee from any further payment of rental, except that should such production cease during the primary term the lease may be continued only during the remaining primary term of the lease by payment of advance rental which shall commence on the next anniversary date of the lease. Rental shall be paid on the basis of a full year and no refund will be made of advance rental paid in compliance with the regulations in this part: *Provided*, That the Superintendent in his discretion may order further development of any leased acreage or separate horizon if, in his opinion, a prudent operator would conduct further development. If Lessee refuses to comply, the refusal will be considered a violation of the lease terms and said lease shall be subject to cancellation as to the acreage or horizon the further development of which was ordered: *Provided further*, That the Superintendent may impose restrictions as to time of drilling and rate of production from any well or wells when in his judgment, such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Osage Tribe. The superintendent may consider, among other things, Federal and Oklahoma laws regulating either drilling or production. If a lessee holds both an oil lease and a gas lease covering the same acreage, such lessee is subject to the provisions of this section as to both the oil lease and the gas lease.

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

[43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

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§ 226.10 Term of lease.

Leases issued hereunder shall be for a primary term as established by the Osage Tribal 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.

[43 FR 8136, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 226.11 Royalty payments.

(a) *Royalty on oil*—(1) *Royalty rate.* Lessee shall pay or cause to be paid to the Superintendent, as royalty, the sum of not less than 16 $\frac{2}{3}$ percent of the gross proceeds from sales after deducting the oil used by Lessee for development and operation purposes on the lease: *Provided,* That when the quantity of oil taken from all the producing wells on any quarter-section or fraction thereof, according to the public survey, during any calendar month is sufficient to average one hundred or more barrels per active producing well per day the royalty on such oil shall be not less than 20 percent. The Osage Tribal Council may, upon presentation of justifiable economic evidence by Lessee, agree to a revised royalty rate subject to approval by the Superintendent, applicable to additional oil produced from a lease or leases by enhanced recovery methods, which rate shall not be less than 12 $\frac{1}{2}$ percent of the gross proceeds from sale of oil produced by enhanced recovery processes, other than gas injection, after deducting the oil used by Lessee for development and operating purposes on the lease or leases.

(2) Unless the Osage Tribal Council, with approval of the Secretary, shall elect to take the royalty in kind, payment is owing at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the actual selling price, but at not less than the highest posted price by a major purchaser (as defined in § 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases.

(3) *Royalty in kind.* Should Lessor, with approval of the Secretary, elect to take the royalty in kind, Lessee shall furnish free storage for royalty oil for

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a period not to exceed 60 days from date of production after notice of such election.

(b) *Royalty on gas*—(1) *Oil lease.* All casinghead gas shall belong to the oil Lessee subject to any rights under existing gas leases. All casinghead gas removed from the lease from which it is produced shall be metered unless otherwise approved by the Superintendent and be subject to a royalty of not less than 16 $\frac{2}{3}$ percent of the market value of the gas and all products extracted therefrom, less a reasonable allowance for manufacture or processing. If an oil Lessee supplies casinghead gas produced from one lease for operation and/or development of other leases, either his/hers or others, a royalty of not less than 16 $\frac{2}{3}$ percent shall be paid on the market value of all casinghead gas so used. All casinghead gas not utilized by the oil Lessee may, with the approval of the Superintendent, be utilized or sold by the gas Lessee, subject to the prescribed royalty of not less than 16 $\frac{2}{3}$ percent of the market value.

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

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

(c) *Minimum royalty.* In no event shall the royalty paid from producing leases during any year be less than an amount equal to the annual rental specified for the lease. Any underpayment of minimum royalty shall be due and payable within 45 days following the end of the lease year. After the primary term, Lessee shall submit with his payment evidence that the lease is producing in paying quantities. The Superintendent is authorized to determine whether the lease is actually producing in paying quantities or has terminated for lack of such production. Payment for any underpayment not made within the time specified shall be subject to a late charge at the rate of not less than 1 $\frac{1}{2}$

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percent per month for each month or fraction thereof until paid.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8136, Feb. 28, 1978; 43 FR 11815, Mar. 22, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990; 59 FR 22104, Apr. 28, 1994]

§ 226.12 Government reserves right to purchase oil.

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

§ 226.13 Time of royalty payments and reports.

