

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-2. General Rules.

R649-2-1. Scope of Rules.

1. The following general rules adopted by the board pursuant to Title 40, Chapter 6, Board of Division of Oil, Gas and Mining shall apply to any land in the state in order to conserve the natural resources of oil and gas in the state, to protect human health and the environment, to prevent waste, to protect the correlative rights of each owner and to realize the greatest ultimate recovery of oil and gas.

2. Special rules and orders have been and will be issued by the board when required and shall prevail as against the general rules and orders of the board if in conflict.

3. Exceptions to the general rules may be granted by the director or authorized agent for good cause shown and shall prevail as against the general rules.

4. No exceptions granted by the board, director, or authorized agent to the rules applicable to the Underground Injection Control Program will be effective without the consent of the federal Environmental Protection Agency.

R649-2-2. Application of Rules to Lands Owned or Controlled By the United States.

These general rules shall apply to any land in the state including lands of the United States and lands subject to the jurisdiction of the United States to the extent lawfully subject to the state's power.

R649-2-3. Application of Rules to Unit Agreements.

1. The board may suspend the application of the general rules or orders or any part thereof, with regard to any unit agreement approved by an authorized officer of the appropriate federal agency, so long as the conservation of oil or gas and the prevention of waste is accomplished.

2. Such suspension shall not relieve any operator from making such reports as are otherwise required by the general rules or orders, or as may reasonably be requested by the board or the division in order to keep the board and the division fully informed as to operations under such unit agreements.

R649-2-4. Designation of Operator.

1. Subject to the provision of Subsections R649-2-4(3) and (4), the designated operator of a drilling unit for oil and gas operations shall be the owner which, in the applicable drilling unit:

1.1. owns more than an undivided 50% of the working interest;

1.2. owns 50% or less of the working interest, and has the written authorization and designation by additional owners to operate on their behalf which, combined with the designated operator's interest, totals more than an undivided 50% of the working interest; or

1.3. is the designated owner selected by the consenting parties to a JOA if: (a) a JOA has been entered by owners owning more than an undivided 50% of the working interest; (b) the operator designated under the JOA has elected to go non-consent to the proposed operation, and (c) the terms of the JOA allow the designation.

2. Subject to the provision of Subsections R649-2-4(3) and (4) below, in the absence of a board order establishing a drilling unit for oil and gas operations, the designated operator of a well shall be the owner that:

2.1. owns more than the aggregate of the undivided 50% of: (a) the working interest in the lease covering the lands which the well will physically penetrate and in the targeted formations from which the well will produce; and (b) the working interest derived from oil and gas owned in fee in the lands which the well will physically penetrate and in the targeted formations from which the well will produce; or

2.2. owns the aggregate of the undivided 50% or less of: (a) the working interest in the lease covering the lands which the well will physically penetrate and in the targeted formations from which the well will produce; and (b) the working interest derived from oil and gas owned in fee in the lands which the well will physically penetrate and in the targeted formations from which the well will produce; and (c) has the written authorization and designation by additional owners to operate on their behalf which, combined with the designated operator's interest totals more than the aggregate of an undivided 50%:

2.2.1. the working interest attributable to the lease covering the lands which the well will physically penetrate and in the targeted formations from which it will produce; and

2.2.2. the working interest derived from oil and gas owned in fee in the lands which the well will physically penetrate and in the targeted formations from which it will produce; or

2.3. the designated owner selected by consenting parties to a JOA if: (a) a JOA has been entered by owners owning more than the aggregate of an undivided 50% of: (i) the working interest in the lease covering the lands which the well will physically penetrate and in the targeted formations from which the well will produce; and (ii) the working interest derived from oil and gas owned in fee in the lands which the well will physically penetrate and in the targeted formations from which the well will produce; (b) the operator designated under the JOA has elected to go non-consent to an operation; and (c) the terms of the JOA allow the designation.

3. If the criteria set forth in Subsection R649-2-4(1) or (2) cannot be met, or if any owner desires to challenge whether any of the required criteria have been satisfied, or if any owner desires to challenge the designation of the operator on any other good faith basis, including those specified in Subsection R649-3-4(4), the owner may file a request for agency action seeking board review and designation of a different operator provided that no challenge may be asserted after the protest period specified in Subsection R649-3-4(4) has elapsed and, if the division has determined that good cause exists for shortening the ten day period under Subsection R649-3-4(4), preparation for drilling has commenced.

