

1           The Railroad Commission of Texas (Commission) adopts amendments to §3.25, relating to Use  
2 of Common Storage; §3.26, relating to Separating Devices, Tanks, and Surface Commingling of Oil; and  
3 §3.27, relating to Gas to be Measured and Surface Commingling of Gas. Section 3.25 is adopted without  
4 changes and §§3.26 and 3.27 are adopted with changes to the proposed text as published in the November  
5 30, 2018, issue of the *Texas Register* (43 TexReg 7747).

6           The Commission received 10 comments. Six associations submitted comments: National  
7 Association of Royalty Owners, Texas Chapter (NARO-Texas); Permian Basin Petroleum Association  
8 (PBPA); Texas Independent Producers and Royalty Owners Association (TIPRO); Texas Land & Mineral  
9 Owners Association (TLMA); Texas Oil and Gas Association (TXOGA); and Texas Press Association  
10 (TPA). The remaining comments were submitted by Apache Corporation (Apache), BPX Energy (BPX),  
11 Encana Oil & Gas (USA) Inc. (Encana), and the General Land Office (GLO).

12           First, several comments expressed concern about removing notice requirements or automatically  
13 granting commingling permits. The Commission would like to clarify how the rule revisions and  
14 corresponding permit process will impact notice. As stated in the proposal preamble, the amendments in  
15 new §3.26(b) specify two instances in which an exception is no longer required: (1) where the operator  
16 measures the production stream from each tract and each Commission-designated reservoir separately  
17 before combining it with a stream from another tract or Commission-designated reservoir; and (2) the  
18 tracts and Commission-designated reservoirs have identical working interest and royalty interest  
19 ownership in identical percentages. In these instances, an operator would still be required to apply for a  
20 commingle permit and comply with all applicable commingling rules but would not be required to  
21 provide notice or pay the exception fee. The proposal preamble did not fully explain that under current  
22 §3.26, notice is not required in those instances. Current §3.26(b) states, "Upon written application, the  
23 commission may grant approval for surface commingling administratively when any one of the following  
24 conditions is met: (A) [t]he tracts or commission-designated reservoirs have identical working interest  
25 and royalty interest ownership in identical percentages and therefore there is no commingling of separate  
26 interests; (B) [p]roduction from each tract and each commission-designated reservoir is separately  
27 measured and therefore there is no commingling of separate interests; or (C) [w]hen the tracts or  
28 commission-designated reservoirs do not have identical working interest and royalty interest ownership in  
29 identical percentages and the commission has not received a protest to an application within 21 days of  
30 notice of the application being mailed by the applicant to all working and royalty interest owners or, if  
31 publication is required, within 21 days of the date of last publication . . ." Therefore, under the current  
32 rule, notice is only required when the tracts or commission-designation reservoirs do not have identical  
33 working interest and royalty interest ownership in identical percentages. However, the current exception  
34 application (Form P-17) instructions conflict with the rule language and operators often provide notice

1 pursuant to the form instructions even though notice is not required by the rule. Outside of the rulemaking  
2 process, Commission staff is amending the Form P-17 such that its instructions no longer conflict with the  
3 rule.

4 The amendments do not change the notice requirements for a commingle permit. Notice is still  
5 required when an operator applies to commingle and the subject tracts or commission-designated  
6 reservoirs do not have identical working interest and royalty interest ownership in identical percentages.  
7 Just as before, notice is not required when (1) the operator measures the production stream from each tract  
8 and each Commission-designated reservoir separately before combining it with a stream from another  
9 tract or Commission-designated reservoir; and (2) the tracts and Commission-designated reservoirs have  
10 identical working interest and royalty interest ownership in identical percentages. Under the amendments  
11 as proposed and adopted, an operator in these two situations does not need a rule exception and does not  
12 have to pay an exception fee. This is different from the current rule, which requires an exception and a fee  
13 for all types of commingling.

14 Apache and PBPA commented that the proposed Form P-17A should be introduced through the  
15 form approval and comment process. As mentioned above, Commission staff has proposed amendments  
16 to the Form P-17. Commission staff has also proposed a new form, Form P-17A. Both forms are currently  
17 posted on the Commission's website for public comment.

18 Apache and PBPA also suggested that where commingling occurs only because of the  
19 Commission practice of assigning unique lease numbers for wells with identical ownership that the  
20 Commission consider these situations not commingling and, therefore, not require a commingle permit.  
21 The Commission declines to adopt this interpretation of commingling as it may be inconsistent with  
22 governing statutes.

23 Apache and PBPA support the removal of current §3.26(d)(4). The Commission appreciates this  
24 support.

25 BPX, TIPRO, and TXOGA asked that the Commission ensure the amendments will not conflict  
26 with an operator's ability to make annual gas deliverability testing optional. The amendments do not  
27 change existing requirements and procedures related to testing. Section 3.28 (relating to Potential and  
28 Deliverability of Gas Wells to be Ascertained and Reported) states, "Notwithstanding any of the  
29 provisions in this section on frequency of testing, gas wells commingling liquid hydrocarbons before  
30 metering must comply with the testing provisions applicable to such wells." Based on this provision, an  
31 operator who meters a gas well prior to commingling is typically given an administrative exception to the  
32 testing requirements in §3.28. The amendments to §§3.25, 3.26, and 3.27 do not remove the opportunity  
33 for an administrative exception.

