

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:**

**CASE NO. 12935
ORDER NO. R-11877**

APPLICATION OF THE OIL CONSERVATION DIVISION TO AMEND RULE 303.B (SURFACE COMMINGLING), RULE 309.B (ADMINISTRATIVE APPROVAL, LEASE COMMINGLING), AND RULE 309.C (ADMINISTRATIVE APPROVAL, OFF-LEASE STORAGE), AND TO MAKE CONFORMING AMENDMENTS TO RULE 303.A (SEGREGATION REQUIRED) AND TO RULE 309.A (CENTRAL TANK BATTERIES - AUTOMATIC CUSTODY TRANSFER EQUIPMENT)

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER, a rulemaking proceeding, came before the Oil Conservation Commission (hereinafter referred to as "the Commission") during a public hearing on November 22, 2002 at Santa Fe, New Mexico, on application of the Oil Conservation Division (hereinafter referred to as "the Division"), and the Commission, having carefully considered the evidence, the pleadings, comments and other materials submitted in support of the application, now, on this 13th day of December, 2002,

FINDS,

1. Notice has been given of the application and the public hearing on this matter, and the Commission has jurisdiction of the parties and the subject matter herein.

2. The Division seeks adoption of an amended Rule 303.B [19.15.5.303.B NMAC], dealing with the granting of exceptions to the pool segregation requirements to permit surface commingling of production, in order (a) to incorporate provisions now found in Rule 309.B [19.15.5.309.B NMAC] dealing with exceptions to permit surface commingling of production from different leases, (b) to simplify and streamline the procedures for approval of surface commingling of production where ownership is identical, (c) to adopt specific provisions regarding the methods of allocating commingled production where ownership is identical and where ownership is diverse, (d) to clarify the procedures for approval of surface commingling where ownership is

diverse, and (e) to establish a procedure for adding additional leases and/or pools to a surface commingling installation or facility.

3. The Division further seeks amendment of Rule 309.C [19.15.5.309.C NMAC] dealing with off-lease storage and measurement of production where there is no surface commingling (a) to incorporate the provisions of this rule into Rule 303 as paragraph 303.D [19.15.5.303.D NMAC] and (b) to clarify applicable notice procedures.

4. The Division further seeks conforming amendments to Rule 303.A [19.15.5.303.A] and 309.A [19.15.5.309.A] (a) to incorporate provisions of Rule 309.A requiring segregation of production from different leases into Rule 303.A, (b) to make clear that the prohibition of commingling of production from different leases absent a Division-approved exception applies to natural gas production as well as liquid hydrocarbons, (c) to repeal the prohibition of commingling of production from more than sixteen (16) proration units in a common tank battery and (d) to retitle and reformat the remaining provisions of Rule 309.A as a stand-alone rule dealing with Automatic Custody Transfer Equipment only. All references hereinafter to Rules by number refer to sections or subdivisions thereof codified, or proposed to be codified in 19.15.5 NMAC.

5. To assist with the rulemaking, the Division Director created a workgroup composed of the Chief of the Division's Engineering Bureau, the Division counsel, industry technical personnel, and representatives of the New Mexico Oil and Gas Association and the United States Bureau of Land Management. That group has prepared and submitted a consensus draft of a proposed rule to the Commission. The work of this group has been of invaluable assistance to the Commission.

6. The following substantive changes are proposed by the Division:

a. Present Rule 309.A prohibiting surface commingling of production from different leases specifically applies only to oil. There is no express prohibition of surface commingling of gas production from different leases, although in practice, the Division receives and processes applications for exceptions authorizing surface commingling of natural gas production as though such commingling was permissible only if such an exception were granted. Proposed Rule 303.A(2) would codify present practice by prohibiting surface commingling of gas, as well as oil, from different leases absent an exception.

b. Present Rules 303.B(3) (applicable to surface commingling of production from separate pools) and 309.C(1)(f) (applicable to off-lease storage and measurement) require that an applicant for an exception these

rules, if federal or state-owned lands are involved, provide evidence that the applicable federal or state agency has approved the application. The Division proposes to replace these provisions with proposed Rules 303.B(1)(b) (applicable to surface commingling applications, whether involving pool commingling, lease commingling or both) and 303.D(7) (applicable to off-lease storage and measurement where no commingling is involved) which would require evidence only that the appropriate federal or state agency responsible for the lands involved has been notified.

