

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

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IN THE MATTER OF PROPOSED AMENDMENTS TO THE
COMMISSION'S RULE ON RULEMAKING, 19.15.3 NMAC.

CASE NO. 15738

OIL CONSERVATION COMMISSION'S
PRE-HEARING STATEMENT

The Oil Conservation Commission through its counsel files the following Pre-hearing Statement.

PARTIES AND ATTORNEYS

Oil Conservation Commission

Cheryl L. Bada
Deputy General Counsel
Energy, Minerals and Natural Resources
Department
1220 S. St. Francis Drive
Santa Fe, NM 87505

STATEMENT OF THE CASE

The Oil Conservation Commission (Commission) commenced this proceeding on its own motion, proposing amendments to the rule governing the procedures for rulemaking proceedings, 19.15.3 NMAC. The purpose of the proposed amendments is to comply with recent statutory changes involving rulemaking requirements. The proposed changes also update and clarify 19.15.3 NMAC, including requirements for initiating rulemaking and the filing of pre-hearing statements. The statutory changes necessitating this rulemaking are to the Oil and Gas Act, NMSA 1978, Section 70-2-12.2 regarding the adoption of rules and appeals, and changes to the State Rules Act in Laws of 2017, Chapter 137.

The Commission's counsel has proposed modifications to the proposed rule changes attached to the Commission's Order to (1) re-insert existing Paragraph D of 19.15.3.8 NMAC, which was left out of the rule changes included with Order No. R-14362, (2) require that proposed modifications to proposed rule changes and the reasons for the proposed modifications be included with pre-hearing statements, (3) comply with the State Records Center and Archives rule formatting requirements, and (4) remove extraneous or unnecessary words. The addition in Subparagraph (2) of Paragraph B of 19.15.3.11 NMAC requiring that the text and reasons for proposed modifications be included replaces language that is proposed to be deleted from Paragraph C.

WITNESSES

William Brancard, General Counsel, Energy, Minerals and Natural Resources Department

Ms. Brancard has been General Counsel for the Energy, Minerals and Natural Resources Department since 2010, and has extensive experience in rulemaking for boards and commissions and advising boards and commissions, including the Oil Conservation Commission, the Mining Commission, and the Water Quality Control Commission. From 2003 to 2010, he served as the Director of the Mining and Minerals Division in the Department. He has also worked as an Assistant Land Commissioner and an Assistant Attorney General for the State of New Mexico as well as practicing law with the firm of Sutin, Thayer & Browne in Albuquerque and Santa Fe. Mr. Brancard is a graduate of Hamilton College (1979) and Harvard Law School (1987) and attended the London School of Economics. Mr. Brancard drafted the proposed amendments to 19.15.3 NMAC.

Mr. Brancard's testimony will include a review of the proposed rule amendments and the basis or requirements for the amendments. Mr. Brancard's testimony is expected to last one hour.

EXHIBITS

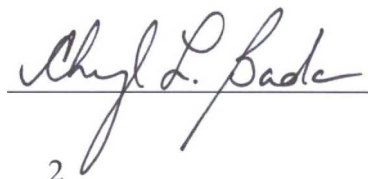
1. Laws of 2017, Chapter 137
2. Oil and Gas Act, NMSA 1978, Section 70-2-12.2
3. Certificate of Compliance with Notice Requirements from Florene Davidson
4. Proposed Amendments to 19.5.3 NMAC
5. Proposed Modifications to the Proposed Amendments
6. Table showing proposed rule changes and whether required by Laws of 2017, Chapter 137 or Commission proposal

Copies of Exhibits 1 through 6 are attached.

PROCEDURAL MATTERS

The Commission's counsel knows of no procedural matters that the Commission needs to address.

Respectfully submitted,

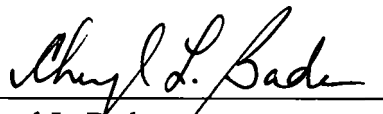

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Cheryl L. Bada
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3214
Fax: (505) 476-3220
Email: cheryl.bada@state.nm.us
Attorney for the Oil Conservation Division

Certificate of Service

I hereby certify that the Oil Conservation Commission's Pre-Hearing Statement was served by e-mail and first-class mail to the following on September 13, 2017.

Ryan Flynn, Executive Director
New Mexico Oil and Gas Association
P.O. Box 1864
Santa Fe, NM 87504-1864


Cheryl L. Bada

WESTLAW

2017 New Mexico Laws Ch. 137 (H.B. 58)

NEW MEXICO 2017 SESSION LAWS

RULES AND REGULATIONS—ADMINISTRATIVE LAW AND PROCEDURE—STATE RULES ACT

2017 New Mexico Laws Ch. 137 (H.B. 58) (Approx. 4 pages)

Additions and deletions are not identified in this document.

Vetoed are indicated by ~~Text~~ ;

stricken material by ~~Text~~ .

Ch. 137

H.B. No. 58

RULES AND REGULATIONS—ADMINISTRATIVE LAW AND PROCEDURE—STATE RULES ACT

AN ACT RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING,
ADOPTING, AMENDING OR REPEALING RULES; AMENDING AND ENACTING
SECTIONS OF THE STATE RULES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

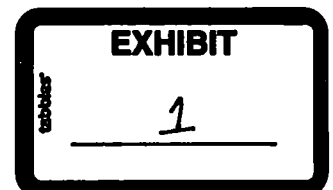
SECTION 1. Section 14-4-2 NMSA 1978 (being Laws 1967, Chapter 275, Section 2, as amended) is amended to read:

<< NM ST § 14-4-2 >>

§ 14-4-2. Definitions

As used in the State Rules Act:

- A. "agency" means any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches of the state government;
- B. "person" includes individuals, associations, partnerships, companies, business trusts, political subdivisions and corporations;
- C. "proceeding" means a formal agency process or procedure that is commenced or conducted pursuant to the State Rules Act;
- D. "proposed rule" means a rule that is provided to the public by an agency for review and public comment prior to its adoption, amendment or repeal, and for which there is specific legal authority authorizing the proposed rule;
- E. "provide to the public" means for an agency to distribute rulemaking information by:
 - (1) posting it on the agency website, if any;
 - (2) posting it on the sunshine portal;
 - (3) making it available in the agency's district, field and regional offices, if any;
 - (4) sending it by electronic mail to persons who have made a written request for notice from the agency of announcements addressing the subject of the rulemaking proceeding and who have provided an electronic mail address to the agency;
 - (5) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency;



(6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address; and

(7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

F. "rule" means any rule, regulation, or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals thereof, issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, including affecting persons served by the agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed such a rule, nor shall it constitute specific adoption thereof by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the girls' welfare home or any hospital; rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from any educational institution; and

G. "rulemaking" means the process for adoption of a new rule or the amendment, readoption or repeal of an existing rule.

SECTION 2. Section 14–4–3 NMSA 1978 (being Laws 1967, Chapter 275, Section 3, as amended) is amended to read:

<< NM ST § 14–4–3 >>

§ 14–4–3. Format of rules; filing; distribution

A. Each agency promulgating any rule shall place the rule in the format and style required by rule of the state records administrator and shall deliver the rule to the state records administrator or the administrator's designee, accompanied by the concise explanatory statement required by the State Rules Act. The state records administrator or the administrator's designee shall note thereon the date and hour of filing.

B. The state records administrator or the administrator's designee shall maintain a copy of the rule as a permanent record open to public inspection during office hours, on the website of the records center, published in a timely manner in the New Mexico register and compiled into the New Mexico Administrative Code.

C. At the time of filing, an agency may submit to the state records administrator or the administrator's designee a copy, for annotation with the date and hour of filing, to be returned to the agency.

D. The state records administrator, after written notification to the filing agency, may make minor, nonsubstantive corrections in spelling, grammar and format in filed rules. The state records administrator shall make a record of the correction and shall deliver the record to the filing agency and issuing authority within ten days of the change. Within thirty days of receiving that state records administrator's record of a correction, the agency shall provide to the public notice of the correction in the same manner as the agency used to give notice of the rulemaking proceeding pursuant to Section 4 of this 2017 act.

SECTION 3. Section 14–4–5 NMSA 1978 (being Laws 1967, Chapter 275, Section 6, as amended) is amended to read:

<< NM ST § 14–4–5 >>

§ 14–4–5. Time limit on adoption of a proposed rule; filing and compliance required for validity

A. Except in the case of an emergency rule, no rule shall be valid or enforceable until it is published in the New Mexico register as provided by the State Rules Act.

B. An agency shall not adopt a rule until the public comment period has ended. If the agency fails to take action on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the agency takes action to extend the period. The agency may extend the period of time for adopting the proposed rule for an additional period of two years by

filing a statement of good cause for the extension in the rulemaking record, but it shall provide for additional public participation, comments and rule hearings prior to adopting the rule.

C. An agency may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If a rulemaking is terminated pursuant to this section, the agency shall provide notice to the public.

D. Within fifteen days after adoption of a rule, an agency shall file the adopted rule with the state records administrator or the administrator's designee and shall provide to the public the adopted rule. The state records administrator or the administrator's designee shall publish rules as soon as practicable after filing, but in no case later than ninety days after the date of adoption of the proposed rule. Unless a later date is otherwise provided by law or in the rule, the effective date of a rule shall be the date of publication in the New Mexico register.