1 TIPRO and TXOGA also asked that the rules clarify that gas wells filed on the Form P-17A are  
2 exempt from semiannual well testing because they are measured prior to commingling. The Commission  
3 does not agree with this entire statement and disagrees to make any changes to the rule. The Commission  
4 agrees that if an operator files the Form P-17A because it is measuring the production stream of the *gas*  
5 well separately before combining it with a stream from another tract or reservoir pursuant to §3.26(b)(1),  
6 then the operator is eligible for the administrative exception discussed above. However, if the operator  
7 files the Form P-17A under §3.26(b)(2), then semiannual testing may still be required.

8 Similarly, TXOGA and Encana requested that the rules clarify that semiannual oil tests are not  
9 required when the Form P-17A is filed for an oil well. The Commission disagrees and declines to make  
10 any changes. The amendments do not change existing testing requirements for oil wells.

11 TIPRO and TXOGA also expressed concern that operators could be forced to record the  
12 commingling permit number on production reports and certain signs, that some wells may be filed under  
13 Form P-17 and others under Form P-17A, and that there could be operators with two commingling permit  
14 numbers where there was once only one, all of which contributes to costly signage and production  
15 reporting revisions. Apache and PBPA noted these concerns and disagree, stating they do not feel posting  
16 P-17 or P-17A numbers is overly burdensome given the Commission's longstanding practice of allowing  
17 commingling permits to be modified, upon proper application, without issuing new permit numbers. The  
18 Commission declines to adopt any changes to the proposed language. The Commission will issue one  
19 commingle permit number whenever possible to reduce reporting costs and enable tracking of commingle  
20 permits filed under Form P-17 and P-17A over time. The Commission agrees with Apache and PBPA that  
21 in the event two permits are necessary, posting both numbers is not overly burdensome. The Commission  
22 will continue to allow modification of commingle permit applications without issuing a new permit  
23 number.

24 The GLO commented that it relies on notification from operators to assist with its fiduciary duty  
25 to review and approve surface commingling of State oil and gas leases. The GLO is responsible for  
26 studying the proposed design of commingling facilities to ensure payment occurs pursuant to the lease,  
27 even where the royalty interests among a group of commingled tracts are identical. The GLO states,  
28 "removing notice requirements and automatically granting commingling permits in all cases where  
29 production has been 'measured' (irrespective of the method or relative accuracy of measurement), could  
30 result in fewer operators obtaining commingling authority from the GLO, as required by 31 TAC §9.35,  
31 in a timely manner."

32 The Commission appreciates the GLO's input. The amendments do not change an operator's  
33 obligation to comply with other law, such as 31 TAC §9.35. Also, as noted above, the amendments only  
34 clarify existing notice requirements such that notice is not required when an operator is measuring prior to

1 commingling or the ownership interests are identical. Even when notice is not required, the amendments  
2 still require an operator to obtain a permit from the Commission and report the commingle permit number  
3 on its production reports. These continued reporting requirements provide a mechanism to confirm  
4 compliance with other law.

5 Similarly, the GLO expressed concern that lack of notice would allow the Commission's Oil and  
6 Gas Director to authorize measurement methodologies that have not achieved industry consensus  
7 represented by American Petroleum Institute or American Gas Association standards, or which conflict  
8 with those standards.

9 The Commission understands this concern; however, the ability to obtain approval to use an  
10 alternate measurement technology (found in §3.26(a)(4)) was not addressed in the proposal. Therefore,  
11 any changes to that provision would be outside the scope of this rulemaking.

12 The GLO also commented that the opacity of some proposed allocation methodologies makes  
13 them difficult to audit by royalty owners. Automatic approval of commingling permits without notice of  
14 annual or semi-annual well testing allocation measurement systems is not always in the best interest of  
15 royalty owners. The Commission understands this concern, and though notice requirements are not  
16 changing, the Commission adopts §3.26 with a change to clarify that allocation is required whether an  
17 operator files Form P-17A or Form P-17. This clarification, found in §3.26(e), will ensure that allocation  
18 methods continue to be noted on the applicable forms, which will be available on the Commission's  
19 website for inspection and audit by royalty owners.

20 The GLO requested that the certification that appears on the current Form P-17 be included in any  
21 new or revised forms adopted pursuant to the rule amendments. The Commission included the  
22 certification on the Form P-17A and Form P-17, which are currently posted on the Commission's website  
23 for comment.

