

## **Proposed Surface Commingling Rule**

### **Substantive Changes**

- 303.B(1)(b) **Consent of B.L.M. or State Land Office.** Present Rule 303.B(2) requires that an applicant for surface commingling authority present evidence that BLM or the State Land Office "has consented." The new rule would required evidence that those agencies have been notified.

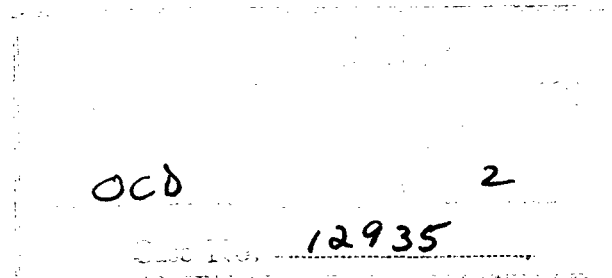
Operators pointed out that the necessity to obtain BLM or Land Office consent *prior to filing* with OCD causes unnecessary delay.

- 303.B(2)(a) **Definition - "Lease."** For purposes of this rule only, "lease" is defined, essentially, as a contiguous area where ownership of production is identical. Although the present rules do not define "lease" this definition will allow commingling without any application or notice of production from properties currently identified by separate lease numbers for OCD purposes, so long as they are contiguous ownership of all interests is identical, and all production is from the same pool.

In such cases, there would seem to be no need for regulatory supervision. Pool commingling would not result from the definition unless otherwise authorized, and correlative rights are not implicated where ownership is identical.

- 303.B(3)(a) **Methods of Allocation - Identical Ownership.** The new rule expressly authorizes use of (i) well test method, (ii) allocation by metering, and (iii) subtraction method, as alternatives to direct measurement for allocating production among commingled leases or pools where ownership is identical, and contains. There is also a catch-all provision in clause (iv) authorizing the division to approve other alternative methods. Present Rule 309.B provides that "adequate facilities will be provided for determining production from each well at reasonable intervals." The new rule also makes clear that well that well tests are not allowed for allocation among top allowable wells.

Where ownership is identical, and only marginal units or unprorated pools are involved, allocation of production between pools or wells is not necessary for protection of correlative rights. Instead allocation serves only a statistical purpose. The well test method and the subtraction method (and possibly other methods) are considered to be sufficiently accurate for statistical purposes.



303.B(3)(b) Approval Process - Identical Ownership. Rule rewritten. (1) The procedure for applying for surface commingling where ownership is identical is substantially simplified. (a) Technical information presently required by Rule 303.B(2) for pool commingling will no longer be required so long as ownership is identical. (b) The new rule requires only a sundry notice setting forth the leases and/or pools to be commingled, and stating the method of allocation, including, if it is other than one of the specifically approved methods, evidence of the method's reliability. (2) Since this streamlined method of application is available only if ownership is identical, a new requirement is added for a certification by an attorney or landman that ownership is identical.

(1) Where ownership is identical, wasteful commingling is unlikely because there will not be a financial incentive to commingle unless value is maximized thereby. Since correlative rights are not implicated where ownership is identical, detailed regulatory supervision is unnecessary.

(2) Detailed regulatory review is necessary for the protection of correlative rights where ownership is not identical. The Division accordingly needs some assurance that ownership is actually identical when the streamlined procedure is used. Hence, a certification by an attorney or landman is required.

303.B(4)(a) Methods of Allocation - Diverse Ownership. The proposed rule says that production shall be "accurately metered, or determined by other methods specifically approved by the division." The existing rule [309.B.(5)(b)] says production shall be "accurately measured and determined in accordance with the provisions of [applicable Division Manual]." The new provision is designed to give both the Division and the operators greater flexibility while maintaining a requirement for metering as the norm for the diverse ownership situation.

Although separate metering remains the norm where ownership is diverse, this provision gives operators and the division the flexibility to allow other methods of allocating production after notice and opportunity for a hearing. All references to the manual, which is out-dated, have been eliminated.

303.B(4)(b) Meter Proving Frequencies. This provision is new.

These provisions are designed, in accordance with B.L.M. requirements and industry standards, to assure the integrity of allocation by metering.

303.B(4)(c) Low Production Gas Wells. This provision is also new.

This provision is inserted to conform with Rule 403.

303.B(4)(d) Approval Process - Diverse Ownership. No substantive change is intended. The detailed requirements of present Rule 303.B(2) and 309.B concerning the contents of the application are omitted from the new rule, but are set forth in the proposed form C-107-B. In addition, the following matters are clarified. (1) Proposed 303.B(4)(d)(i) and (ii) make clear that notice must be sent to all royalty and overriding royalty owners, as well as working interest owners. Although no substantive change is intended, the phrase "parties owning an interest in the leases" in the present rule [309.C(4)] is somewhat ambiguous. (2) An express provision [303.B(4)(d)(v)] for notice by publication to owners who cannot be located has been added. (3) 303.B(4)(d)(vi) specifically addresses the effect of a protest by a party who does not come to the hearing and offer evidence, a matter not addressed in the present rule. (4) 303.B(4)(d)(vii) specifies who must receive notice when additional wells are to be added to an existing, authorized, commingled system, a matter again not specifically addressed in the present rule.

(1) and (2) are clarifications of what is believed to be the effect of the present rule.

(3) By not requiring presentation of proof in support of an otherwise uncontested application if a protesting party does not appear at the hearing prepared to offer any evidence, the proposed rule will ensure a more efficient hearing process.

(4) The provision allowing addition of production to an existing, commingled system with notice only to the parties being added will save operators substantial time and money by obviating the need to repeatedly sent notices to owners whose production is already being commingled. The provision that the parameters for adding production are to be set forth in the original order assure that the owners included in the system initially have notice and an opportunity for hearing before they are subjected to the possibility of dilution of their production through additions to the system.

303.D Off-Lease Storage and/or Measurement. The notice requirement for applications for off-lease storage and measurement where there is to be no commingling is changed to require notice to working interest owners only. The present rule requires notice to "owners of the leases," an ambiguous phrase, and also requires consent of the purchaser of production. These requirements are eliminated.

Applications for off-lease storage and measurement without commingling are unusual. In the rare situation where such an application might occur, it is believed that royalty and overriding royalty owners are not sufficiently affected to justify the cost of notice.

309

The provision of the present rule that a common tank battery may serve no more than 16 spacing units is repealed. All other changes to 309 [formerly 309.A] are textual conforming changed.

Technology of the industry is developing in the direction of larger consolidated facilities. No rational justification is perceived for a sixteen spacing unit limitation by rule.