E. A proposed rule shall not take effect unless it is adopted and filed within the time limits set by this section.

SECTION 4. A new section of the State Rules Act is enacted to read:

NOTICE OF PROPOSED RULEMAKING.—

A. Not later than thirty days before a public rule hearing, the agency proposing the rule shall provide to the public and publish in the New Mexico register a notice of proposed rulemaking. The notice shall include:

- (1) a summary of the full text of the proposed rule;
- (2) a short explanation of the purpose of the proposed rule;
- (3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;
- (4) information on how a copy of the full text of the proposed rule may be obtained;
- (5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;
- (6) information on where and when a public rule hearing will be held and how a person may participate in the hearing; and
- (7) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

B. An agency may charge a reasonable fee for providing any records in nonelectronic form when provided to a person pursuant to this section. An agency shall not charge a fee for providing any records in electronic form when provided to a person pursuant to this section.

C. An internet link providing free access to the full text of the proposed rule shall be included on the notice of proposed rulemaking.

D. If the agency changes the date of the public rule hearing or the deadline for submitting comments as stated in the notice, the agency shall provide notice to the public of the change.

E. The state records administrator or the administrator's designee shall timely publish the notice of proposed rulemaking in the next publication of the New Mexico register.

SECTION 5. A new section of the State Rules Act is enacted to read:

PUBLIC PARTICIPATION, COMMENTS AND RULE HEARINGS.—

A. The notice of proposed rulemaking shall specify a public comment period of at least thirty days after publication in the New Mexico register during which a person may submit information and comment on the proposed rule. The information or comment may be submitted in an electronic or written format or at a public rule hearing pursuant to Subsection B of this section. The agency shall consider all information and comment on a proposed rule that is submitted within the comment period.

B. At the public rule hearing, members of the public shall be given a reasonable opportunity to submit data, views or arguments orally or in writing. Each agency shall determine, in accordance with governing statutory and case law, the manner in which parties to the proceeding and members of the public will be able to participate in public hearings. All public hearings shall be conducted in a fair and equitable manner. Except as otherwise provided by law, an agency representative or hearing officer shall preside over a public rule hearing.

C. The public rule hearing shall be open to the public and be recorded.

SECTION 6. A new section of the State Rules Act is enacted to read:

AGENCY RECORD IN RULEMAKING PROCEEDING.—

A. An agency shall maintain a rulemaking record for each rule it proposes to adopt. The record and materials incorporated by reference in the proposed rule shall be readily available for public inspection in the central office of the agency and available for public display on the state sunshine portal. If an agency determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the sunshine portal, the agency shall describe that part of the record, shall note on the sunshine portal that the part of the record is not displayed and shall provide instructions for accessing or inspecting that part of the record.

B. A rulemaking record shall contain:

- (1) a copy of all publications in the New Mexico register relating to the proposed rule;
- (2) a copy of any technical information that was relied upon in formulating the final rule;
- (3) any official transcript of a public rule hearing or, if not transcribed, any audio recording or verbatim transcript of the hearing, and any memoranda summarizing the contents of the hearing prepared by the hearing officer or agency official who presided over the hearing;
- (4) a copy of all comments and other material received by the agency during the public comment period and at the public hearing;
- (5) a copy of the full text of the initial proposed rule and the full text of the final adopted rule and the concise explanatory statement filed with the state records administrator or the administrator's designee; and
- (6) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.

SECTION 7. A new section of the State Rules Act is enacted to read:

CONCISE EXPLANATORY STATEMENT.—At the time it adopts a rule, an agency shall provide to the public a concise explanatory statement containing:

- A. the date the agency adopted the rule;
- B. a reference to the specific statutory or other authority authorizing the rule; and
- C. any findings required by a provision of law for adoption of the rule.

SECTION 8. A new section of the State Rules Act is enacted to read:

EMERGENCY RULE.—

A. An agency shall comply with the rulemaking procedures of the State Rules Act unless the agency finds that the time required to complete the procedures would:

- (1) cause an imminent peril to the public health, safety or welfare;
- (2) cause the unanticipated loss of funding for an agency program; or
- (3) place the agency in violation of federal law.

B. The agency shall provide to the public a record of any finding pursuant to Subsection A of this section and a detailed justification for that finding before issuing an emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the emergency rule

immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable.

C. When an agency makes a finding pursuant to Subsection A of this section, the agency shall follow the provisions of this section in addition to any more specific requirements in statute that pertain to the agency regarding promulgating emergency or interim rules.

D. Emergency rules may take effect immediately upon filing with the state records administrator or the administrator's designee or at a later date specified in the emergency rule. Emergency rules shall be published in the New Mexico register.

E. No emergency rule shall permanently amend or repeal an existing rule. An emergency rule shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within one hundred eighty days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule. If an expired emergency rule temporarily amended or repealed an existing rule, the rule shall revert to what it would have been had the emergency rule not been issued.

SECTION 9. A new section of the State Rules Act is enacted to read:

CONFLICTS BETWEEN RULE AND STATUTE—VARIANCE BETWEEN PROPOSED AND FINAL ACTION.—

A. No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute.

B. A word or phrase that is defined in an applicable statute should not be defined in rule. A conflict between a definition that appears in a rule and in an applicable statute is resolved in favor of the statute.

SECTION 10. A new section of the State Rules Act is enacted to read:

PROCEDURAL RULES.—No later than January 1, 2018, the attorney general shall adopt default procedural rules for public rule hearings for use by agencies that have not adopted their own procedural rules consistent with the State Rules Act. Each agency may adopt its own procedural rules, or continue in effect existing rules, which shall provide at least as much opportunity for participation by parties and members of the public as is provided in the procedural rules adopted by the attorney general. An agency that adopts its own procedural rules shall send a copy of those procedural rules to the attorney general and shall maintain those procedural rules on the agency's website.

SECTION 11. EFFECTIVE DATE.—The effective date of the provisions of this act is July 1, 2017.

Approved April 7, 2017.

**End of
Document**

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WESTLAW

West's New Mexico Statutes Annotated

Chapter 70. Oil and Gas

Article 2. Oil Conservation Commission; Division; Regulation of Wells (Refs &

§ 70-2-12.2. Adoption of rules; appeals

West's New Mexico Statutes Annotated Chapter 70. Oil and Gas | Effective: June 19, 2015 (Approx. 2 pages)

Effective: June 19, 2015

N. M. S. A. 1978, § 70-2-12.2

§ 70-2-12.2. Adoption of rules; appeals

Currentness

A. No rule shall be adopted pursuant to the Oil and Gas Act until after a hearing by the commission.

B. Any rule adopted under the Oil and Gas Act shall be filed and published in accordance with the State Rules Act.¹ No rule shall be filed until the latter of twenty days after the commission has entered an order or has refused a rehearing application pursuant to Section 70-2-25 NMSA 1978.

C. Any party of record to the proceeding before the commission or any person adversely affected by a rule adopted under the Oil and Gas Act may appeal to the court of appeals within thirty days after filing of the rule under the State Rules Act. All such appeals shall be upon the record made by the commission. Upon appeal, the court of appeals shall set aside the rule only if found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

D. As used in this section, "rule" includes an amendment or repeal of a rule.

Credits

Added by L. 2015, Ch. 133, § 1, eff. June 19, 2015.

Footnotes

¹ NMSA 1978, § 14-4-1 et seq.

NMSA 1978, § 70-2-12.2, NM ST § 70-2-12.2

Current through the end of the First Regular and Special Sessions of the 53rd Legislature (2017).

**End of
Document**

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**EXHIBIT**

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

**In the Matter of Proposed Amendments to the
Commission's Rule on Rulemaking, 19.15.3 NMAC.**

CASE No. 15738

CERTIFICATE OF COMPLIANCE WITH NOTICE REQUIREMENTS

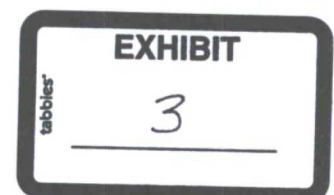
As Clerk to the New Mexico Oil Conservation Commission, I hereby certify that notice of this matter has been provided as follows:

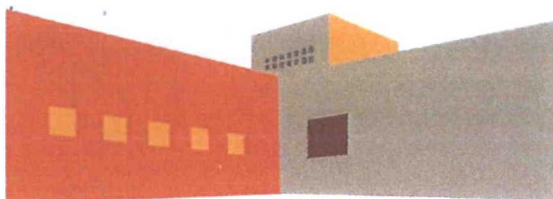
- 1. The Notice of Proposed Rulemaking for this Case ("Notice") was mailed to the State Records Center and Archives and was published in the New Mexico Register on August 15, 2017. (Attachment A)**
- 2. A copy of the Notice was sent to the Albuquerque Journal and was published on August 17, 2017. (Attachment B)**
- 3. On August 14, 2017, a copy of the Notice was posted on the Oil Conservation Division website and remained posted through the date of the public hearing.**
- 4. On August 17, 2017, a copy of the Notice was sent to the Oil Conservation Division field offices in Hobbs, Artesia and Aztec to be available to the public.**
- 5. By August 14, 2017, a copy of the Notice had been mailed or e-mailed to all persons on the Commission mailing list for rulemakings.**
- 6. On August 21, 2017, a copy of the Notice was mailed to the New Mexico Legislative Council for distribution to committees.**
- 7. On August 21, 2017, a copy of the Notice was mailed to the New Mexico Department of Information Technology for posting on the sunshine portal.**

NEW MEXICO OIL CONSERVATION COMMISSION

Florene Davidson

Florene Davidson, Commission Clerk





NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe 87507 US
476-7935

Invoice

BILL TO

EMNRD-Oil Conservation Division
Brittany Dutton
1220 S. St. Francis Dr.
Santa Fe, NM 87505

INVOICE #	DATE	TOTAL DUE	DUE DATE	ENCLOSED
2410	08/29/2017	\$114.00	08/29/2017	

P.O. NUMBER

52100-0000057261

DATE	ACTIVITY	QTY	RATE	AMOUNT
08/29/2017	N.M. Register - 431902 - Columnar Inch, Vol. XXVIII, Rulemaking Amendment to 19.15.39 NMAC, Special Provisions for a Selected Area of the Roswell Artesian Basin, effective 8/29/2017.	38	3.00	114.00

I, Matt Ortiz, certify that the agency noted above has published legal notices or rules in the NEW MEXICO REGISTER, VOL. XXVIII, and that payment has been assessed for said legal notice or publication, which appears on the publication date and issue number noted above.