24 NARO-Texas and TLMA expressed concerns about the lack of notice hindering royalty owners'  
25 ability to determine when production stops on one lease, even when commingled production comes from  
26 leases with identical ownership interests. As noted above, the amendments do not change the current  
27 notice requirements. Notice of commingling applications may decrease, but if so, only because operators  
28 previously sent notice according to the Form P-17, which, due to unclear instructions, was interpreted by  
29 operators to require notice even when not required by the rule. Further, as noted above, a commingle  
30 permit number, whether issued through the Form P-17A or Form P-17, continues to be required on an  
31 operator's monthly production report. In addition, the amendments do not alter existing testing  
32 requirements. Therefore, the mechanisms currently in place to provide royalty owners relevant  
33 information regarding when production stops on one lease will still be available after the amendments are  
34 in effect.

1 NARO-Texas also commented that the Commission could revise §3.26(b)(1) to clarify that one-  
2 time measurement of production does not suffice. The Commission has always interpreted the rule in this  
3 manner and the amendments do not change that interpretation. Therefore, the Commission declines to  
4 adopt any changes. To clarify, the term “before” in the phrase “measures the production stream from each  
5 tract and each Commission-designated reservoir separately before combining . . .” means the production  
6 stream must be measured upstream of (i.e., before) the commingling.

7 NARO-Texas expressed concerns that proposed §3.26(f), now §3.26(g), could be used to correct  
8 permits where commingling has occurred contrary to a permit and no notice would be given. The  
9 Commission declines to make any changes. This situation could occur under the current rule and forms.  
10 However, this provision ensures the Commission has complete and accurate records of operations related  
11 to commingling.

12 NARO-Texas commented that proposed §3.26(g) could result in commingling changes through  
13 field rule amendments, a process that does not provide all stakeholders notice and an opportunity to  
14 comment. Upon review, the Commission has determined that subsection (g) is not necessary as it merely  
15 reminds operators that if field rules apply then operators must comply with those rules.

16 Finally, the Texas Press Association commented that the proposed publication requirements,  
17 which apply when an operator is unable to provide notice by certified mail to working and royalty interest  
18 owners, would significantly harm citizens’ right to know about management of oil and gas resources in  
19 their communities and limit the ability for individuals with working or royalty interests from safeguarding  
20 their rights. The Commission disagrees. Although some Commission notice requirements aim to notify  
21 the general public of oil and gas activity in their communities, the notice requirements applicable to  
22 commingling permits focus on working and royalty interest owners only. Most of these individuals will  
23 be notified by the operator directly via certified mail, as required by §3.26(d). The notice by publication  
24 procedure will only be used when an operator is unable, after due diligence, to provide notice via certified  
25 mail. The Commission has no evidence that in these instances reducing the frequency of published notices  
26 from once each week for four consecutive weeks to once each week for two consecutive weeks will harm  
27 working and royalty interest owners’ rights. Further, the Commission received no comments from  
28 working and royalty interest owners or associations representing those individuals that express concern  
29 over the reduction in published notice.

30 The Commission adopts the amendments to §3.26 and §3.27 to change when an operator must  
31 apply for a rule exception by filing Form P-17. Currently, any operator who seeks to surface commingle  
32 production from two or more tracts of land producing from the same Commission-designated reservoir or  
33 from one or more tracts of land producing from different Commission-designated reservoirs must obtain  
34 an exception. The operator may receive an exception administratively by filing Form P-17, paying the

1 associated exception fee of \$150, and complying with any applicable notice requirements. An approved  
2 P-17 is referred to as a commingle permit and has a unique permit number.

3 The amendments in new §3.26(b) specify two instances in which an exception is no longer  
4 required: (1) where the operator measures the production stream from each tract and each Commission-  
5 designated reservoir separately before combining it with a stream from another tract or Commission-  
6 designated reservoir; and (2) the tracts and Commission-designated reservoirs have identical working  
7 interest and royalty interest ownership in identical percentages. In these instances, an operator would still  
8 be required to apply for a commingle permit and comply with all applicable commingling rules but would  
9 not be required to provide notice or pay the exception fee. Concurrent with the proposed rule  
10 amendments, the Commission proposed new Form P-17A. An operator who falls into one of the instances  
11 in which an exception is no longer required will file the Form P-17A to obtain a commingle permit.

12 The amendments to §3.26(c) clarify that if production is commingled pursuant to §3.26(b), the  
13 commingling is authorized even if separation, metering, or storage is located off the relevant tract or  
14 tracts. Subsection (c) also clarifies that Form P-17A is required for operators who apply for a commingle  
15 permit under §3.26(b).

16 Operators who seek to surface commingle but do not meet §3.26(b) are still required to seek an  
17 exception by filing Form P-17, which will be revised to reflect the rule amendments. Therefore, the  
18 Commission adopts corresponding amendments to §3.26(d), requiring an administrative exception when  
19 the tracts proposed for commingling do not have identical working interest and royalty interest ownership  
20 in identical percentages. The Commission also adopts amendments to subsection (d) to decrease the  
21 notice by publication requirement from once a week for four consecutive weeks to once a week for two  
22 consecutive weeks.