c. Present Rule 309 (applicable to surface commingling of production from different leases and to off-lease storage and measurement) does not define the term lease. Proposed Rule 303.B(2) defines "lease," basically, as "a contiguous geographical area of identical ownership." Under the proposed definition, adjacent lands in different spacing units that are owned by the same parties in the same proportions under different oil and gas leases would be parts of the same "lease," and surface commingling of production from such areas would not require any regulatory notice or approval.

d. Present Rule 303.B(1) (applicable to pool commingling) provides that "production from each common source of supply is to be accurately measured or determined . . . in accordance with the Division's 'Manual for the Installation and Operation of Commingling Facilities.'" Present Rule 309.B(1)(e)(ii) (applicable to lease commingling where ownership is diverse) provides that "production from each lease is to be accurately measured *and* determined . . . in accordance with the Division's 'Manual for the Installation and Operation of Commingling Facilities.'" Proposed Rule 303.B(3)(a) would specifically authorize allocation of production based on well tests (provided that no unit to be commingled is subject to proration and capable of producing the top allowable), by metering or the subtraction method, or by other methods approved by the Division, for either pool or lease commingling where ownership is common. Proposed Rule 303.B(4)(a) provides that where ownership is diverse production for each pool or lease shall be "accurately metered, or determined by other methods specifically approved by the division, prior to such commingling." All references to the Division's Manual are removed in the proposed rule.

e. Proposed Rule 303.B(3)(b), specifying meter proving frequencies for oil and gas meters, and providing for corrections of inaccuracies discovered in metering equipment, is new.

f. Proposed Rule 303.B(3)(c), providing for estimation of production in lieu of metering for certain low production gas wells, is new.

g. Present Rules 303.B(2) (applicable to pool commingling) and 309.B(1) (applicable to lease commingling) contain detailed provisions specifying the contents of an application for surface commingling authority. These rules require attachment of plats and a schematic diagram of the commingling facility. Proposed Rule 303.B(3)(b) eliminates these requirements for pool or lease commingling where ownership is identical, requiring only identification of the pools or leases to be commingled, a statement of the allocation method to be used, and a certification that ownership is identical. Also eliminated is the requirement that the application be filed in triplicate.

h. Where ownership is diverse, proposed Rule 303.B(4)(d)(ii) substitutes for the detailed provisions regarding the contents of the application a provision that the application will be filed on form C-107-B, a form proposed by the Division that will incorporate the substantive provisions of present rules regarding the contents of the application. This provision also eliminates the requirement that the application be filed in triplicate.

i. Present Rule 309.B(1)(c) (applicable to lease commingling) requires consent of, or notice to, "all parties owning an interest in the leases and the purchaser of commingled production.." Proposed Rule 303.B(3) dispenses with the notice requirement altogether where ownership of the leases to be commingled is identical. In the case of diverse ownership, proposed Rule 303.B(4)(d) specifically requires notice to all working interest, royalty and overriding royalty owners of all production to be commingled, resolving the ambiguity in the above quoted language of the present rule in accordance with existing regulatory practice. Proposed Rule 303B(4)(d) dispenses with the requirement for consent of, or notice to, the purchaser of production.

j. Proposed Rule 303.B(4)(d)(v) adds a provision authorizing notice by publication to unknown interest owners.

k. Proposed Rule 303.B(4)(d)(vi) provides that if a protest is filed to an application for surface commingling of leases with diverse ownership, and the protesting party either does not appear at the hearing, or appears and presents no evidence, the application may be granted without the necessity of further evidence. This provision is new.

l. Proposed Rule 303.B(4)(d)(vii) authorizes the Division, upon specific application, to authorize prospectively the addition of additional pools or leases to a surface commingling facility to the extent requested in such application and defined in the Division's order. When such additions are authorized, they may be effected by subsequent order with notice only to the owners of interests in production to be added, without further notice to the owners of the production already subject to the order. This provision is new.

m. Present Rule 309.C (applicable to off-lease storage and measurement) provides for notice to "all parties owning an interest in the leases." Proposed Rule 303.D(5) would limit this notice requirement to "all parties owning working interests in any of the production to be transported off lease prior to measurement."

n. Present Rule 309.A provides that a maximum of sixteen (16) proration units may produce into a common tank battery. The Division proposes to eliminate this provision.

7. At the public hearing of this matter, the Division presented the testimony of Richard Ezeanyim, P.E. Mr. Ezeanyim is the Bureau Chief of the Engineering Bureau of the Division.

