

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 12½ 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 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 16⅔ 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 16⅔ 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 16⅔ percent of the market value.

(2) *Gas lease.* Lessee shall pay a royalty of not less than 16⅔ percent of the

market 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 1½ 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