3.1. The board may elect to consider the provisions of the applicable JOA regarding change of operatorship in determining which owner shall be the operator rather than designating an operator under this rule.

3.2. The board may elect to take the designation of an operator under advisement or continue the request until additional information is provided to the board.

4. If a request for agency action is filed as provided in Subsection R649-2-4(3), and after opportunity for a hearing, the board may consider any of the following factors in its deliberations and ruling:

4.1. experience, prudence and competence as an operator in other similarly situated wells;

4.2. multi-well expenditures already made for infrastructure that involve the applicable well or drilling unit;

4.3. good faith negotiations prior to the board's consideration of the operator designation;

4.4. whether drainage of the spacing or drilling unit has occurred or is likely to occur in the immediate future and whether an owner has committed to drill a well in a timely fashion;

4.5. project complexity and geology;

4.6. contractual obligations including those arising under a drilling contract, surface use agreement, or an expiring lease; and

4.7. any other factors the board may deem material to its decision.

5. Subject to Subsection R649-2-4(5.3) the designated operator has the right to request the division revoke any other approved APDs for any wells where preparation for drilling has not yet commenced relating to:

- 5.1. the applicable drilling unit; or
- 5.2. in the absence of a board order establishing a drilling unit, any approved APDs for any wells approved under the criteria specified in R649-2-4(2) above.
- 5.3. The division may not revoke APDs approved pursuant to Subsection R649-3-4(5).

R649-2-5. Right to Inspect.

1. The director or authorized agent shall have the right at any reasonable time to go upon and inspect any oil or gas properties and wells for the purpose of making any investigations or tests reasonably necessary to ensure compliance with the provisions of the statutes, the general rules and orders of the board or any special field rules and orders. The director or authorized agent shall report any observed violation to the board.

2. The documentation of off lease transportation of crude oil required by Section R649-2-6, Access to Records, shall be carried in the motor vehicle during transportation and shall be available for examination and inspection by the director or an authorized agent upon request.

R649-2-6. Access to Records.

1. Any person who produces, operates, sells, purchases, acquires, stores, transports, refines, or processes oil or gas or who injects fluids for cycling, pressure maintenance, secondary or enhanced recovery, or disposal of salt water or oil field waste within the state, shall make and keep appropriate books and records covering their operations in the state from which they shall be able to make and substantiate any reports required by the board or the division.

1.1. Such books and records, together with copies of any reports and notices submitted to the board or the division shall be kept on file and available for inspection by the director or an authorized agent at any reasonable time for a period of at least six years.

1.2. The director or the authorized agent shall also have access to any pertinent well records wherever located.

2. Each owner or operator shall permit the director or authorized agent at their sole risk and expense, in the absence of negligence on the part of the owner or operator, to come upon any lease, property or well operated or controlled by them; to inspect the records pertaining to and the manner of operation of such property or well; and to have access at any reasonable time to any record pertaining to such well. Any information so obtained by the director or authorized agent shall be kept confidential and shall be reported only to the division or its authorized agent, unless the owner or operator gives written permission to the director to release such information.

3. Any off lease transportation of oil by motor vehicle shall be accompanied by a run ticket or equivalent document. The documentation shall identify the name and address of the transporter, the name of the operator, the lease or facility from which the oil was taken, the date of removal, the API gravity of the oil, the calculated percentage of BS and W, the volume of oil or the opening and closing tank gauges or meter readings, and the destination of the oil.

R649-2-7. Naming of Oil and Gas Fields or Pools.

1. The division shall name oil and gas fields or pools within the state in cooperation with a Fields Names Advisory Committee and with due regard and consideration for any recommendation from the owners or operators of such fields or pools. The Field Names Advisory Committee shall be composed of a representative of the United States Bureau of Land Management and representatives of appropriate state agencies and the oil and gas industry.

R649-2-8. Measurement of Production.