8. Mr. Ezeanyim testified that the Division has applied the surface commingling rules as though the prohibitions on both lease and pool commingling applied to both gas and oil production, and that the same reasons supported regulation of surface commingling of both oil and gas. Mr. Ezeanyim stated that one of the main reasons for changing the present rule was to make clear that the requirement of specific authorization for surface commingling applied to gas production as well as oil production.

9. Mr. Ezeanyim testified that a second reason for revision of the present rules was to incorporate provisions for surface commingling of production from separate

pools and from separate leases into the same rule to make the application process simpler and less confusing for operators.

10. Mr. Ezeanyim further testified that a third reason for revision of the present rules was to encourage surface commingling in appropriate cases in order to prevent waste by reducing costs of production through consolidation of facilities, and to protect the environment by reducing the amount of surface utilized by production facilities.

11. Mr. Ezeanyim further testified that the proposed changes simplifying the contents of a surface commingling application, utilizing form C-103 (Sundry Notices and Reports on Wells) and providing pre-approved methods of allocating production where ownership is identical, could reduce the time required for the division to process these applications to 48 hours.

12. Rick Foppiano of Oxy-Permian, an oil and gas operator in the Permian Basin, also testified in favor of the application. Mr. Foppiano is the chair of the Regulatory Practices Committee of the New Mexico Oil and Gas Association, and spoke also on behalf of that Committee. During his presentation, Mr. Foppiano discussed and explained the definition of "lease" in proposed Rule 303.B(3)(a). He explained that a lease is an area where ownership of production is identical, and he specifically testified that a pooled unit or a participating area within a federal exploratory unit would constitute a single lease.

13. Mr. Foppiano explained the three methods of allocating commingled production between pools and leases that would be pre-approved under the proposed rule and testified that each of these three methods - well test, metering and subtraction - is an acceptable, industry-standard method and generally approved by the Division under current regulatory practice in cases involving identical ownership.

14. Mr. Foppiano testified that each of the pre-approved methods would adequately serve the statistical requirements that might exist for allocation of production, but that more rigorous allocation methods are needed for protection of correlative rights where ownership is diverse, or for wells capable of producing the top unit allowable, where allocation is necessary to apply proration rules.

15. Mr. Foppiano further explained the simplification of the application for surface commingling where ownership was identical. He testified that the detailed, technical information required by the present rule was not necessary where ownership is identical because, in such cases, the self interest of the operators would ensure that

surface commingling would not be proposed unless it served the economic interest of efficient production at the least practicable cost.

16. Mr. Foppiano testified that the proposed rule required allocation by metering in the case of surface commingling involving diverse ownership because metering is the most accurate method, and, where ownership is diverse, is necessary in most circumstances to protect correlative rights.

17. Mr. Foppiano explained the meter proving frequency and calibration requirements of the proposed rules and testified that these provisions are consistent with requirements of other jurisdictions and with industry practices and accuracy standards for sales meters.

18. Mr. Foppiano testified that the work group recommended elimination of all references in the rule to the Division's Manual for Installation and Operation of Commingling Facilities because the manual was written approximately thirty years ago, has not been updated to keep up with industry practice, and is not widely known in the industry.

19. Mr. Foppiano testified that the provision authorizing estimation of production in lieu of metering for low production gas wells was necessary to conform to an existing provision of Division Rule 403 authorizing such estimation, and would serve to prevent waste because, absent such provision, low-production wells might be prematurely abandoned due to the cost of metering.

20. Mr. Foppiano further explained the procedures for applying for and securing approval for surface commingling where ownership is diverse.

21. Mr. Foppiano testified that the proposed provision that an application could be approved without further evidence even if protested, unless the protesting party appeared at the hearing and presented evidence, was necessary to prevent protesting parties from impeding the approval process where a protest is not prosecuted in such a way as to communicate anything other than an attempt to slow down the process.

22. Mr. Foppiano further explained the provision of the proposed rule that would authorize the Division, in a surface commingling order, to authorize, prospectively, the addition of production from additional pools or leases to an authorized surface commingling facility without the necessity of further notice to the owners of production commingled under the original order. He testified that the proposed provision would save industry a substantial amount of money that would otherwise be spent on notification, while protecting the rights of owners by giving them an opportunity to object

to the conditions under which production could be added at the time of the application for the original order.