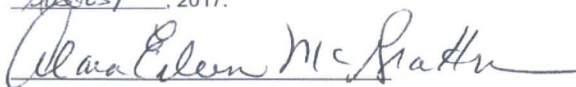
BALANCE DUE

\$114.00

Affiant: 

Publisher New Mexico Register

Subscribed, sworn and acknowledged before me this 29 day of AUGUST, 2017.



Notary Public

My Commission Expires: 4/4/2018

Attachment A

New Mexico Register / Volume XXVIII, Issue 15 / August 15, 2017

NOTICE OF PROPOSED RULEMAKING

The New Mexico Oil Conservation Commission (Commission) hereby gives notice of the following proposed rulemaking.

Case No. 15738. In the Matter of Proposed Amendments to the Commission's Rule on Rulemaking, 19.15.3 NMAC.

The Commission proposes to amend its rule governing the procedures for rulemaking proceedings, 19.15.3 NMAC. The proposed rule change includes amendments to the sections on rulemaking initiation, notice, hearing participation and hearings, and adds sections on deliberation and action, the record and filing and appeal.

The purposes of the proposed rule changes are to comply with recent statutory changes involving rulemaking requirements. The proposed rule change is also intended to update and clarify 19.15.3 NMAC including the requirements for the initiation of rulemaking and for the filing of pre-hearing statements. The statutory authorizations include a new section of the Oil and Gas Act, NMSA 1978, Section 70-2-12.2, on adoption of rules and appeals, and the changes to the State Rules Act in Chapter 137 of Laws 2017. NMSA 1978, Section 70-2-11(A), authorizes the adoption of rules to carry out the purposes of the Oil and Gas Act.

Case No. 15802. Application of the New Mexico Oil Conservation Division for Amendment of Section 19.15.7.24 NMAC Changing the Time for Division Notification and Enforcement After an Operator's Failure to file an Acceptable Monthly Production Report (Form C-115).

The proposed amendment will reduce the time after an operator fails to file an acceptable monthly production report (form C-115) within which the Oil Conservation Division ("the division") must notify the operator of its intent to revoke the operator's authorization to transport from 60 days to 30 days, and to reduce the time within which the operator may file an acceptable form or request a hearing on the proposed revocation from 120 days to 60 days, after the original due date of the form C-115.

The purpose of the proposed amendment is to secure more expeditious filing of operators' production reports. This amendment is authorized by NMSA 1978, Section 70-2-11(A), which authorizes the adoption of rules to carry out the purposes of the Oil and Gas Act (NMSA 1978, Sections 70-2-1 through 70-2-38, as amended); and by NMSA 1978, Section 70-2-12(A), which authorizes the collection of data and to provide for the keeping of records and the making of reports.

No technical information served as a basis for the proposed rules.

Public Hearing and Comment. The Commission will hold a public hearing on each of the proposed rules at the Commission meeting which will commence at 9:00 A.M. on **September 21, 2017**, in Porter Hall, 1st Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

The proposed rule amendments are available from Commission Clerk, Florene Davidson at (505) 476-3458 or can be viewed on the Hearings page and Rules page at the Oil Conservation Division's website at <http://www.emnrd.state.nm.us/ocd>. Persons **recommending modifications** to the proposed rule amendments must file a notice of recommended modifications with Ms. Davidson no later than 5:00 P.M. on Thursday, September 7, 2017. The notice must include the text of the recommended modifications of the proposed rule amendments, an explanation of the recommended modification's impact, and reasons for adopting the modification. Persons intending to provide **written comments** on the proposed rule changes must submit their written comments no later than 5:00 P.M. on Friday, September 15, 2017 to Ms. Davidson.

Persons intending to offer technical testimony at the hearing must file six copies of a **Pre-hearing Statement** conforming to the requirements of 19.15.3.11 NMAC, and six copies of all exhibits the person will offer as evidence at the hearing, no later than 5:00 P.M. on Thursday, September 14, 2017. Any person may present non-technical testimony at the hearing.

Proposed modifications and written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505, faxed to Ms. Davidson at (505) 476-3462, or e-mailed to Ms. Davidson at florene.davidson@state.nm.us. Pre-hearing Statements must be hand-delivered or mailed to Ms. Davidson at the above address.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing please contact Ms. Davidson at (505) 476-3458 or through the New Mexico Relay Network at 1-800-659-1779 by **September 11, 2017**. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A party who plans on using projection

equipment at a hearing must contact Ms. Davidson seven (7) business days prior to the hearing requesting the use of the projection equipment. Wireless internet is available; however, the party must provide its own laptop computer.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 27th day of July 2017.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

**David R. Catanach
Director, Oil Conservation Division
S E A L**

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

Bernadette Gonzales, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

08/17/2017

Bernadette Gonzales

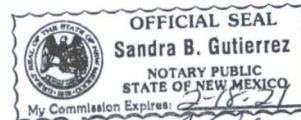
Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

17 day of August of 2017

PRICE \$243.71

Statement to come at the end of month.

ACCOUNT NUMBER 1009556



Sandra B. Gutierrez

NEW MEXICO OIL CONSERVATION COMMISSION
Notice of Proposed Rulemaking

The New Mexico Oil Conservation Commission (Commission) hereby gives notice of the following proposed rulemaking.

Case No. 15738. In the Matter of Proposed Amendments to the Commission's Rule on Rulemaking, 19.15.3 NMAC.

The Commission proposes to amend its rule governing the procedures for rulemaking proceedings, 19.15.3 NMAC. The proposed rule change includes amendments to the sections on rulemaking initiation, notice, hearing participation and hearings, and adds sections on deliberation and action, the record and filing and appeal.

The purposes of the proposed rule changes are to comply with recent statutory changes involving rulemaking requirements. The proposed rule change is also intended to update and clarify 19.15.3 NMAC including the requirements for the initiation of rulemaking and for the filing of pre-hearing statements. The statutory authorizations include a new section of the Oil and Gas Act, NMSA 1978, Section 70-2-12.2, on adoption of rules and appeals, and the changes to the State Rules Act in Chapter 137 of Laws 2017, NMSA 1978, Section 70-2-11(A), authorizes the adoption of rules to carry out the purposes of the Oil and Gas Act.

Case No. 15802. Application of the New Mexico Oil Conservation Division for Amendment of Section 19.15.7.24 NMAC Changing the Time for Division Notification and Enforcement After an Operator's Failure to file an Acceptable Monthly Production Report (Form C-115).

The proposed amendment will reduce the time after an operator fails to file an acceptable monthly production report (form C-115) within which the Oil Conservation Division ("the Division") must notify the operator of its intent to revoke the operator's authorization to transport from 60 days to 30 days, and to reduce the time within which the operator may file an acceptable form or request a hearing on the proposed revocation from 120 days to 60 days, after the original due date of the form C-115.

The purpose of the proposed amendment is to secure more expeditious filing of operators' production reports. This amendment is authorized by NMSA 1978, Section 70-2-11(A), which authorizes the adoption of rules to carry out the purposes of the Oil and Gas Act (NMSA 1978, Sections 70-2-1 through 70-2-38, as amended); and by NMSA 1978, Section 70-2-12(A), which authorizes the collection of data and to provide for the keeping of records and the making of reports.

No technical information served as a basis for the proposed rules.

Public Hearing and Comment. The Commission will hold a public hearing on each of the proposed rules at the Commission meeting which will commence at 5:00 A.M. on September 21, 2017, in Portia Hall, 1st Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

The proposed rule amendments are available from Commission Clerk, Florene Davidson at (505) 476-3458 or can be viewed on the Hearings page and Rules page at the Oil Conservation Division's website at <http://new.mexico.state.us/oil>. Persons recommending modifications to the proposed rule amendments must file a notice of recommended modifications with Ms. Davidson no later than 5:00 P.M. on Thursday, September 7, 2017. The notice must include the text of the recommended modifications of the proposed rule amendments, an explanation of the recommended modification's impact, and reasons for adopting the modification. Persons intending to provide written comments on the proposed rule changes must submit their written comments no later than 5:00 P.M. on Friday, September 15, 2017 to Ms. Davidson.