1. The volume of oil production shall be computed in barrels of clean oil, on the basis of acceptable meter measurements, tank measurements, or with such greater accuracy as may be required by the division. Computations of the volume of oil production shall be subject to the following corrections:

1.1. The gross volume of oil shall be corrected to exclude the entire volume of impurities not constituting a natural component part of the oil.

1.2. The observed volume of oil after correction for impurities shall be further corrected to the standard volume at 60 degrees Fahrenheit, in accordance with Table 6A of the API/ASTM D-1250, Chapter 11.1, Manual of Petroleum Measurement (1980), which is incorporated by this reference.

1.3. The observed gravity of oil shall be corrected to the standard API gravity at 60 degrees Fahrenheit in accordance with Table 5A of API/ASTM, D-1250, Chapter 11.1, Manual of Petroleum Measurement (1980), which is incorporated by this reference.

2. Any gas shall be measured by an orifice type meter unless otherwise authorized by the division.

2.1. In computing the volumes of any gas produced, sold, or injected, the standard pressure base shall be 14.73 pounds per square inch absolute (psia), and the standard temperature base shall be 60 degrees Fahrenheit.

2.2. Any measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized by the division.

R649-2-8a. Consenting to Participate in a Well.

1. Except as provided in Subsection (2), an owner shall be determined by the board to be a "Nonconsenting owner" as defined in Section 40-6-2 if, within 30 days from the date the notice of opportunity to participate is received, the owner has failed to:

1.1. Execute and deliver to the operator an executed AFE for the well; and

1.2. Execute and deliver to the operator a JOA to govern the drilling and operation of the well and applicable drilling unit with the operator, and subject the owner to the risk compensation award under Section 40-6-6.5 as may be determined by the board.

2. If, within 30 days from the date the notice of opportunity to participate is received or such later date as provided for by the notice of opportunity to participate, or by separate written agreement, an owner has delivered to the operator an executed AFE, and subject to Subsection R649-2-8a(5), written objections, addressing the specific provisions of the operator's proposed JOA to which the owner in good faith objects, the reasoning for each objection, and modifications or alternative provisions the owner proposes in lieu thereof, the owner shall be deemed a "Consenting owner" as defined in Subsection 40-6-2(4).

3. Failure of an owner to comply with the requirements of Subsection (2) shall result in the determination by the board that the owner is a Nonconsenting owner and subject the owner to the risk compensation award under Section 40-6-6.5 as may be determined by the board.

4. An owner who complies with the requirements of Subsection (2) or an operator who in good faith rejects said owner's proposed modifications or alternate provisions to the JOA may request that the board determine the terms of the JOA in accordance with the provisions of Subsection 40-6-6.5(2) as follows:

4.1. if the operator has filed a request for agency action for compulsory pooling of owners in the well and associated drilling unit has been filed, either the owner or the operator may move the board to determine the reasonableness of the costs charged and the terms of the JOA between the owner and operator as part of the proceeding; and

4.2. if no request for agency action has been filed for the compulsory pooling of owners in the well and associated drilling unit, then either the owner or the operator may file a request for agency action within 60 days of the receipt by the operator of the owner's written objections;

4.3. if neither Subsection (4.1) or (4.2) timely occurs, then the actual costs incurred shall be deemed by the board as just and reasonable, and the terms of the JOA as proposed by the operator in the notice of opportunity to participate shall be deemed by the board to govern as between the operator and the owner in any subsequent hearing before the board;

4.4. if a hearing is held before the board regarding disputed provisions or terms of a JOA, the scope of the hearing shall be limited to addressing only the terms at issue within the proposed JOA. Any JOA approved and adopted by the board shall include any undisputed terms and conditions of the JOA proposed by the operator and govern as between the operator and the owner. If the board determines the owner's objections to the costs charged are justified, the operator shall apply the amounts over and above those found to be reasonable charges as credit against the owner's proportionate share of future operational expenses.