23. Mr. Foppiano testified that the work group recommended repeal of the provision of present Rule 309.A limiting common tank batteries to a maximum of sixteen (16) proration units because, in the present state of the art and the industry, there is no real reason why a common tank battery should be limited to this extent.

24. The proposals of the Division were published in advance of the hearing by posting to the Division's website and by dissemination through industry channels by the industry representatives on the work group. No one appeared at the hearing to oppose or offer any further input regarding the Division's proposals. The Commission has received a brief written statement from Marathon Oil Company supporting the Division's proposal. No other comments regarding these proposals has been received.

25. Although present Division rules do not expressly require Division approval for commingling of natural gas production from different leases if the production is from the same pool, the Division has administered the rules regarding lease commingling as though they applied to natural gas production, and this construction has been accepted by industry. The same reasons exist for regulating lease commingling of natural gas as of oil, *i.e.* the protection of correlative rights. Accordingly, the Division's proposal to amend the existing rules to make clear that lease commingling of natural gas production, as well as liquid hydrocarbon production, is regulated, should be adopted.

26. Where ownership of production streams is identical, correlative rights are not jeopardized by commingling. Surface commingling reduces the need for redundant surface facilities, thereby reducing the cost of production, and protecting the environment by minimizing surface use. For these reasons, surface commingling should be facilitated in those cases where ownership of the production streams to be commingled is identical.

27. Because operators will not have a financial incentive to surface commingle identically owned production unless economies can be achieved thereby, it is reasonable to assume that operators will not apply for commingling authority in such cases where waste would result. Accordingly, minimal regulatory scrutiny of surface commingling applications involving identical ownership is needed.

28. For the reasons indicated in Finding Paragraphs 26 and 27, the Division's proposal to define a lease as a geographical area of contiguous ownership, thereby allowing unregulated commingling of production from adjacent leases where ownership is identical, and the Division's proposal to establish a streamlined procedure involving

minimal informational requirements for surface commingling of identically owned production stream should be adopted.

29. Although the well test method and subtraction method of allocating production between pools or leases are less accurate than individual metering of each production stream, and accordingly not generally adequate for protection of correlative rights where diverse ownership exists, such methods are accepted in the industry and are adequate where allocation serves only statistical purposes, as is the case where ownership of the production streams is identical and the affected units are not subject to proration or not capable of producing the top allowable. Furthermore, the Division now routinely approves surface commingling using the well test method or the subtraction method where ownership is identical. Accordingly the Division's proposal to pre-approve these methods by rule where ownership is identical should be adopted. Where correlative rights are implicated, as will always be the case where there is diverse ownership, or where units capable of producing the top allowable from a prorated pool are involved, a more accurate method should be used. Accordingly, the Division's proposal to require individual stream metering where ownership is diverse absent special circumstances approved by specific order, and the proposal to disallow the well test method of allocation where prorated units capable of producing the top allowable are involved, should also be adopted.

30. To further protect correlative rights, it is appropriate and necessary to ensure the integrity of the equipment used in metering. The Division's proposals regarding meter proving frequencies and calibration will facilitate that goal and should be adopted.

31. In the case of very low production gas wells, however, a requirement for individual metering might result in waste because the cost of metering could exceed the economic value of production from these wells, resulting in premature abandonment. Furthermore, metering of production volumes of less than 15 mcf of gas per day may not be accurate. Accordingly, the Division's proposal to allow estimation of production, in lieu of metering, in the case of wells producing less than 15 mcf per day should be adopted.

32. The Division's proposal to remove the detailed requirements for surface commingling applications from the rules and incorporate them into an official form will serve administrative convenience and should be adopted.

33. The requirement of the present Division rules for notice of surface commingling applications involving diverse ownership to "all parties owning an interest in the leases," is not sufficiently definite. Present administrative practice is to require

notice to all interest owners regardless of the nature of their interest. Since any interest could potentially be diluted by inappropriate commingling, this practice is appropriate, and the Division's proposal to clarify the rule by specifically requiring notice to all working, royalty and overriding royalty owners should be adopted.

34. Present Division rules require consent of the purchaser of production to surface commingling of production from different leases. No reason appears why consent of the purchaser should be required. Accordingly, the Division's proposal to repeal this requirement should be adopted.

35. The benefits of surface commingling in the prevention of waste and protection of the environment should not be prevented by the inability of operators, after reasonable diligence, to locate particular owners. Accordingly, the Division's proposal for notice by publication in such cases should be adopted.