23 The Commission adopts the amendments with a change to §3.26(d)(3). The proposal preamble  
24 stated that operators applying for a commingle permit would still be required to comply with all  
25 applicable commingling requirements. This includes existing requirements regarding reasonable  
26 allocation. To make that clear, the requirements currently found in §3.26(b)(3) and proposed in  
27 §3.26(d)(3), will be moved to new subsection (e). Thus, current allocation requirements will continue to  
28 apply to all commingling permits, whether filed under the Form P-17A or Form P-17. The remaining  
29 subsections of §3.26 are re-lettered accordingly: proposed subsection (e) is now adopted as subsection (f);  
30 and proposed subsection (f) is now adopted as subsection (g). As described above, proposed subsection  
31 (g) is not part of the rule as adopted, and therefore, subsections (h) and (i) are now adopted as proposed.

32 The amendments to §3.26(d)(4) and new subsection (f) remove notice requirements from §3.26  
33 that are already covered by §3.10, relating to Restriction of Production of Oil and Gas from Different  
34 Strata.

1           The amendments to §3.26(g) require an operator to review and correct any forms related to its  
2 commingle permit as necessary in order to maintain accurate information on file with the Commission.

3           Proposed §3.26(g), which contained language from current §3.26(b)(4), was determined  
4 unnecessary and is not included in the adopted amendments.

5           The Commission adopts amendments to §3.25 and §3.27 to reflect the changes to §3.26. The  
6 amendments to §3.25 clarify that common storage is authorized as long as an operator complies with the  
7 requirements in §3.26 and §3.27. The amendments to §3.27 authorize surface commingling if done in  
8 accordance with §3.26. To ensure compliance with all applicable provisions of §3.26, Section §3.27(e) is  
9 adopted with a change: specific provisions referencing subsections of §3.26 are replaced with a general  
10 reference to §3.26.

11           Other amendments in §§3.25 - 3.27 are nonsubstantive clarifications.

12           The Commission adopts the amendments to §§3.25 - 3.27 pursuant to Texas Natural Resources  
13 Code §85.046, which grants the Commission broad discretion in permitting the commingling of  
14 production of oil or gas or oil and gas from two or more tracts of land producing from the same reservoir  
15 or from one or more tracts of land producing from different reservoirs; Texas Natural Resources Code  
16 §§81.051 - 81.052, which provide the Commission with jurisdiction over all persons owning or engaged  
17 in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for  
18 governing and regulating persons and their operations under Commission jurisdiction; Texas Natural  
19 Resources Code §§85.201 - 85.202, which require the Commission to adopt and enforce rules and orders  
20 for the conservation and prevention of waste of oil and gas, and specifically for drilling of wells,  
21 preserving a record of the drilling of wells, and requiring records to be kept and reports to be made; and  
22 Texas Natural Resources Code §§86.041 - 86.042, which give the Commission broad discretion in  
23 administering the provisions of Chapter 86 of the Code, authorize the Commission, generally, to adopt  
24 any rule or order necessary to effectuate the provisions and purposes Chapter 86, and require the  
25 Commission to adopt and enforce rules and orders to conserve and prevent the waste of gas, provide for  
26 drilling wells and preserving a record of them, require wells to be drilled and operated in a manner that  
27 prevents injury to adjoining property, and require records to be kept and reports to be made.

28           Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.046, 85.201, 85.202,  
29 86.041, and 86.042.

30           Cross reference to statute: §§81.051, 81.052, 85.046, 85.201, 85.202, 86.041, and 86.042.

31  
32 §3.25. Use of Common Storage.

33           (a) ~~Where [In all fields or areas in which the commission has approved the use of common-~~  
34 ~~storage where]~~ oil and/or other liquid hydrocarbons are [is] produced from two or more separate

1 reservoirs or zones and separate proration schedules are published by the Commission [~~commission~~] for  
2 each reservoir or zone, the use of common storage is authorized as long as the requirements of §3.26 and  
3 §3.27 of this title (relating to Separating Devices, Tanks, and Surface Commingling of Oil, and Gas to be  
4 Measured and Surface Commingling of Gas, respectively) are met. An [the] operator utilizing common  
5 storage pursuant to this section [~~of said lease~~] shall not be required to file a separate Form P-4,  
6 [~~Producer's~~] Certificate of Compliance and Transportation Authority, [~~Authorization to Transport Oil or~~  
7 ~~Gas From Lease Form~~] for each reservoir or zone, but may file one form to authorize the transportation of  
8 oil or gas from all reservoirs or zones producing into common storage.

9 (b) A gatherer transporting oil from such common storage shall not be required to file a separate  
10 transporter's report for each separate reservoir or zone or each separate lease but shall file such report on a  
11 combined basis for the total amount of commingled oil in common storage.

12 (c) The operator of a lease or leases for which the Commission [~~commission~~] has authorized the  
13 use of common storage of oil produced from two or more reservoirs or zones and from two or more leases  
14 shall file Form PR, Monthly Production Report, for each separate reservoir or zone and/or for each  
15 separate lease and, in addition thereto, said operator shall file a report showing the data included on the  
16 individual reports on a combined basis for the total amount of commingled oil in common storage.