5. Articles VII.A through D of the standard and unmodified A.A.P.L. Form 610-2015 Model Form Operating Agreement, which are incorporated by this reference, are deemed just and reasonable under any circumstances, and shall be adopted by the board in any JOA dispute under Subsection R649-2-8a(4) retroactively effective to the date the AFE is signed by the consenting owner pursuant to Subsection R649-2-8a(2) above; provided that, as to Article VII. D.3, the applicable "risk penalty" referred to therein shall be set by the board. If these provisions are contained in the JOA proposed by the operator without modification, any objection to them shall be summarily rejected by the board.

R649-2-9. Refusal to Agree.

If the operator and owner negotiating in good faith fail to reach agreement for the leasing of that owner's mineral interest or for voluntary participation by that owner in the proposed well prior to the filing of a request for agency action for compulsory pooling of interests in the drilling unit under Section 40-6-6.5 then, the duly-noticed hearing on the request for agency action for compulsory pooling may, at the discretion of the board or its designated hearing examiner, be delayed for a period not to exceed 30 days, to allow for continued good faith negotiations between the operator and the owner.

R649-2-9a. Notice of Unlocatable and Unidentified Owners.

1. Either an owner who is not identifiable, but may claim ownership by, through, or under the estate of a deceased owner of record, or an owner who is not locatable, may be determined by the board to be a "Nonconsenting owner" as defined under Section 40-6-2 if:

1.1. the operator, concurrent with the filing of a request for agency action for compulsory pooling, files with the board an ex parte motion for notice by publication in a newspaper of general circulation in the county where the well is located for two consecutive weeks prior to the hearing date, which motion shall be accompanied by a proposed form of such notice to be published, and an affidavit outlining in sufficient detail the operator's reasonable diligent and good faith efforts to identify and locate such owners including at a minimum:

1.1.1. a listing of any such owners; provided, if such owners are unknown, then identifying them as parties not already leased or participating in the well at issue and claiming by, through or under the estate of the deceased owner of record;

1.1.2. the name, address, email address and telephone number of a contact person for the operator to respond to the notice; and

1.1.3. any information set forth in notice of opportunity to participate, in lieu of an AFE and a JOA, a statement that an AFE for the subject well and a proposed JOA agreement shall be provided by the operator to the owner if a response to the notice is received before the hearing;

1.2. the board finds the operator has exercised such reasonable, diligent and good faith efforts to identify and locate such owners and further finds the proposed form of notice is acceptable, and issues an order granting the motion, and proof of such publication is supplied by said newspaper publisher and filed with the board; and

1.3. no response, either agreeing to lease or to otherwise participate in the subject well, is received by the operator from any such owner prior to the hearing.

R649-2-9b. Imposition of Statutory Risk Compensation Award.

In determining the level of any risk compensation award imposed within the range of 150% to 400% specified under Subsection 40-6-6.5(4)(d)(i)(D), the board may consider, among other factors, the geologic and engineering uncertainties and difficulties in drilling the well, the availability of information from prior and current drilling and development in the area, and the unique specified costs of the well.

R649-2-10. Notification of Lease Sale or Transfer.

The owner of a lease shall provide notification to any person with an interest in such lease, when any part of that interest in the lease is sold or transferred.

R649-2-11. Confidentiality of Well Log Information.

1. Well logs marked confidential shall be kept confidential for one year after the date on which the log is required to be filed with the division, unless the operator gives written permission to release the log at an earlier date.

2. Information on a newly permitted well will be held confidential only upon receipt by the division of a written request from the owner or operator.

3. The period of confidentiality may begin at the time the APD is submitted for approval if a request for confidentiality is received at that time. The information on the application itself will not be considered confidential.

4. Information that shall be held confidential includes well logs, electrical or radioactivity logs, electromagnetic, electrical, or magnetic surveys, core descriptions and analysis, maps, other geological, geophysical, and engineering information, and well completion reports that contain such information.

5. The owner or operator shall clearly mark documents as confidential. Such marking shall be in red and be clearly visible.

6. Confidential wells or information shall be reported separately from wells or information that is not in confidential status.

R649-2-12. Tests and Surveys.

1. When deemed necessary or advisable the Director or authorized agent can require that tests or surveys be made to determine the presence of waste of oil, gas, water, or reservoir energy; the quantity of oil, gas or water; the amount and direction of deviation of any well from the vertical; formation, casing, tubing, or other pressures; or any other test or survey deemed necessary to carry out the purposes of the Oil and Gas Conservation Act.