36. The Division has proposed that if an application for surface commingling is protested, and the protestant either fails to appear at the scheduled hearing, or fails to offer any evidence in support of the protest, the applicant should not be required to offer evidence in addition to the application itself. This provision would save time and money for both the applicant and the Division where a protest is filed and not seriously prosecuted. When the protestant has been duly notified of a hearing and fails to appear to support the protest, this procedure is appropriate and should be adopted.

37. Where, however, a protestant appears at the scheduled hearing, dispensing with the requirement that the applicant offer admissible evidence subject to cross-examination could potentially infringe upon statutory and constitutional rights of the protestant. The part of the Division's proposal that would apply if the protestant appears at the hearing and does not offer evidence, therefore, should not be adopted.

38. When an applicant seeks to add production to an existing facility, the cost of notifying all owners of production already commingled may be burdensome and create a disincentive to otherwise appropriate surface commingling. In the absence of an existing authorization by Division order to add additional production to the facility, however, such notice to owners of the already included production is necessary to protect correlative rights. However, the correlative rights of the owners of production may be protected prospectively by authorizing commingling of additional production subject to parameters specifically delineated in the original order. Provided that the application for an order alerts interest owners that a provision will be sought allowing the addition of production without further notice to them, this procedure would not infringe upon rights of such owners. Accordingly the Division's proposal for prospective authorization of

addition of production to surface commingling facilities by specific provision in particular orders should be adopted.

39. Where an operator seeks authority for off-lease transportation or storage of production prior to measurement, but does not seek authority to commingle the production with production from any other lease, correlative rights are ordinarily not jeopardized. Accordingly, the Division's proposal to limit the notice required of such applications to working interest owners is appropriate, and should be adopted.

40. The limitation that common tank batteries may not receive production from no more than sixteen (16) proration units is not in accordance with the needs of efficiency in light of current industry standards, and serves no articulable regulatory purpose. Accordingly the Division's proposal to repeal this limitation should be adopted.

41. The Division has proposed to eliminate the provisions of existing Division rules requiring that an applicant for surface commingling of state-owned or federally owned lands furnish evidence that the State Land Office or Bureau of Land Management, as applicable *has consented* to the requested commingling be repealed, and that a provision be substituted merely requiring notice of the application to such agencies. It is urged that this provision will save time by allowing these agencies and the Division to conduct their review simultaneously. The Commission agrees that approval by other agencies should not be required as a prerequisite to Division consideration of a surface commingling application. However, the Commission believes that the Rule should clearly state that, where approval by another agency is required, Division approval of the application is effective only upon final approval by such agency.

42. Accordingly, the Division's proposal to substitute a provision for notice to these agencies for the existing consent requirement should be adopted, but the proposed rule should incorporate a specific provision to the effect that any Division approval is subject to, and effective only upon, final approval by other affected agencies.

43. A draft of amendments to Rules 303 and 309 incorporating the Division's proposals with the exception indicated in Finding Paragraph 37 above, and with the additional qualification indicated in Finding Paragraph 42, is attached hereto as Exhibit A and incorporated herein for all purposes.

44. The amended rules set forth in Exhibit A should be adopted, published in the New Mexico Register, and adopted as a part of the Rules and Regulations of the Oil Conservation Division, in lieu of the existing rules that are amended thereby.

IT IS THEREFORE ORDERED, AS FOLLOWS:

1. Rules of the Oil Conservation Commission, presently codified at 19.15.5.303 NMAC, and 19.15.5.309, shall be and hereby are amended, effective as of the date of publication of the amendment in the New Mexico Register, as follows:

- a. 19.15.5.303.A and 19.15.5.303.B NMAC are amended to read as shown on Exhibit A;
- b. 19.15.5.303 NMAC is further amended by the addition thereto of 19.15.5.303.D set forth on Exhibit A;
- c. 19.15.5.309.A NMAC is amended to read as set forth on Exhibit A; and
- d. 19.15.5.309.B and 19.15.5.309.C NMAC are repealed.

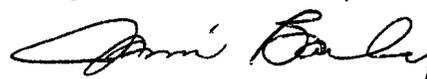
Staff is instructed to forthwith seek publication of these amendments in the Register.