17  
18 §3.26. Separating Devices, Tanks, and Surface Commingling of Oil.

19 (a) Where oil and gas are found in the same stratum and it is impossible to separate one from the  
20 other, or when a well has been classified as a gas well and such gas well is not connected to a cycling  
21 plant and such well is being produced on a lease and the gas is utilized under Texas Natural Resources  
22 Code §§86.181 - 86.185, the operator shall install a separating device of approved type and sufficient  
23 capacity to separate the oil and liquid hydrocarbons from the gas.

24 (1) A [~~The~~] separating device shall be kept in place as long as a necessity for it exists,  
25 and its use shall not be [~~after being installed, such device shall not be removed nor the use thereof~~]  
26 discontinued without the consent of the Commission [~~commission~~].

27 (2) All oil and any other liquid hydrocarbons as and when produced shall be adequately  
28 measured pursuant to paragraphs (3) and (4) of this subsection [~~according to the pipeline rules and~~  
29 ~~regulations of the commission~~] before the same leaves the lease from which they are produced, except for  
30 gas wells where the full well stream is moved to a plant or central separation facility in accordance with  
31 §3.55 of this title (relating to Reports on Gas Wells Commingling Liquid Hydrocarbons before Metering)  
32 (Statewide Rule 55) and the full well stream is measured, with each completion being separately  
33 measured, before the gas leaves the lease. If an operator commingles production pursuant to subsection  
34 (b) of this section, the operator shall comply with paragraphs (3) and (4) of this subsection but the



1 operator is not required to measure the production stream before it leaves the lease.

2 (3) Sufficient tankage and separator capacity shall be provided by the producer to  
3 adequately take daily gauges of all oil and any other liquid hydrocarbons unless LACT equipment,  
4 installed and operated in accordance with the latest revision of American Petroleum Institute (API)  
5 Manual of Petroleum Measurement Standards, Chapter 6.1 or another method approved by the  
6 Commission [~~eommission~~] or its delegate, is being used to effect custody transfer.

7 (4) For Commission [~~eommission~~] purposes, the measurement requirements of this  
8 section are satisfied by the use of coriolis or turbine meters or any other measurement device or  
9 technology that conforms to standards established, as of the time of installation, by the American  
10 Petroleum Institute (API) or the American Gas Association (AGA) for measuring oil or gas, as applicable,  
11 or approved by the Director of the Oil and Gas Division as an accurate measurement technology.

12 (b) Surface commingling of oil, gas, or oil and gas production from two or more tracts of land  
13 producing from the same Commission-designated reservoir or from one or more tracts of land producing  
14 from different Commission-designated reservoirs is permitted and authorized if:

15 (1) the operator measures the production stream from each tract and each Commission-  
16 designated reservoir separately before combining it with a stream from another tract or Commission-  
17 designated reservoir; or

18 (2) the tracts and Commission-designated reservoirs have identical working interest and  
19 royalty interest ownership in identical percentages.

20 (c) Production that complies with subsection (b) of this section is authorized even if the separator,  
21 metering, or storage is located off the tract or tracts. If production is surface commingled pursuant to  
22 subsection (b) of this section, the operator shall file Form P-17A, Application for Commingle Permit  
23 Pursuant to Rules 26 and/or 27.

24 (d) [~~(b)~~] If an operator does not meet the requirements of subsection (b) of this section [In order  
25 to prevent waste, to promote conservation or to protect correlative rights], the Commission [~~eommission~~]  
26 may approve surface commingling of oil, gas, or oil and gas production from two or more tracts of land  
27 producing from the same Commission-designated [~~eommission-designated~~] reservoir or from one or more  
28 tracts of land producing from different Commission-designated [~~eommission-designated~~] reservoirs in  
29 order to prevent waste, to promote conservation, or to protect correlative rights.[~~as follows:~~]

30 (1) Administrative approval. After receipt of a completed Form P-17, the Commission  
31 [~~Upon written application, the commission~~] may grant approval for surface commingling administratively  
32 when [~~any one of the following conditions is met:~~

33 (A) ~~The tracts or commission-designated reservoirs have identical working-~~  
34 ~~interest and royalty interest ownership in identical percentages and therefore there is no commingling of-~~

1 separate interests;

2 ~~(B) Production from each tract and each commission-designated reservoir is~~  
3 ~~separately measured and therefore there is no commingling of separate interests; or~~

4 ~~(C) When~~ the tracts or Commission-designated ~~[commission-designated]~~  
5 reservoirs do not have identical working interest and royalty interest ownership in identical percentages  
6 and the Commission ~~[commission]~~ has not received a protest to an application within 21 days of notice of  
7 the application being mailed by the applicant to all working and royalty interest owners or, if publication  
8 is required, within 21 days of the date of last publication and the applicant provides:

9 (A) ~~[(i)]~~ a method of allocating production to ensure the protection of correlative  
10 rights, in accordance with subsection (e) of this section; and

11 (B) ~~[(ii)]~~ an affidavit or other evidence that all working interest and royalty  
12 interest owners have been notified of the application by certified mail or have provided applicant with  
13 waivers of notice requirements; or

14 (C) ~~[(iii)]~~ in the event the applicant is unable, after due diligence, to provide  
15 notice by certified mail to all working interest and royalty interest owners, a publisher's affidavit or other  
16 evidence that the Commission's ~~[commission's]~~ notice of application has been published once a week for  
17 two ~~[four]~~ consecutive weeks in a newspaper of general circulation in the county or counties in which the  
18 tracts that are the subject of the application are located.