2. Directional, deviation, or measurements-while-drilling (MWD) surveys or a combination of these surveys must be run on horizontal wells in order to identify the well's path and submitted in accordance with Section R649-3-21, Well Completion and Filing of Well Logs, as amended for horizontal wells.

R649-2-13. Application of a Compulsory Pooling Order to Subsequently Drilled Wells in a Drilling Unit.

1. An initial board order compulsory pooling any interests in a drilling unit, including the terms and conditions of a JOA as adopted by the board, shall apply to any subsequently drilled well in the drilling unit as authorized under Subsection 40-6-6.5(12), subject to compliance with the following:

1.1. The operator has filed with the board a motion to modify the initial order to apply its terms to an additional well in the drilling unit which sets forth by affidavit:

1.1.1. The docket and cause numbers of said initial board order;

1.1.2. The location, identification, and description of the well drilled to which the order is to apply;

1.1.3. An identification of those owners who the operator asserts have not consented to participate in the subsequent well after having been provided a notice of an opportunity to participate and failing to consent or make objections as allowed by Section R649-2-8a, and those owners who are either locatable, unlocatable, or cannot be identified;

1.1.4. Certification that the operator has made reasonable efforts to locate and provide notice to the alleged Nonconsenting owner which shall include:

1.1.4.1. Copies of the written notice of opportunity to participate sent to them together with a proof of service; or

1.1.4.2. Proof of notice by publication as required by Subsection R649-2-9a(1.2) if any such alleged Nonconsenting owner is unlocatable or not identified; and

1.1.5. A statement that the average weighted landowner's royalty for the drilling unit remains the same as that provided for in the initial board order or a calculation of the average weighted landowner's royalty for the drilling unit at the time of commencement of the drilling of the subsequent well as provided in Subsection 40-6-6.5(6);

1.1.6. The anticipated costs of plugging the well; and

1.1.7. The risk compensation award as determined by the board in the original order; and

1.2. The motion to modify the initial board order has been mailed by the operator, together with copies of the initial board order and a recitation of the provisions of Subsection 40-6-6.5(12) and Subsection R649-2-8a to any such alleged nonconsenting owners, with a certification of service evidencing the same executed and filed with the board; and

1.3. Within 30 days of the mailing of the motion, no party has filed any objection to the motion to modify the initial board order to apply to the subsequently drilled well in the drilling unit, including, without limitation, any objection to said party's alleged nonconsent status, the applicable risk compensation percentage or the reasonableness of the actual costs incurred for the subsequently drilled well.

2. Upon a written notice filed with the board stating the foregoing conditions have been satisfied, the board may enter an order declaring its initial compulsory pooling order to be applicable to such subsequently drilled well, with modifications for the matters addressed in the motion to modify the order.

3. If an owner or other person with an interest affected by the motion shall have filed an objection within 30 days of the mailing of the motion to modify the order including, but not limited to, an objection to said person's alleged nonconsent status, the applicable risk compensation percentage, or the reasonableness of the costs of the well, then the board shall set a time for a hearing in accordance with Rules of Practice Before the Board in Rule R641-100.

3.1. The hearing shall be limited to addressing the objections to the motion to modify the order as asserted by any party.

3.2. The operator shall have the burden to satisfy the requirements under Section 40-6-6.5 for the granting of the motion and the objecting owner shall have the burden of establishing the merit to its objections.

3.3. The board shall enter an order determining the application of the initial order to the subsequent well as to any party who filed objections, and how the initial order will apply to others who have not objected.

4. If there are no objections made to the motion to modify the initial compulsory pooling order, the initial order shall apply to the subsequent well as requested.

5. The terms of any JOA adopted by the board in an initial compulsory pooling order and applicable to any subsequent order may not be in the contravention of the provisions under Section 40-6-6.5, including providing that an owner shall be entitled to receive notice of opportunity to participate in any subsequent well proposed in the drilling unit regardless of the owner's prior consent or nonconsent status on a prior well in the drilling unit.

KEY: consenting, nonconsenting, oil, pooling

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