2. Jurisdiction of this matter is retained for entry of such further orders as may be necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


LORI WROTENBERY, CHAIR


JAMI BAILEY, MEMBER


ROBERT LEE, MEMBER

SEAL

EXHIBIT A to Order No. R-11877

Case No. 12935

NEW MEXICO OIL CONSERVATION COMMISSION
SURFACE COMMINGLING
AMENDMENTS TO RULES 303 [19.15.5.303 NMAC] AND 309 [19.15.5.309 NMAC]

19.15.5.303 SEGREGATION OF PRODUCTION FROM DIFFERENT POOLS OR LEASES

A. In General.

- (1) Pool Segregation Required. Each pool shall be produced as a single common source of supply, and wells therein shall be completed, cased, maintained, and operated so as to prevent communication within the wellbore with any other pool. Oil, gas, or oil and gas produced from each pool shall at all times be segregated, and the combination or commingling of production, before marketing, with production from any other pool without division approval is prohibited.
- (2) Lease Segregation Required. Oil, gas, or oil and gas shall not be transported from a lease until it has been accurately measured or determined by other methods acceptable to the division. The production from each lease shall at all times be segregated, and the combination or commingling of production, before marketing, with production from any other lease without division approval is prohibited.
- (3) Exceptions. Exceptions to paragraphs (1) and (2) of this subsection may be permitted for surface commingling, downhole commingling and off-lease storage and/or measurement pursuant to subsections B, C and D, respectively, of this section. Exceptions granted by previous orders of the division remain in effect in accordance with their terms and conditions.

B. Surface Commingling – Oil, Gas, or Oil and Gas.

- (1) Introduction. To prevent waste, to promote conservation and to protect correlative rights, the division shall have the authority to grant exceptions to permit the surface commingling of oil, gas, or oil and gas in common facilities from two or more pools, two or more leases or combinations of pools and leases provided that:

- (a) the method used to allocate the production to the various leases or pools to be commingled is approved by the division;
 - (b) if federal, indian or state lands are involved, the United States bureau of land management or the commissioner of public lands for the State of New Mexico (as applicable) has been notified of the proposed commingling; and
 - (c) all other applicable requirements set out in this subsection are met.
- (2) Definitions - For purposes of this section only, the following definitions shall apply:
- (a) Lease. "Lease" means a contiguous geographical area of identical ownership overlying a pool or portion of a pool. An area pooled, unitized or communitized, either by agreement or by division order, or a participating area shall constitute a lease. If there is any diversity of ownership between different pools, or between different zones or strata, then each such pool, zone or stratum having such diverse ownership shall be considered a separate lease.
 - (b) Diverse Ownership. "Diverse Ownership" exists if leases or pools have any different working, royalty or overriding royalty interest owners or any different ownership percentages of the same working, royalty or overriding royalty interest owners.
 - (c) Identical Ownership. "Identical Ownership" exists if leases or pools have all the same working, royalty and overriding royalty owners in exactly the same percentages.
- (3) Specific Requirements and Provisions for Commingling of Leases, Pools or Leases and Pools with Identical Ownership.
- (a) Measurement and Allocation Methods.
 - (i) Well Test Method.

If all wells or units to be commingled are marginal and are physically incapable of producing the top unit allowable for their

respective pools, or if all affected pools are unprorated, commingling shall be permitted without separately measuring the production from each pool or lease. Instead, the production from each well and from each pool or lease may be determined from well tests conducted periodically, but no less than annually. The well test method shall not apply to wells or units that can produce an amount of oil equal to the top unit allowable for the pool but are restricted because of high gas-oil ratios.

The operator of any such marginal commingling installation shall notify the division at any time any well or unit so commingled under this subsection becomes capable of producing the top unit allowable for its pool, at which time the division shall require separate measurement.

- (ii) Metering Method. Production from each pool or lease may be determined by separately metering before commingling.
- (iii) Subtraction Method. If production from all except one of the pools or leases to be commingled is separately measured, the production from the remaining pool or lease may be determined by the subtraction method as follows:

For oil, the net production from the unmetered pool or lease shall be the difference between the net pipeline runs with the beginning and ending stock adjustments and the sum of the net production of all metered pools or leases.

For gas, the net production from the unmetered pool or lease shall be the difference between the volume recorded at the sales meter and the sum of the volumes recorded at the individual pool or lease meters.

- (iv) Top Allowable Producers. If any well or unit in a prorated pool to be commingled can physically be produced at top unit allowable rates (even if restricted because of high gas-oil ratios), commingling may be permitted only if the production from such unit is metered prior to

commingling, or determined by the subtraction method.