Persons intending to offer technical testimony at the hearing must file six copies of a Pre-hearing Statement conforming to the requirements of 19.15.3.11 NMAC, and six copies of all exhibits the person will offer as evidence at the hearing, no later than 5:00 P.M. on Thursday, September 14, 2017. Any person may present non-technical testimony at the hearing.

Proposed modifications and written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505, faxed to Ms. Davidson at (505) 476-3462, or e-mailed to Ms. Davidson at florence.davidson@state.nm.us. Pre-hearing Statements must be hand-delivered or mailed to Ms. Davidson at the above address.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing please contact Ms. Davidson at (505) 476-3458 or through the New Mexico Relay Network at 1-800-658-1779 by September 11, 2017. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A party who plans on using projection equipment at a hearing must contact Ms. Davidson seven (7) business days prior to the hearing requesting the use of the projection equipment. Wireless internet is available, however, the party must provide its own laptop computer.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 14th day of August, 2017.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

David R. Catanach
Director, Oil Conservation
Division
Journal: August 17, 2017

Attachment B

**EXHIBIT A
PROPOSED RULE CHANGE**

**TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 3 RULEMAKING**

19.15.3.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division and Oil Conservation Commission.
[19.15.3.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/08; A. / /17]

19.15.3.2 SCOPE: 19.15.3 NMAC applies to persons or entities engaged in rulemaking proceedings before the commission.
[19.15.3.2 NMAC - Rp, 19.15.14.2 NMAC, 12/1/08]

19.15.3.3 STATUTORY AUTHORITY: 19.15.3 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, which grants the oil conservation division and the oil conservation commission jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and NMSA 1978, Section 70-2-7, which provides that the division shall prescribe by rule its hearing procedures. The 2017 amendments are authorized by NMSA 1978, Section 70-2-12.2 (2016) which provides for the appeal of Commission rules and Laws 2017, Chapter 137 which provides for uniform rulemaking procedures.
[19.15.3.3 NMAC - Rp, 19.15.14.3 NMAC, 12/1/08; A. / /17]

19.15.3.4 DURATION: Permanent.
[19.15.3.4 NMAC - Rp, 19.15.14.4 NMAC, 12/1/08]

19.15.3.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.3.5 NMAC - Rp, 19.15.14.5 NMAC, 12/1/08]

19.15.3.6 OBJECTIVE: To establish procedures for commission rulemaking proceedings.
[19.15.3.6 NMAC - Rp, 19.15.14.6 NMAC, 12/1/08]

19.15.3.7 DEFINITIONS: ~~{RESERVED}~~
{See NMSA 1978, Section 70-2-33 and 19.15.2.7 NMAC for definitions. See also NMSA 1978, Section 14-4-2 (2017) for the definitions of "proceeding", "proposed rule" and "rule".}
"party" means the applicant or any person filing a pre-hearing statement or an entry of appearance;
"technical testimony" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing;
[19.15.3.7 NMAC - N, 12/1/08; A. / /17]

19.15.3.8 RULEMAKING INITIATION:
A. Any person may file an application with the commission to adopt, amend or repeal any rule within the jurisdiction of the commission. The commission may commence a rulemaking proceeding by issuing an order initiating rulemaking. The division, an operator or producer or other person may initiate a rulemaking proceeding by filing an application to adopt, amend or repeal a rule with the commission clerk. The application shall be in writing and applicants shall specifically identify the

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applicant ~~proposes~~ seeks for the commission to adopt, amend or repeal. The application ~~or order initiating rulemaking~~ shall include the following:

- (1) a brief summary of the proposed rule ~~change's~~ intended effect;
- (2) a ~~proposed~~ draft of the ~~proposed~~ new rule or amendment;
- (3) the applicant's name;
- (4) the applicant's address, or the address of its attorney, including an e-mail address ~~and fax number~~ if available; and
- (5) a proposed legal notice for publication which meets the requirements of subsection B of 19.15.3.9 NMAC; and
- ~~(6) any other matter a commission order requires.~~

B. An applicant shall file ~~six sets of~~ the application for rulemaking with the commission clerk. The applicant shall file the application by delivering the application to the commission clerk in person, or by mail and shall also send an electronic copy of the application to the commission clerk by facsimile, as long as the applicant mails or delivers six sets of the application to the commission clerk on the next business day.

C. Upon receiving an application for rule change the commission clerk shall file the application, and shall deliver a copy to all commissioners within 10 business days of the application's receipt. ~~Unless the commission chairman or another commissioner indicates, within 10 business days following the commission clerk's delivery of the rule change application, that a hearing is not necessary or appropriate, the chairman shall schedule a hearing on the rule change application. If a commissioner indicates to the chairman, or if the chairman concludes, that a hearing is not necessary or appropriate because the application is repetitive or frivolous or for any other lawful reason, the commission shall determine, at a public meeting at least 15 days and no later than within 60 days of the application's filing, whether to hold a public hearing on the proposed rule. hear the application, and if the commission decides to hold a public hearing on the proposed rule, the commission may set the date for the hearing and may issue orders specifying procedures for the conduct of the hearing in addition to the procedures of this Part, including naming a hearing officer, providing additional public notice, and providing for a pre-hearing conference. hear the application~~ Prior to the hearing, the chairman or other hearing officer appointed by the commission shall have the authority to schedule or continue a hearing, hold a pre-hearing conference and rule on any non-dispositive motions, on the rule change application.
[19.15.3.8 NMAC - Rp, 19.15.14.1201 NMAC, 12/1/08; A. / /17]

19.15.3.9 RULEMAKING NOTICE:

A. The ~~commission division~~ shall ~~distribute~~ publish a notice of a proposed rulemaking no later than thirty days before the hearing on the rule change by:

- ~~(1) posting the notice on the division website;~~
- ~~(2) posting the notice on the sunshine portal;~~
- ~~(3) making the notice available in the division's district offices;~~
- ~~(4) sending the notice by mail or electronic mail to persons who have made a written request for notice from the commission of announcements addressing the subject of the rulemaking proceeding and who have provided a mail or an electronic mail address to the commission;~~
- ~~(5) providing the notice to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees; and~~
- ~~(6) publishing the notice in the New Mexico register and in a newspaper of general circulation in the state.~~

~~set for the hearing in the name of the "State of New Mexico", signed by the commission chairman and bearing the commission's seal. The notice shall state the hearing's date, time and place and the date by which those commenting shall submit their written comments to the commission clerk. The notice shall be published as follows:~~

- ~~(1) one time in a newspaper of general circulation in the counties that the proposed rule change affects, or if the proposed rule change will have statewide effect, in a newspaper of general circulation in the state, no less than 20 days prior to the scheduled hearing date;~~
- ~~(2) on the applicable docket for the commission hearing at which the commission will hear the matter, which the commission clerk shall send by regular or electronic mail not less than 20 days prior to the hearing to all who have requested such notice;~~

~~(3) one time in the New Mexico register, with the publication date not less than 10 business days prior to the scheduled hearing date; and~~

~~(4) by posting on the division's website not less than 20 days prior to the scheduled hearing date.~~

B. Content. The notice shall include:

(1) a summary of the full text of the proposed rule;

(2) a short explanation of the purpose of the proposed rule;

(3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;

(4) information on how a copy of the full text of the proposed rule may be obtained, including an internet link to the full text;

(5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;

(6) information on where and when a public rule hearing will be held and how a person may participate in the hearing; and

(7) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained. In cases of emergency, the commission chairman may shorten these time limits by written order.

[19.15.3.9 NMAC - Rp, 19.15.14.1202, 12/1/08; A. / /17]

19.15.3.10 COMMENTS ON RULEMAKING: A person may submit written, or electronic or ~~facsimile~~ comments on a proposed rule change, and those comments shall be made part of the hearing record. Individuals or entities shall provide written comments on the proposed rule change to the commission clerk not later than ~~the date of five business days before~~ the scheduled hearing date, unless the commission chairman or the commission extends the time for filing comments. The commission chairman or the commission may extend the time for filing written, or, electronic or ~~facsimile~~ comments by making an announcement at the hearing, or by posting notice on the division's website. A person may review written, or, electronic or ~~facsimile~~ comments on a proposed rule change at the division's Santa Fe office. The division shall post copies of written, or, electronic or ~~facsimile~~ comments that persons have filed with the commission clerk on the division's website as soon as practicable after they are filed.

[19.15.3.10 NMAC - Rp, 19.15.14.1203 NMAC, 12/1/08; A. / /17]

19.15.3.11 RULEMAKING HEARING PARTICIPATION:

A. Non-technical testimony.

(1) A person may testify or make an un-sworn statement at the rulemaking hearing. A person does not need to file prior notification with the commission clerk to present non-technical testimony at the hearing.

(2) A person may also offer exhibits in connection with the testimony, so long as the exhibits are relevant to the proposed rule change and do not unduly repeat the testimony. A person offering exhibits shall file exhibits prior to the scheduled hearing date or submit them at the hearing.

(3) Members of the general public who wish to present non-technical testimony should indicate their intent on a sign-in sheet at the hearing.

