

**TITLE 19 NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 15 OIL AND GAS**  
**PART 13 COMPULSORY POOLING**

**19.15.13.1 ISSUING AGENCY:** Energy, Minerals and Natural Resources Department, Oil Conservation Division.  
[19.15.13.1 NMAC - N, 12/1/08]

**19.15.13.2 SCOPE:** 19.15.13 NMAC applies to persons engaged in oil and gas development and production within New Mexico.  
[19.15.13.2 NMAC - N, 12/1/08]

**19.15.13.3 STATUTORY AUTHORITY:** 19.15.13 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-17.  
[19.15.13.3 NMAC - N, 12/1/08]

**19.15.13.4 DURATION:** Permanent.  
[19.15.13.4 NMAC - N, 12/1/08]

**19.15.13.5 EFFECTIVE DATE:** December 1, 2008, unless a later date is cited at the end of a section.  
[19.15.13.5 NMAC - N, 12/1/08]

**19.15.13.6 OBJECTIVE:** To establish requirements for implementation of the division's statutory authority to pool interests in oil and gas spacing units.  
[19.15.13.6 NMAC - N, 12/1/08]

**19.15.13.7 DEFINITIONS:**

**A.** "Infill well" means a well in a compulsory pooled proration or spacing unit to be completed in a pool in which an existing well drilled pursuant to the compulsory pooling order has been completed and not plugged and abandoned.

**B.** "Operator", for the purposes of 19.15.13 NMAC, means the division or commission appointed operator of a compulsory pooled proration or spacing unit, or its successor.

**C.** "Pooled working interest" means a working interest or unleased mineral interest that is pooled by division or commission order and not by voluntary agreement of the owner of the interest, except for an unleased mineral interest on federal, state or tribal lands.

[19.15.13.7 NMAC - N, 12/1/08]

**19.15.13.8 CHARGE FOR RISK:**

**A.** General rule. Compulsory pooling orders the division enters pursuant to NMSA 1978, Section 70-2-17, as amended, may provide for the recovery, out of the share of production allocable to the working interest of a party that elects not to pay its proportionate share of well costs in advance, in addition to reasonable well costs and costs of supervision and management, of a charge for risk associated with the drilling, completion or working over and re-completion of each unit well for which the order provides. Unless otherwise ordered pursuant to Subsection D of 19.15.13.8 NMAC, the charge for risk is 200 percent of well costs.

**B.** Well costs shall include the reasonable costs of drilling, reworking, diverting, deepening, plugging back and testing the well; completing the well in a formation pooled by the order; and equipping the well for production.

**(1)** If, however, a well was previously completed in another formation or bottom hole location, or was previously abandoned without completion, well costs as to that well shall mean only the reasonable costs of re-entering, reworking, diverting, deepening, plugging back or testing the well; completion in the pooled formation or formations and; if necessary, reequipping the well for production, unless the division determines that allowance of all or some portion of historical costs of drilling is just and reasonable due to particular circumstances.

**(2)** If a well is completed in two or more formations having diverse ownership or a different risk charge percentage, the order shall provide for allocation of well costs between the formations.

**(3)** As to an interest owner who elects not to pay its share of well costs associated with a specific well in advance, as provided in the applicable order, well costs shall include costs of a subsequent operation undertaken

to secure or enhance production from a formation pooled by the order prior to the time that the entire amount of the non-consenting owner's share of well costs and applicable risk charge have been recovered from the non-consenting owner's share of the well's production. The costs shall include expenses for reworking, diverting, deepening, plugging back, testing, completion or recompletion and equipping for production, but not ordinary operating expenses.

(4) Well costs shall also include reasonable costs of drilling, testing, completing and equipping a substitute well if, in the drilling of a well pursuant to a compulsory pooling order, the operator loses the hole or encounters mechanical difficulties rendering it impracticable to drill to the objective depth and the substitute well is located within 330 feet of the original well and the operator commences drilling within 10 days of the original well's abandonment.

C. An applicant for compulsory pooling is not required to present technical evidence justifying the risk charge provided in Subsection A of 19.15.13.8 NMAC.

D. Exceptions. A person responding to a compulsory pooling application who seeks a different risk charge than that provided in Subsection A of 19.15.13.8 NMAC shall so state in a timely pre-hearing statement filed with the division and served on the applicant in accordance with 19.15.4.13 NMAC, and shall have the burden to prove the justification for the risk charge sought by relevant geologic or technical evidence. The hearing examiner may allow a responding party who has not filed a pre-hearing statement, but who appears in person or by attorney at the hearing, to offer evidence in support of a different risk charge than that Subsection A of 19.15.13.8 NMAC provides, but in such cases the hearing examiner shall allow a continuance of the hearing, if requested, to enable the applicant to present rebuttal evidence.

[19.15.13.8 NMAC - Rp, 19.15.1.35 NMAC, 12/1/08]

**19.15.13.9 INFILL WELLS:** Whenever 19.15.15 NMAC or an applicable pool order authorizes one or more infill wells within a proration or spacing unit pooled by division or commission order pursuant to NMSA 1978, Section 70-2-17, either the operator or an owner of a pooled working interest may, at any time after completion of the initial well provided in the pooling order, propose drilling of an infill well.