- (v) Alternative Methods. Production from each pool or lease to be commingled may also be determined by any other method specifically approved by the division prior to commingling. The division shall determine what evidence is necessary to support any request to use an alternative method.

- (b) Approval Process. Prior to commingling, the applicant shall notify the division by filing form C-103 (sundry notices and reports on wells) in the Santa Fe office with the following information set forth therein or attached thereto:
 - (i) Identification of each of the leases, pools or leases and pools to be commingled;
 - (ii) The method of allocation to be used. If the well test method is proposed for production from a prorated pool, the notification to the division shall be accompanied by a tabulation of production showing that the average daily production of any affected proration unit over a 60-day period has been below the top unit allowable for the subject pool (or for any newly drilled well without a 60-day production history, a tabulation of the available production) or other evidence acceptable to the division to establish that the well or wells on such unit are not capable of producing the top unit allowable. If the proposed method of allocation is other than an approved method provided in this section, the operator shall submit evidence of the reliability of such method;
 - (iii) A certification by a licensed attorney or qualified petroleum landman that the ownership in all pools and leases to be commingled is identical as defined in this section; and
 - (iv) Evidence of notice to the state land office and/or the United States bureau of land management, if required.

Commingling may be authorized without any notice or hearing and may be commenced upon approval of form C-103 by the division, subject to compliance with any conditions of such approval noted by the division; provided however that commingling involving any state, federal or

tribal leases shall not be commenced unless or until approved by the state land office or the United States bureau of land management, as applicable.

(4) Specific Requirements and Provisions for Commingling of Leases, Pools or Leases and Pools with Diverse Ownership.

(a) Measurement and Allocation Methods. Where there is diversity of ownership between two or more leases, two or more pools, or between different pools and leases, the surface commingling of production therefrom shall be permitted only if production from each of such pools or leases is accurately metered, or determined by other methods specifically approved by the division, prior to such commingling.

(b) Meter Proving and Calibration Frequencies.

(i) Oil. Each meter used in oil production accounting shall be tested for accuracy as follows:

monthly, if more than 100,000 barrels of oil per month are measured through the meter;

quarterly, if between 10,000 and 100,000 barrels of oil per month are measured through the meter; and

semi-annually, if less than 10,000 barrels of oil per month are measured through the meter.

(ii) Gas. For each gas sales and allocation meter, the accuracy of the metering equipment at the point of delivery or allocation shall be tested following the initial installation and following repair and retested:

quarterly, if 100 thousand cubic feet of gas per day ("mcfcpd") or more are measured through the meter; and

semi-annually, if less than 100 mcfcpd are measured through the meter.

(iii) Correction and Adjustment. If a meter proving and calibration test reveals inaccuracy in the metering equipment of more than two percent (2%), the volume measured shall be corrected and the meter adjusted to zero error. The operator shall submit a

corrected report adjusting the volume of oil or gas measured and showing all calculations made in correcting the volumes. The volumes shall be corrected back to the time the inaccuracy occurred, if known. If the time is unknown, the volumes shall be corrected for the last half of the period elapsed since the date of the last calibration. If a test reveals an inaccuracy of less than 2%, the meter shall be adjusted, but correction of prior production shall not be required.

- (c) Low Production Gas Wells. For gas wells producing less than 15 mcfcpd, estimation of production is an acceptable alternative to individual well measurement provided that commingling of production from different pools or leases does not take place unless otherwise authorized pursuant to this section.
- (d) Approval Process.
 - (i) In General. Where there is diversity of ownership, the division may grant an exception to the requirements of subsection 303.A to permit surface commingling of production from different leases, pools or leases and pools only after notice and an opportunity for hearing as provided in this subparagraph.
 - (ii) Application. An application for administrative approval shall be submitted to the division's Santa Fe office on form C-107-B and shall contain a list of all parties (hereinafter called "interest owners") owning any interest in any of the production to be commingled (including owners of royalty and overriding royalty interests whether or not they have a right or option to take their interests in kind) and a method of allocating production to ensure the protection of correlative rights.
 - (iii) Notice. Notice shall be given to all interest owners in accordance with 19.15.N.1207.A NMAC. The applicant shall submit a statement attesting that applicant, on or before the date the application was submitted to the division, sent notification to each of the interest owners by submitting a copy of the application and all attachments thereto, by certified mail, return receipt requested, and advising them that any

objection must be filed in writing with the Santa Fe office of the division within 20 days from the date the division received the application. The division may approve the application administratively, without hearing, upon receipt of written waivers from all interest owners, or if no such owner has filed an objection within the 20-day period. If any objection is received, the application shall be set for hearing. Notice of the hearing shall be given to the applicant, to any party who has filed an objection, and to such other parties as the division shall direct.