19 (2) Request for hearing. When the tracts or Commission-designated ~~[commission-~~  
20 ~~designated]~~ reservoirs do not have identical working interest and royalty interest ownership in identical  
21 percentages and a person entitled to notice of the application has filed a protest to the application with the  
22 Commission ~~[commission]~~, the applicant may request a hearing on the application. The Commission  
23 ~~[commission]~~ shall give notice of the hearing to all working interest and royalty interest owners. The  
24 Commission ~~[commission]~~ may permit the commingling if the applicant demonstrates that the proposed  
25 commingling will protect the rights of all interest owners in accordance with subsection (e) of this section  
26 and will prevent waste, promote conservation or protect correlative rights.

27 (e) ~~[(3)]~~ Reasonable allocation required. The applicant must demonstrate to the Commission or its  
28 designee that the proposed commingling of hydrocarbons will not harm the correlative rights of the  
29 working or royalty interest owners of any of the wells to be commingled. The method of allocation of  
30 production to individual interests must accurately attribute to each interest its fair share of aggregated  
31 production.

32 (1) ~~[(A)]~~ In the absence of contrary information, such as indications of material  
33 fluctuations in the monthly production volume of a well proposed for commingling, the Commission will  
34 presume that allocation based on the daily production rate for each well as determined and reported to the

1 Commission by semi-annual well tests will accurately attribute to each interest its fair share of production  
2 without harm to correlative rights. As used in this section, "daily production rate" for a well means the 24  
3 hour production rate determined by the most recent well test conducted and reported to the Commission  
4 [~~commission~~] in accordance with §§3.28, 3.52, 3.53, and 3.55 of this title (relating to Potential and  
5 Deliverability of Gas Wells to be [~~To Be~~] Ascertained and Reported, Oil Well Allowable Production,  
6 Annual Well Tests and Well Status Reports Required, and Reports on Gas Wells Commingling Liquid  
7 Hydrocarbons before Metering).

8 (2) [(B)] Operators may test commingled wells annually after approval by the  
9 Commission or the Commission's [~~commission's~~] delegate of the operator's written request demonstrating  
10 that annual testing will not harm the correlative rights of the working or royalty interest owners of the  
11 commingled wells. Allocation of commingled production shall not be based on well tests conducted less  
12 frequently than annually.

13 (3) [(C)] Nothing in this section prohibits allocations based on more frequent well tests  
14 than the semi-annual well test set out in paragraph (1) [(A)] of this subsection. Additional tests used for  
15 allocation do not have to be filed with the Commission [~~commission~~] but must be available for inspection  
16 at the request of the Commission [~~commission~~], working interest owners or royalty interest owners.

17 (4) [(D)] Allocations may be based on a method other than periodic well tests if the  
18 Commission or its designee determines that the alternative allocation method will insure a reasonable  
19 allocation of production as required by this paragraph.

20 ~~[(4) Additional notice required. In addition to giving notice to the persons entitled to~~  
21 ~~notice under paragraph (1)(C) of this subsection, an applicant for a surface commingling exception must~~  
22 ~~give notice of the application to the operator of each tract adjacent to one or more of the tracts proposed~~  
23 ~~for commingling that has one or more wells producing from the same commission-designated reservoir as~~  
24 ~~any well proposed for commingling if:]~~

25 [~~(A) any one of the wells proposed for commingling produces from a~~  
26 ~~commission-designated reservoir for which special field rules have been adopted; or]~~

27 [~~(B) any one of the wells proposed for commingling produces from multiple~~  
28 ~~commission-designated reservoirs, unless:]~~

29 [(i) an exception to §3.10 of this title (relating to Restriction of  
30 Production of Oil and Gas from Different Strata) has previously been obtained for production from the  
31 well; or

32 [(ii) the applicant continues to separately measure production from each  
33 different commission-designated reservoir produced from the same wellbore.]

34 (f) An operator that commingles production from different Commission-designated reservoirs,

1 whether under subsection (b) or (c) of this section, shall comply with §3.10 of this title (relating to  
2 Restriction of Production of Oil and Gas from Different Strata).

3 (g) An operator that commingles production, whether under subsection (b) or (c) of this section,  
4 shall review and correct any forms related to its commingle permit as necessary in order to maintain  
5 accurate information on file with the Commission.

6 (h) [(e)] If oil or any other liquid hydrocarbon is produced from a lease or other property covered  
7 by the coastal or inland waters of the state, the liquid produced may, at the option of the operator, be  
8 measured on a shore or at a point removed from the lease or other property on which it is produced.