B. Technical testimony.

(1) A person, including the division, who intends to present technical testimony or to submit modifications to a proposed rule ~~cross-examine witnesses at the hearing~~ shall, no later than ~~ten~~ five business days before the scheduled hearing date, file ~~six sets of~~ a pre-hearing statement with the commission clerk. Corporations, partnerships, governmental agencies, political subdivisions, unincorporated associations and other collective entities shall appear only through an attorney or through a duly authorized officer or member.

(2) The pre-hearing statement shall include the person or entity's name and its attorney's name; the names of all witnesses the person or entity will call to testify at the hearing; a concise statement of each witnesses' testimony; all technical witnesses' qualifications including a description of the witnesses' education and experience; and the approximate time the person or entity will need to present its testimony. The person or entity shall attach to the pre-hearing statement any exhibits it plans to offer as evidence at the hearing. A corporation or other entity not represented by an attorney shall identify in its pre-hearing statement the person who will conduct its presentation and shall attach a sworn and notarized

statement from the corporation's or entity's governing body or chief executive officer attesting that it authorizes that person to represent the corporation or entity.

(3) The commission may exclude any expert witnesses or technical exhibits not identified in or attached to the pre-hearing statement unless the testimony or exhibit is offered solely for rebuttal or the person or entity offering the testimony or exhibits demonstrates good cause for omitting the witness or exhibit from its pre-hearing statement.

(4) The division shall post copies of pre-hearing statements filed with the commission clerk on the division's website as soon as practicable after they are filed. A person may review pre-hearing statements filed with the commission clerk at the division's Santa Fe office.

C. Entry of Appearance Modifications to proposed rule changes.

~~(1) A person, who is or may be affected by the proposed rule other than the applicant or a commissioner, recommending modifications to a proposed rule change shall, may file an entry of appearance as a party no later than 10 business days prior to the scheduled hearing date, file a notice of recommended modifications with the commission clerk.~~

~~(2) The notice shall include:~~

~~(a) the text of the recommended modifications to the proposed rule change;~~

~~(b) an explanation of the recommended modification's impact; and~~

~~(c) reasons for adopting the modification.~~

[19.15.3.11 NMAC - Rp, 19.15.14.1204 NMAC, 12/1/08; A, / 17]

19.15.3.12 RULEMAKING HEARINGS:

A. Conduct of hearings.

(1) The rules of civil procedure and the rules of evidence shall not apply.

(2) The commission shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome and without unnecessary repetition. The hearing shall proceed as follows:

(a) the hearing shall begin with a statement from the commission chairman identifying the hearing's nature and subject matter and explaining the procedures to be followed;

(b) the commission may allow ~~parties~~persons to make a brief opening statement;

(c) unless otherwise ordered, the applicant, or in the case of commission initiated rulemaking, commission or division staff, shall present its case first;

(d) the commission chairman shall establish an order for other participants' testimony based upon ~~pre-hearing statements~~notices of intent to present technical testimony, sign-in sheets, the availability of witnesses who cannot be present for the entire hearing and any other appropriate factor;

(e) the commission may allow ~~parties~~persons to make a brief closing statement;

(f) if the hearing continues for more than one day, the commission shall provide an opportunity each day for public comment;

(g) at the close of the hearing, the commission shall determine whether to keep the record open for written submittals including arguments and proposed statements of reasons supporting the proposed commission decision; in considering whether the record will remain open, the commission shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision; if the commission keeps the record open, the commission chairman shall announce at the hearing's conclusion the subjects on which the commission will allow submittals and the deadline for filing the submittals; and

(h) if the hearing is not completed on the day that it commences, the commission may, by announcement, continue the hearing as necessary without further notice.

B. Testimony and cross-examination.

(1) The commission shall take all testimony under oath or affirmation, which may be accomplished en masse or individually. However, a person may make an un-sworn position statement.

(2) The commission shall admit relevant evidence, unless the commission determines that the evidence is incompetent or unduly repetitious.

(3) A person who testifies at the hearing is subject to cross-examination by the commissioners, commission counsel or a party~~a person who has filed a pre-hearing statement~~ on the subject matter of the person's direct testimony. A person who presents technical testimony may also be cross-examined on matters related to the person's background and qualifications. The commission may

limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

C. Exhibits.

(1) A person offering an exhibit shall provide six sets of the exhibit for the commission, copies for each ~~party of these individuals or entities that have filed an intent to present technical testimony or cross-examine witnesses at the hearing~~ and five additional copies for others who may attend the hearing.

(2) Exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially.

D. ~~Transcript of proceeding.~~

~~(1) The commission shall make a verbatim record of the hearing.~~

~~(2) A person may obtain a copy of the hearing transcript. The person requesting the copy shall pay for the cost of the copy of the hearing transcript.~~

E. ~~Deliberation and decision.~~

~~(1) If a quorum of the commission attended the hearing, and if the hearing agenda indicates that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and make a decision in open session on the proposed rule change based on a motion that includes reasons for the decision.~~

~~(2) If, during the course of deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.3.9 NMAC.~~

~~(3) The commission shall issue a written order adopting or refusing to adopt the proposed rule change, or adopting the proposed rule change in part, and shall include in the order the reasons for the action taken.~~

~~(4) Upon the commission's issuance of the order, the commission clerk shall post the order on the division's website and mail or e-mail a copy of the order to each person who presented non-technical testimony at the hearing or who filed a pre-hearing statement, or the person's attorney.~~

F. Filing. The division shall file with the state records center and archives and publish any rule the commission adopts, amends or repeals consistent with the State Rules Act.
[19.15.3.12 NMAC - Rp, 19.15.14.1205 NMAC, 12/1/08; A, / /17]

19.15.3.13 COMMISSION DELIBERATION AND ACTION

A. Deliberation. If a quorum of the commission attended the hearing, and if the hearing agenda indicates that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and make a decision in open session on the proposed rule change. The commission may otherwise deliberate and take action in open session at any commission meeting where such deliberation and possible action is listed on the meeting agenda.

B. If, during the course of deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.3.9 NMAC.

C. Order. The commission shall issue a written order adopting or refusing to adopt the proposed rule change, or adopting the proposed rule change in part, and shall include in the order the reasons for the action taken. The commission's order shall serve as the "concise explanatory statement" required by NMSA 1978, Section 14-4- (2017).

D. Termination. The commission may terminate a rulemaking at any time by a motion approved at a commission meeting. The commission shall publish a notice of termination in the New Mexico register and provide notice of the termination in the manner provided in 19.15.3.9 NMAC. If the commission has not taken action within two years after publication of a proposed rule change in the New Mexico register, the rulemaking is automatically terminated unless the commission approves a motion to extend the rulemaking and files a statement of good cause in the record. The commission shall also provide for additional public notice, comment and public hearing.

[19.15.3.13 NMAC - N, / /17]

19.15.3.14 RECORD

A. The commission shall maintain a record for each rulemaking proceeding. The record shall be available for public inspection at the division's Santa Fe office and a copy shall be provided to the sunshine portal.

B. The record shall contain:

- (1) a copy of all publications in the New Mexico register relating to the proposed rule;
 - (2) a copy of any technical information that was relied upon in formulating the final rule;
 - (3) any official transcript of the public hearing or, if not transcribed, any audio recording or verbatim transcript of the hearing;
 - (4) a copy of all comments and other material received by the commission during the public comment period and at the public hearing;
 - (5) a copy of the full text of the initial proposed rule and the full text of the final adopted rule and the order adopted by the commission; and
 - (6) any corrections made by the state records administrator pursuant to NMSA 1978, Section 14-4-3.
- [19.15.3.14 NMAC – N. / /17]

19.15.3.15 FILING AND APPEAL

A. Filing. Any rule adopted under this Part, along with the commission order, shall be filed in accordance with the State Rules Act. No rule shall be filed until the latter of twenty days after the commission has entered an order or has refused a rehearing application pursuant to Section 70-2-25 NMSA 1978. The end of the twenty day rehearing period, if no rehearing is requested, or the action of the commission on a rehearing application shall constitute the “adoption of the rule” for the purposes of NMSA 1978, Section 14-4-5.D (2017). The rule shall be filed with the state records administrator within 15 days after the adoption of the rule.

B. Notice. Upon filing of the rule, the commission shall provide notice of the adoption of the rule to the public. The notice, which shall include the final rule and order or information on how to obtain a copy of the final rule and order, shall be:

- (1) posted on the division's website;
- (2) posted on the sunshine portal;
- (3) made available in the division's district offices;
- (4) sent by mail or electronic mail to persons who have made a written request for notice from the commission of announcements addressing the subject of the rulemaking proceeding and who have provided a mail or electronic mail address to the commission;
- (5) sent by mail or electronic mail to persons who have participated in the rulemaking and who have provided a mail or electronic mail address to the commission; and
- (6) delivered to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

C. Corrections. If the state records administrator provides the commission with a record of corrections to the filed rule, as provided in NMSA 1978, Section 14-4-3 (2017), the commission shall within 30 days provide notice of the correction in the same manner as the notice in subsection A of 19.15.3.9 NMAC.

D. Appeal. Pursuant to NMSA 1978, Section 70-2-12.2, any party of record to the proceeding before the commission or any person adversely affected by a rule adopted under the Oil and Gas Act may appeal to the court of appeals within thirty days after filing of the rule under the State Rules Act.