(a) Royalty payments due may be paid by either purchaser or Lessee. Unless otherwise provided by the Osage Tribal Council and approved by the Superintendent, all payments shall be due by the 25th day of each month and shall cover the sales of the preceding month. Failure to make such payments shall subject Lessee or purchaser, whoever is responsible for royalty payment, to a late charge at the rate of not less than 1½ percent for each month or fraction thereof until paid. The Osage Tribal Council, subject to the approval of the Superintendent, may waive the late charges.

(b) Lessee shall furnish certified monthly reports by the 25th of each following month covering all operations, whether there has been production or not, indicating therein the total amount of oil, natural gas, casinghead gas, and other products subject to royalty payment.

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

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

§ 226.14 Contracts and division orders.

(a) Lessee may enter into division orders or contracts with the purchasers of oil, gas, or derivatives therefrom which will provide for the purchaser to make payment of royalty in accordance with his lease: *Provided*, That such

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

(b) Lessee shall require the purchaser of oil and/or gas from his/her lease or leases to furnish the Superintendent, no later than the 25th day of each month, a statement reporting the gross barrels of oil and/or gross Mcf of gas sold during the preceding month. The Superintendent may authorize an extension of time, not to exceed 10 days, for furnishing this statement.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

§ 226.15 Unit leases, assignments and related instruments.

(a) *Unitization of leases*. The Osage Tribal Council and Lessee or Lessees, may, with the approval of the Superintendent, unitize or merge, two or more oil or oil and gas leases into a unit or cooperative operating plan to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof embracing the lands covered by such lease or leases. The cooperative or unit agreement shall be subject to the regulations in this part and applicable laws governing the leasing of the Osage Mineral Estate. Any agreement between the parties in interest to terminate a unit or cooperative agreement as to all or any portion of the lands included shall be submitted to the Superintendent for his approval. Upon approval the leases included thereunder shall be restored to their original terms: *Provided*, That for the purpose of preventing waste and to promote the

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greatest ultimate recovery of oil and gas from a common source of supply or portion thereof, all oil leases, oil and gas leases, and gas leases issued heretofore and hereafter under the provisions of the regulations in this part shall be subject to any unit development plan affecting the leased lands that may be required by the Superintendent with the consent of the Osage Tribal Council, and which plan shall adequately protect the rights of all parties in interest including the Osage Mineral Estate.

(b) *Assignments.* Approved leases or any interest therein may be assigned or transferred only with the approval of the Superintendent. The assignee must be qualified to hold such lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions thereof. Lessee must assign either his entire interest in a lease or legal subdivision thereof, or an undivided interest in the whole lease: *Provided*, That when an assignment covers only a portion of a lease or covers interests in separate horizons such assignment shall be subject to both the consent of the Osage Tribal Council and approval of the Superintendent. If a lease is divided by the assignment of an entire interest in any part, each part shall be considered a separate lease and the assignee shall be bound to comply with all the terms and conditions of the original lease. A fully executed copy of the assignment shall be filed with the Superintendent within 30 days after the date of execution by all parties. If requested within the 30-day period, the Superintendent may grant an extension of 15 days. A filing fee of \$10 shall accompany each assignment.

(c) *Overriding royalty.* Agreements creating overriding royalties or payments out of production shall not be considered as an interest in a lease as such term is used in paragraph (b) of this section. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in any such

agreement shall be construed as modifying any of the obligations of Lessee under his lease and the regulations in this part. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. The existence of agreements creating overriding royalties or payments out of production, whether or not actually paid, shall not be considered in justifying the shutdown or abandonment of any well. Agreements creating overriding royalties or payments out of production need not be filed with the Superintendent unless incorporated in assignments or instruments required to be filed pursuant to paragraph (b) of this section. An agreement creating overriding royalties or payment out of production shall be suspended when the working interest income per active producing well is equal to or less than the operational cost of the well, as determined by the Superintendent.

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

(e) *Combining leases.* The 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.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

OPERATIONS

§ 226.16 Commencement of operations.

(a) No operations shall be permitted upon any tract of land until a lease covering such tract shall have been approved by the Superintendent: *Provided*, That the Superintendent may grant authority to any party under such rules, consistent with the regulations in this part that he deems proper, to conduct geophysical and geological exploration work.