[19.15.13.9 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

**19.15.13.10 PROPOSAL BY THE OPERATOR:**

A. If the operator proposes an infill well, it shall notify each pooled working interest owner of the proposal by certified mail, return receipt requested, specifying the proposed well's location and depth and including a schedule of estimated well costs and a statement of each pooled working interest owner's gross working interest percentage.

B. Each pooled working interest owner may elect to participate in the proposed infill well by notice in writing to the operator within 30 days after the owner receives the proposal, provided that the election to participate shall not be effective unless the owner so electing pays to the operator the amount of the owner's share of estimated well costs within 30 days after the date of transmission of its notice of election to participate.

C. A pooled working interest owner not electing to participate in the proposed infill well shall be deemed to have elected to become a non-consenting owner with respect to the infill well. The operator shall withhold from the proceeds of the well's production accruing to the working interest of a non-consenting owner the non-consenting owner's share of costs, as defined in 19.15.13 NMAC, of the infill well, together with a risk charge computed at the same rate as provided in the pooling order with respect to the initial well. The operator shall distribute the amounts withheld from the non-consenting owner's share of production for well costs and risk charges proportionately to the persons who have advanced the infill well's cost.

D. Unless it withdraws the proposal the operator shall commence drilling of the proposed infill well no later than 120 days after the expiration of the initial notice period of 30 days. The director may extend the time for commencement of drilling once for not more than an additional 120 days, upon showing of good cause for the extension, without notice or hearing. If the operator has not commenced drilling within the time provided no election previously made shall be binding on a party. If the operator still desires to drill the infill well, it shall resubmit written notice proposing the well as if no prior proposal had been made.

[19.15.13.10 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

**19.15.13.11 PROPOSAL BY POOLED WORKING INTEREST OWNER:**

A. If a pooled working interest owner proposes an infill well, it shall notify the operator of the proposal by certified mail, return receipt requested, specifying the proposed well's location and depth and including a schedule of estimated well costs. The proposing owner shall mail a copy of the proposal to each of the other

pooled working interest owners, or their successors in title as identified by documents of record in the office of the clerk of the county where the proposed well will be located, at the same time that it mails the proposal to the operator.

**B.** The operator shall, within 60 days after receipt of such notice, either propose an infill well at the specified location and depth as an operator proposal pursuant to 19.15.13.10 NMAC, or notify the owner proposing the well that it declines to do so.

(1) If the operator proposes the well and fewer than all working interest owners elect to participate, the operator may withdraw the proposal unless the originally proposing owner, within 30 days of receipt of notice of such occurrence, advances the share of estimated well costs allocable to all non-consenting owners of pooled working interests.

(2) If the operator proposes the well and all owners consent to the well or the originally proposing owner advances the share of well costs allocable to an otherwise unsubscribed interest, the operator shall commence drilling the proposed infill well within 120 days after it receives notice that either condition has occurred. The director may extend the time for commencement of drilling once for not more than an additional 120 days, upon showing of good cause for the extension, without notice or hearing. Well costs applicable to a non-consenting owner of a pooled working interest, together with the risk charge provided in the original pooling order, shall be recoverable out of the non-consenting owner's share of production as in other cases.

**C.** If the operator declines to propose a well proposed to it by a pooled working interest owner or fails to commence the well within the time provided, the proposing owner may apply to the division for an order authorizing the drilling of the proposed infill well under the compulsory pooling order's terms. The owner filing the application shall give notice of the application as provided in 19.15.4.12 NMAC to the owners of working interests in the proration or spacing unit, including those whose interests in the proration or spacing unit are pooled by agreement, and, if the proration or spacing unit includes state, federal or tribal minerals, to the state land office or the BLM, as applicable.

[19.15.13.11 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

**19.15.13.12 REFUND OF MONEY ADVANCED:** If the operator does not commence an infill well proposed pursuant to 19.15.13.10 NMAC within the time provided, including an extension the division allows, it shall refund amounts it received from a pooled party as advance payment of well costs for the well within 10 days after the expiration of the time provided for commencement of drilling, together with interest on the amount received calculated at the rate of bank of America prime plus three percentage points.

[19.15.13.12 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

**19.15.13.13 DETERMINATION OF REASONABLE COSTS:** The provision of the applicable compulsory pooling order regarding reporting of actual well costs to the division and to pooled working interest owners, opportunity for objections to those costs, determinations of reasonableness of well costs and adjustment of the amount paid to a participating pooled working interest owner to reflect reasonable well costs shall apply to a well drilled pursuant to 19.15.13.10 NMAC or 19.15.13.11 NMAC.

[19.15.13.13 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

#### **HISTORY of 19.15.13 NMAC:**

**History of Repealed Material:** 19.15.1 NMAC, General Provisions (filed 04/27/2001) repealed 12/1/08.

#### **NMAC History:**

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 35 and 36) (filed 04/27/2001) was replaced by 19.15.13 NMAC, Compulsory Pooling, effective 12/1/08.