[19.15.3.15 NMAC – N. / /17]

HISTORY of 19.15.3 NMAC:

History of Repealed Material: 19.15.14 NMAC, Procedure (filed 09/16/2005) repealed 12/1/08.

NMAC History:

Those applicable portions of 19.15.14 NMAC, Procedure (Sections 1-6, 1201 - 1205) (filed 09/16/2005) were replaced by 19.15.3 NMAC, Rulemaking, effective 12/1/08.

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PROPOSED MODIFICATIONS TO PROPOSED RULE CHANGES

19.15.3.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division and Oil Conservation Commission.

[19.15.3.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/2008; A, / /2017]

19.15.3.3 STATUTORY AUTHORITY: 19.15.3 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6 NMSA 1978, which grants the oil conservation division and the oil conservation commission jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and NMSA 1978, Section 70-2-7 NMSA 1978, which provides that the division shall prescribe by rule its hearing procedures. The 2017 amendments are authorized by NMSA 1978, Section 70-2-12.2 NMSA 1978 (2016), which provides for the appeal of [C]commission rules and Laws 2017, Chapter 137, which provides for uniform rulemaking procedures.

[19.15.3.3 NMAC - Rp, 19.15.14.3 NMAC, 12/1/2008; A, / /2017]

19.15.3.7 DEFINITIONS: ~~[[RESERVED] [See 19.15.2.7 NMAC for definitions.]]~~ See also NMSA 1978, Section 14-4-2 NMSA 1978 (2017) for the definitions of “proceeding,” “proposed rule” and “rule”. As used in 19.15.3 NMAC:

A. “Party” means the applicant or any person filing a pre-hearing statement or an entry of appearance.
B. “Technical testimony” means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

[19.15.3.7 NMAC - N, 12/1/2008; A, / /2017]

19.15.3.8 RULEMAKING INITIATION:

A. [The commission may commence a rulemaking proceeding by issuing an order initiating rulemaking. The division, an operator or producer or other person may initiate a rulemaking proceeding by filing an application to adopt, amend or repeal a rule with the commission clerk.] Any person may file an application with the commission to adopt, amend or repeal any rule within the commission’s jurisdiction [of the commission]. The application shall be in writing and [applicants shall specifically identify the rule the applicant seeks for the commission] specifically identify the rule the applicant proposes to adopt, amend or repeal. The application [or order-initiating rulemaking] shall include the following:

- (1) a brief summary of the proposed [rule change’s] rule’s intended effect;
- (2) [a proposed draft of the new rule or amendment] a draft of the proposed rule;
- (3) the applicant’s name;
- (4) the applicant’s address, or the address of its attorney, including an e-mail address [and fax number] if available; and
- (5) a proposed legal notice for publication, which meets the requirements of Subsection B of 19.15.3.9 NMAC [; and
- (6) any other matter a commission order requires].

B. An applicant shall file [six sets of] the application for rulemaking with the commission clerk. The applicant shall file the application by delivering the application to the commission clerk in person [; by mail or by facsimile, as long as the applicant mails or delivers six sets of the application to the commission clerk on the next business day] or by mail and shall also send an electronic copy of the application to the commission clerk.

C. Upon receiving an application for rule change the commission clerk shall file the application, and shall deliver a copy to all commissioners within 10 business days of the application’s receipt. [Unless the commission chairman or another commissioner indicates, within 10 business days following the commission clerk’s delivery of the rule change application, that a hearing is not necessary or appropriate, the chairman shall schedule a hearing on the rule change application. If a commissioner indicates to the chairman, or if the chairman concludes, that a hearing is not necessary or appropriate because the application is repetitive or frivolous or for any other lawful reason, the commission] shall determine within 60 days of the application’s filing whether to hear the application.

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and if the commission decides to hear the application, the chairman shall schedule a hearing on the rule change application.] The commission shall determine, at a public meeting at least 15 days and no later than within 60 days of the application's filing, whether to hold a public hearing on the proposed rule. If the commission decides to hold a public hearing on the proposed rule, the commission may set the date for the hearing and may issue orders specifying procedures for the conduct of the hearing in addition to the procedures [of this Part] in 19.15.3 NMAC, including naming a hearing officer, providing additional public notice and providing for a pre-hearing conference. Prior to the hearing, the chair or other hearing officer appointed by the commission shall have the authority to schedule or continue a hearing, hold a pre-hearing conference and rule on any non-dispositive motions.

D. 19.15.3.8 NMAC shall not apply to special pool orders, which the commission or the division may adopt, amend or rescind in adjudicatory proceedings subject to 19.15.4.9 NMAC and 19.15.4.12 NMAC's notice provisions.

[19.15.3.8 NMAC - Rp, 19.15.14.1201 NMAC, 12/1/2008; A, / /2017]

19.15.3.9 RULEMAKING NOTICE:

A. [The division shall publish notice of a proposed rulemaking set for the hearing in the name of the "State of New Mexico", signed by the commission chairman and bearing the commission's seal. The notice shall state the hearing's date, time and place and the date by which those commenting shall submit their written comments to the commission clerk. The notice shall be published as follows:

_____ (1) _____ one time in a newspaper of general circulation in the counties that the proposed rule change affects, or if the proposed rule change will have statewide effect, in a newspaper of general circulation in the state, no less than 20 days prior to the scheduled hearing date;

_____ (2) _____ on the applicable docket for the commission hearing at which the commission will hear the matter, which the commission clerk shall send by regular or electronic mail not less than 20 days prior to the hearing to all who have requested such notice;

_____ (3) _____ one time in the New Mexico register, with the publication date not less than 10 business days prior to the scheduled hearing date; and

_____ (4) _____ by posting on the division's website not less than 20 days prior to the scheduled hearing date.] The commission shall distribute a notice of a proposed rulemaking no later than [thirty] 30 days before the hearing on the rule change by:

_____ (1) _____ posting the notice on the division website;

_____ (2) _____ posting the notice on the sunshine portal;

_____ (3) _____ making the notice available in the division's district offices;

_____ (4) _____ sending the notice by mail or electronic mail to persons who have made a written request for notice from the commission of announcements addressing the subject of the rulemaking proceeding and who have provided a mail or an electronic mail address to the commission;

_____ (5) _____ providing the notice to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees; and

_____ (6) _____ publishing the notice in the New Mexico register and in a newspaper of general circulation in the state.

B. [In cases of emergency, the commission chairman may shorten these time limits by written order.]

Content. The notice shall include:

_____ (1) _____ a summary of the full text of the proposed rule;

_____ (2) _____ a short explanation of the purpose of the proposed rule;

_____ (3) _____ a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;

_____ (4) _____ information on how a copy of the full text of the proposed rule may be obtained, including an internet link to the full text;

_____ (5) _____ information on how a person may comment on the proposed rule, where comments will be received and when comments are due;

_____ (6) _____ information on where and when a public rule hearing will be held and how a person may participate in the hearing; and

_____ (7) _____ a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

[19.15.3.9 NMAC - Rp, 19.15.14.1202, 12/1/2008; A, / /2017]

19.15.3.10 COMMENTS ON RULEMAKING: A person may submit written[,] or electronic [or facsimile]

comments on a proposed rule change, and those comments shall be made part of the hearing record. Individuals or entities shall provide written comments on the proposed rule change to the commission clerk not later than ~~[five business days before]~~ the date of the scheduled hearing [date], unless the commission chairman or the commission extends the time for filing comments. The commission chairman or the commission may extend the time for filing written~~;~~ or electronic ~~[or-faesimile]~~ comments by making an announcement at the hearing, or by posting notice on the division's website. A person may review written~~;~~ or electronic ~~[or-faesimile]~~ comments on a proposed rule change at the division's Santa Fe office. The division shall post copies of written~~;~~ or electronic ~~[or-faesimile]~~ comments that persons have filed with the commission clerk on the division's website as soon as practicable after they are filed.

[19.15.3.10 NMAC - Rp, 19.15.14.1203 NMAC, 12/1/2008; A, / /2017]

19.15.3.11 RULEMAKING HEARING PARTICIPATION:

A. Non-technical testimony.

(1) A person may testify or make an un-sworn statement at the rulemaking hearing. A person does not need to file prior notification with the commission clerk to present non-technical testimony at the hearing.

(2) A person may also offer exhibits ~~[in connection]~~ with the testimony, so long as the exhibits are relevant to the proposed rule change and do not unduly repeat the testimony. A person offering exhibits shall file exhibits prior to the scheduled hearing date or submit them at the hearing.

(3) Members of the ~~[general]~~ public who wish to present non-technical testimony should indicate their intent on a sign-in sheet at the hearing.

B. Technical testimony.

(1) A person, including the division, who intends to present technical testimony or ~~[examine-witnesses-at-the-hearing]~~ to submit modifications to a proposed rule shall, no later than ~~[five]~~ 10 business days before the scheduled hearing date, file six sets of a pre-hearing statement with the commission clerk.

Corporations, partnerships, governmental agencies, political subdivisions, unincorporated associations and other collective entities shall appear only through an attorney or through a duly authorized officer or member.