- (iv) Hearing Ordered by the Division. The division may set for hearing any application for administrative approval of surface commingling, and, in such case, notice of such hearing shall be given in such manner as the division shall direct.
- (v) Notice by Publication. When an applicant has been unable to locate all interest owners after exercising reasonable diligence, notice shall be provided by publication, and proof of publication shall be submitted with the application. Such proof shall consist of a copy of the legal advertisement that was published in a newspaper of general circulation in the county* or counties in which the commingled production is located. The contents of such advertisement shall include (a) the name, address, telephone number, and contact party for the applicant, (b) the location by section, township and range of the leases from which production will be commingled and the location of the commingling facility; (c) the source of all commingled production by pool name, and (d) a notation that interested parties must file objections or requests for hearing in writing with the oil conservation division's Santa Fe office, within 20 days after publication, or the Division may approve the application.
- (vi) Effect of Protest. All protests and requests for hearing received by the division shall be included in the case file; provided however, the protest will not be considered by the division

as evidence. If the protesting party does not appear at the hearing, the application may be granted without the division receiving additional evidence in support thereof.

(vii) Additions. A surface commingling order may authorize, prospectively, the inclusion therein of additional pools and/or leases within defined parameters set forth in the order, provided that (a) the notice to the interest owners has included a statement that authorization for subsequent additions is being sought and of the parameters for such additions proposed by the applicant, and (b) the division finds that subsequent additions within defined parameters will not, in reasonable probability, reduce the value of the commingled production or otherwise adversely affect the interest owners. A subsequent application to amend an order to add to the commingled production other leases, pools or leases and pools that are within the defined parameters shall require notice only to the owners of interests in the production to be added, unless the division otherwise directs.

(viii) State, Federal or Tribal Lands. Notwithstanding the issuance of an exception under this subsection, no commingling involving any state, federal or tribal leases shall be commenced unless or until approved by the state land office or the United States bureau of land management, as applicable.

C. Downhole Commingling. [No change]

D. Off-Lease Transportation or Storage Prior to Measurement. The division may grant exceptions to the requirements of subsection A of this section, administratively, without hearing, to permit production from one lease to be transported prior to measurement to another lease for storage thereon when:

- (1) an application for off-lease transportation or storage prior to measurement has been filed on division form C-107-B with the Santa Fe office of the division with one copy to the appropriate district office of the division;
- (2) all such production is from the same common source of supply;

- (3) commingling of production from different leases will not result;
- (4) there will be no intercommunication of the handling, separating, treating or storage facilities designated to each lease;
- (5) all parties owning working interests in any of the production to be transported off lease prior to measurement have been notified of the application in accordance with the provisions of 19.15.N.1207.A NMAC and have consented in writing ;
- (6) in lieu of paragraph (5) of this subsection D, the applicant furnishes proof that said parties were notified by registered or certified mail of its intent to transport the production from one lease to another lease for storage prior to measurement, and after a period of twenty (20) days following receipt of the application, no party has filed objection to the application; and
- (7) if state, federal or indian lands are involved, the commissioner of public lands for the State of New Mexico or the United States bureau of land management (as applicable) has been notified.

The division may set for hearing any application for approval of off-lease transportation or storage prior to measurement, in which event notice of hearing shall be given, pursuant to 19.15.N.1207.A NMAC, to all owners of working interests in any of the production to be transported off lease prior to measurement, and to such other owners as the division may direct.

19.15.5.309 AUTOMATIC CUSTODY TRANSFER EQUIPMENT

Oil shall be received and measured in a facility of an approved design. Such facilities shall permit the testing of each well at reasonable intervals and may be comprised of manually gauged, closed stock tanks for which proper strapping tables have been prepared, or of automatic custody transfer (ACT) equipment. The use of such automatic custody transfer equipment shall be permitted only after compliance with the following: The operator shall file with the Division Form C-106, Notice of Intention to Utilize Automatic Custody Transfer Equipment, and shall receive approval thereof prior to transferring oil through the ACT system. The carrier shall not accept delivery of oil through the ACT system until Form C-106 has been approved.

(2) and (3) unchanged.

309.B Repealed
309.C Repealed