9 (i) [(d)] Oil gravity tests and reports (Reference Order Number 20-55, 647, effective 4-1-66, and  
10 Reference Order Number 20-58, 528, effective 5-10-68.)

11 (1) Where individual lease oil production, or authorized commingled oil production,  
12 separator, treating, and/or storage vessels, other than conventional emulsion breaking treaters, are  
13 connected to a gas gathering system so that heat or vacuum may be applied prior to oil measurement for  
14 Commission-required [~~commission required~~] production reports, the operator may, at the operator's [~~his~~]  
15 option, apply heat or vacuum to the oil only to the extent the average gravity of the stock tank oil will not  
16 be reduced below a limiting gravity for each lease as established by an average oil gravity test conducted  
17 under the following conditions (Reference Order Number 20-55, 647, effective 4-1-66):

18 (A) the separator or separator system, which shall include any type vessel that is  
19 used to separate hydrocarbons, shall be operated at not less than atmospheric pressure;

20 (B) no heat shall be applied;

21 (C) the test interval shall be for a minimum of 24 hours, and the average oil  
22 gravity after weathering for not more than 24 hours shall then become the limiting gravity factor for  
23 applying heat or vacuum to unmeasured oil on the tested lease.

24 (2) Initial gravity tests shall be made by the operator when such separator, treating,  
25 and/or storage vessels are first used pursuant to this section. Subsequent tests shall be made at the request  
26 of either the Commission [~~commission~~] or any interested party; and such subsequent tests shall be  
27 witnessed by the requesting party. Any interested party may witness the tests.

28 (3) Each operator shall enter on the [~~face of his~~] required production report the gravity of  
29 the oil delivered to market from the lease reported, and it is provided that should a volume of oil delivered  
30 to market from such lease separation facilities not meet the gravity requirement established by the  
31 described test, adjustment shall be made by charging the allowable of the lease on the relationship of the  
32 volume and the gravity of the particular crude.

33 (4) Where a conventional heater treater is required and is used only to break oil from an  
34 emulsion prior to oil measurement, this section will not be applicable; provided, however, that by this

1 limitation on the section, it is not intended that excessive heat may be used in conventional heater treater,  
2 and in circumstances where such heater treater is connected to a gas gathering system and it is found by  
3 Commission [~~commission~~] investigation made on its own volition or on complaint of any interested party  
4 that excessive heat is used, either the provisions of this section or special restrictive regulation may be  
5 made applicable.

6  
7 §3.27. Gas ~~to be~~ [~~To Be~~] Measured and Surface Commingling of Gas.

8 (a) All natural gas, except casinghead gas, produced from wells shall be measured, with each  
9 completion being measured separately, before the gas leaves the lease, and the producer shall report the  
10 volume produced from each completion to the Commission [~~commission~~]. For Commission [~~commission~~]  
11 purposes, the measurement requirements of this section are satisfied by the use of coriolis or turbine  
12 meters or any other measurement device or technology that conforms to standards established, as of the  
13 time of installation, by the American Petroleum Institute (API) or the American Gas Association (AGA)  
14 for measuring oil or gas, as applicable, or approved by the Director of the Oil and Gas Division as an  
15 accurate measurement technology. Exceptions to this provision may be granted by the Commission  
16 [~~commission~~] upon written application.

17 (b) All casinghead gas sold, processed for its gasoline content, used in a field other than that in  
18 which it is produced, or used in cycling or repressuring operations, shall be measured before the gas  
19 leaves the lease, and the producer shall report the volume produced to the Commission [~~commission~~].  
20 Exceptions to this provision may be granted by the Commission [~~commission~~] upon written application.

21 (c) All casinghead gas produced in this state which is not covered by the provisions of subsection  
22 (b) of this section, shall be measured before the gas leaves the lease, is used as fuel, or is released into the  
23 air, based on its use or on periodic tests, and reported to the Commission [~~commission~~] by the producer.  
24 The volume of casinghead gas produced by wells exempt from gas/oil ratio surveys must be estimated,  
25 based on general knowledge of the characteristics of the wells. Exceptions to this provision may be  
26 granted by the Commission [~~commission~~] upon written application.

27 (d) Releases and production of gas at a volume or daily flow rate, commonly referred to as "too  
28 small to measure" (TSTM), which, due to minute quantity, cannot be accurately determined or for which  
29 a determination of gas volume is not reasonably practical using routine oil and gas industry methods,  
30 practices, and techniques are exempt from compliance with this rule and are not required to be reported to  
31 the Commission [~~commission~~] or charged against lease allowable production.

32 (e) The Commission [~~In order to prevent waste, to promote conservation or to protect correlative~~  
33 ~~rights, the commission~~] may approve surface commingling of gas or oil and gas described in subsections  
34 (a), (b) or (c) of this section and produced from two or more tracts of land producing from the same

1 Commission-designated [~~commission-designated~~] reservoir or from one or more tracts of land producing  
2 from different Commission-designated [~~commission-designated~~] reservoirs in accordance with §3.26  
3 [~~§3.26(b)~~] of this title (relating to Separating Devices, Tanks, and Surface Commingling of Oil).