(2) The pre-hearing statement shall include the person or entity's name and its attorney's name; the names of all witnesses the person or entity will call to testify at the hearing; a concise statement of each witnesses' testimony; all technical witnesses' qualifications including a description of the witnesses' education and experience; and the approximate time the person or entity will need to present its testimony; and any proposed modifications to the proposed rule change with reasons for adopting the modifications. The person or entity shall attach to the pre-hearing statement any exhibits it plans to offer as evidence at the hearing. A corporation or other entity not represented by an attorney shall identify in its pre-hearing statement the person who will conduct its presentation and shall attach a sworn and notarized statement from the corporation's or entity's governing body or chief executive officer attesting that it authorizes that person to represent the corporation or entity.

(3) The commission may exclude any expert witnesses or technical exhibits not identified in or attached to the pre-hearing statement unless the testimony or exhibit is offered solely for rebuttal or the person or entity offering the testimony or exhibits demonstrates good cause for omitting the witness or exhibit from its pre-hearing statement.

(4) The division shall post copies of pre-hearing statements filed with the commission clerk on the division's website as soon as practicable after they are filed. A person may review pre-hearing statements filed with the commission clerk at the division's Santa Fe office.

C. ~~[Modifications to proposed rule changes:] Entry of appearance.~~ A person, who is or may be affected by the proposed rule, may file an entry of appearance as a party no later than 10 business days prior to the scheduled hearing date.

~~[(1) A person, other than the applicant or a commissioner, recommending modifications to a proposed rule change shall, no later than 10 business days prior to the scheduled hearing date, file a notice of recommended modifications with the commission clerk.]~~

~~[(2) The notice shall include:~~

~~[(a) the text of the recommended modifications to the proposed rule change;~~

~~[(b) an explanation of the recommended modification's impact; and~~

~~[(c) reasons for adopting the modification.]~~

[19.15.3.11 NMAC - Rp, 19.15.14.1204 NMAC, 12/1/2008; / /2017]

19.15.3.12 RULEMAKING HEARINGS:

A. Conduct of hearings.

(1) The rules of civil procedure and the rules of evidence shall not apply.
(2) The commission shall conduct the hearing ~~[so as]~~ to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome and without unnecessary repetition. The hearing shall proceed as follows:

- (a) the hearing shall begin with a statement from the commission chairman identifying the hearing's nature and subject matter and explaining the procedures to be followed;
- (b) the commission may allow ~~[persons]~~ parties to make a brief opening statement;
- (c) unless otherwise ordered, the applicant, or in the case of commission initiated rulemaking, commission or division staff, shall present its case first;
- (d) the commission chairman shall establish an order for other participants' testimony based upon ~~[notices of intent to present technical testimony]~~ pre-hearing statements, sign-in sheets, the availability of witnesses who cannot be present for the entire hearing and any other appropriate factor;
- (e) the commission may allow ~~[persons]~~ parties to make a brief closing statement;
- (f) if the hearing continues for more than one day, the commission shall provide an opportunity each day for public comment;
- (g) at the close of the hearing, the commission shall determine whether to keep the record open for written submittals including arguments and proposed statements of reasons supporting the proposed commission decision; in considering whether the record will remain open, the commission shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision; if the commission keeps the record open, the commission chairman shall announce at the hearing's conclusion the subjects on which the commission will allow submittals and the deadline for filing the submittals; and
- (h) if the hearing is not completed on the day that it commences, the commission may, by announcement, continue the hearing as necessary without further notice.

B. Testimony and cross-examination.

- (1) The commission shall take all testimony under oath or affirmation, which may be accomplished en masse or individually. However, a person may make an un-sworn position statement.
- (2) The commission shall admit relevant evidence, unless the commission determines that the evidence is incompetent or unduly repetitious.
- (3) A person who testifies at the hearing is subject to cross-examination by ~~[a person who has filed a pre-hearing statement]~~ the commissioners, commission counsel or a party on the subject matter of the person's direct testimony. A person who presents technical testimony may also be cross-examined on matters related to the person's background and qualifications. The commission may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

C. Exhibits.

- (1) A person offering an exhibit shall provide six sets of the exhibit for the commission, copies for each ~~[of those individuals or entities that have filed an intent to present technical testimony or cross-examine witnesses at the hearing]~~ party and five additional copies for others who may attend the hearing.
- (2) Exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially.

~~[_____ D. Transcript of proceeding.~~

- ~~(1) The commission shall make a verbatim record of the hearing.~~
- ~~(2) A person may obtain a copy of the hearing transcript. The person requesting the copy shall pay for the cost of the copy of the hearing transcript.~~

~~[_____ E. Deliberation and decision.~~

- ~~(1) If a quorum of the commission attended the hearing, and if the hearing agenda indicates that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and make a decision in open session on the proposed rule change based on a motion that includes reasons for the decision.~~
- ~~(2) If, during the course of deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.3.9 NMAC.~~
- ~~(3) The commission shall issue a written order adopting or refusing to adopt the proposed rule change, or adopting the proposed rule change in part, and shall include in the order the reasons for the action taken.~~
- ~~(4) Upon the commission's issuance of the order, the commission clerk shall post the order~~

on the division's website and mail or e-mail a copy of the order to each person who presented non-technical testimony at the hearing or who filed a pre-hearing statement, or the person's attorney.

F. Filing. The division shall file with the state records center and archives and publish any rule the commission adopts, amends or repeals consistent with the State Rules Act.]
[19.15.3.12 NMAC - Rp, 19.15.14.1205 NMAC, 12/1/2008, A, / /2017]

19.15.3.13 COMMISSION DELIBERATION AND ACTION:

A. Deliberation. If a quorum of the commission attended the hearing, and if the hearing agenda indicates that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and [make a decision] decide in open session on the proposed rule change. The commission may otherwise deliberate and [take action] act in open session at any commission meeting where such deliberation and possible action is listed on the meeting agenda.

B. If, during [the course of] deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.3.9 NMAC.

C. Order. The commission shall issue a written order adopting or refusing to adopt the proposed rule change, or adopting the proposed rule change in part, and shall include in the order the reasons for the action taken. The commission's order shall serve as the "concise explanatory statement" required by [NMSA 1978;] Section 14-4- NMSA 1978 (2017).

D. Termination. The commission may terminate a rulemaking at any time by a motion approved at a commission meeting. The commission shall publish a notice of termination in the New Mexico register and provide notice of the termination in the manner provided in 19.15.3.9 NMAC. If the commission [has not taken action] does not act within two years after publication of a proposed rule change in the New Mexico register, the rulemaking is automatically terminated unless the commission approves a motion to extend the rulemaking and files a statement of good cause in the record. The commission shall also provide for additional public notice, comment and public hearing.

[19.15.3.13 NMAC - N, / /2017]

19.15.3.14 RECORD:

A. The commission shall maintain a record for each rulemaking proceeding. The record shall be available for public inspection at the division's Santa Fe office and a copy shall be provided to the sunshine portal.

B. The record shall contain:

- (1) a copy of all publications in the New Mexico register relating to the proposed rule;
- (2) a copy of any technical information that was relied upon in formulating the final rule;
- (3) any official transcript of the public hearing or, if not transcribed, any audio recording or verbatim transcript of the hearing;
- (4) a copy of all comments and other material received by the commission during the public comment period and at the public hearing;
- (5) a copy of the full text of the initial proposed rule and the full text of the final adopted rule and the order adopted by the commission; and
- (6) any corrections made by the state records administrator pursuant to [NMSA 1978;]

Section 14-4-3 NMSA 1978.

[19.15.3.14 NMAC - N, / /2017]

19.15.3.15 FILING AND APPEAL:

A. Filing. Any rule adopted under [this Part] 19.15.3 NMAC, along with the commission order, shall be filed in accordance with the State Rules Act. No rule shall be filed until the latter of [twenty] 20 days after the commission has entered an order or has refused a rehearing application pursuant to [NMSA 1978;] Section 70-2-25 NMSA 1978. The end of the [twenty] 20-day rehearing period, if no rehearing is requested, or the action of the commission on a rehearing application shall constitute the "adoption of the rule" for the purposes of [NMSA 1978;] Section 14-4-5.D NMSA 1978 (2017). The rule shall be filed with the state records administrator within 15 days after the adoption of the rule.

B. Notice. Upon filing of the rule, the commission shall provide notice of the adoption of the rule to the public. The notice, which shall include the final rule and order or information on how to obtain a copy of the final rule and order, shall be:

- (1) posted on the division's website;

- (2) posted on the sunshine portal;
- (3) made available in the division's district offices;
- (4) sent by mail or electronic mail to persons who have made a written request for notice from the commission of announcements addressing the subject of the rulemaking proceeding and who have provided a mail or electronic mail address to the commission;
- (5) sent by mail or electronic mail to persons who have participated in the rulemaking and who have provided a mail or electronic mail address to the commission; and
- (6) delivered to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

C. Corrections. If the state records administrator provides the commission with a record of corrections to the filed rule, as provided in [NMSA 1978.] Section 14-4-3 NMSA 1978 (2017), the commission shall within 30 days provide notice of the correction in the same manner as the notice in Subsection A of 19.15.3.9 NMAC.