4 (f) In reporting gas well production, the full-well stream gas shall be reported and charged against  
5 each gas well for allowable purposes. All gas produced, including all gas used on the lease or released  
6 into the air, must be reported regardless of its disposition.

7 (g) If gas is produced from a lease or other property covered by the coastal or inland waters of the  
8 state, the gas produced may, at the option of the operator, be measured on a shore or at a point removed  
9 from the lease or other property from which it was produced.

10 (h) All natural hydrocarbon gas produced and utilized from wells completed in geothermal  
11 resource reservoirs shall be measured and allocated to each individual lease based on semiannual tests  
12 conducted on full well stream lease production.

13 (i) For purposes of this rule, "measured" shall mean a determination of gas volume in accordance  
14 with this rule and other rules of the Commission [~~commission~~], including accurate estimates of unmetered  
15 gas volumes released into the air or used as fuel.

16 (j) No meter or meter run used for measuring gas as required by this rule shall be equipped with a  
17 manifold which will allow gas flow to be diverted or bypassed around the metering element in any  
18 manner unless it is of the type listed in paragraphs (1) or (2) of this subsection:

19 (1) double chambered orifice meter fittings with proper meter manifolding to allow  
20 equalized pressure across the meter during servicing;

21 (2) double chambered or single chambered orifice meter fittings equipped with proper  
22 meter manifolding or other types of metering devices accompanied by one of the following types of meter  
23 inspection manifolds:

24 (A) a manifold with block valves on each end of the meter run and a single block  
25 valve in the manifold complete with provisions to seal and a continuously maintained seal record;

26 (B) an inspection manifold having block valves at each end of the meter run and  
27 two block valves in the manifold with a bleeder between the two and with one valve equipped with  
28 provisions to seal and continuously maintained seal records;

29 (C) a manifold equipped with block valves at each end of the meter run and one  
30 or more block valves in the manifold, when accompanied by a documented waiver from the owner or  
31 owners of at least 60% of the royalty interest and the owner or owners of at least 60% of the working  
32 interest of the lease from which the gas is produced.

33 (k) Whenever sealing procedures are used to provide security in the meter inspection manifold  
34 systems, the seal records shall be maintained for at least three years at an appropriate office and made

1 available for ~~[Railroad]~~ Commission inspection during normal working hours. At any time a seal is  
2 broken or replaced, a notation will be made on the orifice meter chart along with graphic representation of  
3 estimated gas flow during the time the meter is out of service.

4 (l) All meter requirements apply to all meters which are used to measure lease production,  
5 including sales meters if sales meter volumes are allocated back to individual leases.

6 (m) The Commission ~~[commission]~~ may grant an exception to measurement requirements under  
7 subsections (a), (b) and (c) of this section if the requirements of this subsection are met. An exception  
8 granted under this subsection will be revoked if the most recent well test or production reported to the  
9 Commission ~~[commission]~~ reflects a production rate of more than 20 MCF of gas per day or if any of the  
10 other requirements for an exception under this subsection are no longer satisfied. An applicant seeking an  
11 exception under this subsection must file an application establishing:

12 (1) the most recent production test reported to the Commission ~~[commission]~~  
13 demonstrates that the gas well or oil lease for which an exception is sought produces at a rate of no more  
14 than 20 MCF of gas per day;

15 (2) an annual test of the production of the gas well or oil lease provides an accurate  
16 estimate of the daily rate of gas flow;

17 (3) the flow rate established in paragraph (2) of this subsection multiplied by the recorded  
18 duration determined by any device or means that accurately records the duration of production each  
19 month yields an accurate estimate of monthly production; and

20 (4) the operator of the pipeline connected to the gas well or oil lease concurs in writing  
21 with the application.

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1 (n) Failure to comply with the provisions of this rule will result in severance of the producing  
2 well, lease, facility, or gas pipeline or in other appropriate enforcement proceeding.

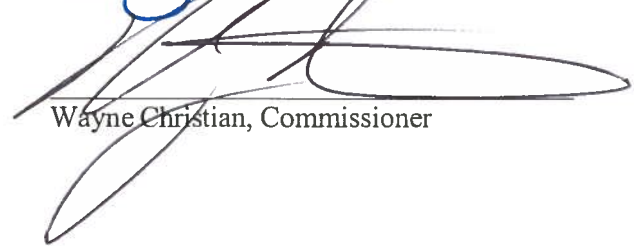
3 This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and  
4 found to be a valid exercise of the agency's legal authority.


5 Issued in Austin, Texas, on February 5, 2019.


6 Filed with the Office of the Secretary of State on February 5, 2019.

  
Christi Craddick, Chairman

  
Ryan Sitton, Commissioner

  
Wayne Christian, Commissioner

ATTEST:  
  
Secretary of the Commission

  
Haley Cochran  
Rules Attorney  
Office of General Counsel  
Railroad Commission of Texas