D. Appeal. Pursuant to [NMSA 1978.] Section 70-2-12.2 NMSA 1978, any party of record to the proceeding before the commission or any person adversely affected by a rule adopted under the Oil and Gas Act may appeal to the court of appeals within [thirty] 30 days after filing of the rule under the State Rules Act. [19.15.3.15 NMAC - N, / /2017]

. NMAC Section	Proposed Revision	Origination
19.15.3.1	ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division <u>and Oil Conservation Commission.</u> [19.15.3.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/2008; A, / /2017]	NMSA 1978, Section 70-2-12.2(A) (2015)
19.15.3.3	19.15.3.3 STATUTORY AUTHORITY: 19.15.3 NMAC is adopted pursuant to the Oil and Gas Act, [NMSA 1978,] Section 70-2-6 <u>NMSA 1978</u> , which grants the oil conservation division and the oil conservation commission jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and [NMSA 1978,] Section 70-2-7 <u>NMSA 1978</u> , which provides that the division shall prescribe by rule its hearing procedures. <u>The 2017 amendments are authorized by Section 70-2-12.2 NMSA 1978 (2016), which provides for the appeal of commission rules and Laws 2017, Chapter 137, which provides for uniform rulemaking procedures.</u> [19.15.3.3 NMAC - Rp, 19.15.14.3 NMAC, 12/1/2008; A, / /2017]	NMSA 1978, Section 70-2-12.2 (2015); 2017 N.M. Laws, Chapter 137
19.15.3.7	19.15.3.7 DEFINITIONS: [[RESERVED] [See 19.15.2.7 NMAC for definitions.]] <u>See Section 14-4-2 NMSA 1978 (2017) for the definitions of "proceeding," "proposed rule" and "rule". As used in 19.15.3 NMAC:</u> <u>A. "Party" means the applicant or any person filing a pre-hearing statement or an entry of appearance.</u> <u>B. "Technical testimony" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.</u> [19.15.3.7 NMAC - N, 12/1/2008; A, / /2017]	2017 N.M. Laws, Ch. 137, §1 (Section 14-4-2(C), (D) and (F))
19.15.3.8	RULEMAKING INITIATION: <u>A. [The commission may commence a rulemaking proceeding by issuing an order initiating rulemaking. The division, an operator or producer or other person may initiate a rulemaking proceeding by filing an application to adopt, amend or repeal a rule with the commission clerk.] Any person may file an application with the commission to adopt, amend or repeal any rule within the commission's jurisdiction. The application shall be in writing and [applicants shall specifically identify the rule the applicant seeks for the commission] specifically identify the rule the applicant proposes to adopt, amend or repeal. The application [or order initiating rulemaking] shall include the following:</u> (1) a brief summary of the proposed [rule change's] <u>rule's</u> intended effect; (2) <u>[a proposed draft of the new rule or amendment] a draft of the proposed rule;</u> (3) the applicant's name;	Create one process for the initiation of a rulemaking proceeding

NMAC Section	Proposed Revision	Origination
	<p>(4) the applicant's address, or the address of its attorney, including an e-mail address [and fax number] if available; <u>and</u></p> <p>(5) a proposed legal notice for publication, which meets the requirements of Subsection B of 19.15.3.9 NMAC [- and</p> <p>(6) any other matter a commission order requires].</p>	
	<p>B. An applicant shall file [six sets of] the application for rulemaking with the commission clerk. The applicant shall file the application by delivering the application to the commission clerk in person [- by mail or by facsimile, as long as the applicant mails or delivers six sets of the application to the commission clerk on the next business day] <u>or by mail and shall also send an electronic copy of the application to the commission clerk.</u></p>	Require electronic filing of application and eliminate need for 6 copies
	<p>C. Upon receiving an application for rule change the commission clerk shall file the application, and shall deliver a copy to all commissioners within 10 business days of the application's receipt. [Unless the commission chairman or another commissioner indicates, within 10 business days following the commission clerk's delivery of the rule change application, that a hearing is not necessary or appropriate, the chairman shall schedule a hearing on the rule change application. If a commissioner indicates to the chairman, or if the chairman concludes, that a hearing is not necessary or appropriate because the application is repetitive or frivolous or for any other lawful reason, the commission] <u>shall determine within 60 days of the application's filing whether to hear the application, and if the commission decides to hear the application, the chairman shall schedule a hearing on the rule change application.]</u> <u>The commission shall determine, at a public meeting at least 15 days and no later than within 60 days of the application's filing, whether to hold a public hearing on the proposed rule. If the commission decides to hold a public hearing on the proposed rule, the commission may set the date for the hearing and may issue orders specifying procedures for the conduct of the hearing in addition to the procedures in 19.15.3 NMAC, including naming a hearing officer, providing additional public notice and providing for a pre-hearing conference. Prior to the hearing, the chair or other hearing officer appointed by the commission shall have the authority to schedule or continue a hearing, hold a pre-hearing conference and rule on any non-dispositive motions.</u></p>	Provide for Commission action on application for rulemaking; allow for Chair, or hearing office, to rule on procedural matters prior to the hearing
	<p>D. 19.15.3.8 NMAC shall not apply to special pool orders, which the commission or the division may adopt, amend or rescind in adjudicatory proceedings subject to 19.15.4.9 NMAC and 19.15.4.12 NMAC's notice provisions.</p>	
	[19.15.3.8 NMAC - Rp, 19.15.14.1201 NMAC, 12/1/2008; A, / /2017]	
19.15.3.9	RULEMAKING NOTICE:	

NMAC Section	Proposed Revision	Origination
	<p>A. [The division shall publish notice of a proposed rulemaking set for the hearing in the name of the “State of New Mexico”, signed by the commission chairman and bearing the commission’s seal. The notice shall state the hearing’s date, time and place and the date by which those commenting shall submit their written comments to the commission clerk. The notice shall be published as follows:</p> <p>_____ (1) _____ one time in a newspaper of general circulation in the counties that the proposed rule change affects, or if the proposed rule change will have statewide effect, in a newspaper of general circulation in the state, no less than 20 days prior to the scheduled hearing date;</p> <p>_____ (2) _____ on the applicable docket for the commission hearing at which the commission will hear the matter, which the commission clerk shall send by regular or electronic mail not less than 20 days prior to the hearing to all who have requested such notice;</p> <p>_____ (3) _____ one time in the New Mexico register, with the publication date not less than 10 business days prior to the scheduled hearing date; and</p> <p>_____ (4) _____ by posting on the division’s website not less than 20 days prior to the scheduled hearing date.] <u>The commission shall distribute a notice of a proposed rulemaking no later than 30 days before the hearing on the rule change by:</u></p> <p>_____ (1) _____ posting the notice on the division website;</p> <p>_____ (2) _____ posting the notice on the sunshine portal;</p> <p>_____ (3) _____ making the notice available in the division’s district offices;</p> <p>_____ (4) _____ sending the notice by mail or electronic mail to persons who have made a written request for notice from the commission of announcements addressing the subject of the rulemaking proceeding and who have provided a mail or an electronic mail address to the commission;</p> <p>_____ (5) _____ providing the notice to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees; and</p> <p>_____ (6) _____ publishing the notice in the New Mexico register and in a newspaper of general circulation in the state.</p>	2017 N.M. Laws, Ch. 137, §§ 1(E) and 4.
	<p>B. [In cases of emergency, the commission chairman may shorten these time limits by written order.]</p> <p>Content. The notice shall include:</p> <p>_____ (1) _____ a summary of the full text of the proposed rule;</p> <p>_____ (2) _____ a short explanation of the purpose of the proposed rule;</p> <p>_____ (3) _____ a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;</p> <p>_____ (4) _____ information on how a copy of the full text of the proposed rule may be obtained, including an</p>	2017 N.M. Laws, Ch. 137, § 5.

NMAC Section	Proposed Revision	Origination
	<p>internet link to the full text:</p> <p><u>(5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;</u></p> <p><u>(6) information on where and when a public rule hearing will be held and how a person may participate in the hearing; and</u></p> <p><u>(7) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.</u></p>	
	[19.15.3.9 NMAC - Rp, 19.15.14.1202, 12/1/2008; A, / /2017]	
19.15.3.10	<p>COMMENTS ON RULEMAKING: A person may submit written[.] <u>or</u> electronic [or facsimile] comments on a proposed rule change, and those comments shall be made part of the hearing record. Individuals or entities shall provide written comments on the proposed rule change to the commission clerk not later than [five business days before] <u>the date of the scheduled hearing [date]</u>, unless the commission chairman or the commission extends the time for filing comments. The commission chairman or the commission may extend the time for filing written[.] <u>or</u> electronic [or facsimile] comments by making an announcement at the hearing, or by posting notice on the division's website. A person may review written[.] <u>or</u> electronic [or facsimile] comments on a proposed rule change at the division's Santa Fe office. The division shall post copies of written[.] <u>or</u> electronic [or facsimile] comments that persons have filed with the commission clerk on the division's website as soon as practicable after they are filed.</p> <p>[19.15.3.10 NMAC - Rp, 19.15.14.1203 NMAC, 12/1/2008; A, / /2017]</p>	2017 N.M. Laws, Ch. 137, §§ 4 and 5.
19.15.3.11	RULEMAKING HEARING PARTICIPATION:	
	<p>A. Non-technical testimony.</p> <p>(1) A person may testify or make an unsworn statement at the rulemaking hearing. A person does not need to file prior notification with the commission clerk to present non-technical testimony at the hearing.</p> <p>(2) A person may also offer exhibits [in connection] with the testimony, so long as the exhibits are relevant to the proposed rule change and do not unduly repeat the testimony. A person offering exhibits shall file exhibits prior to the scheduled hearing date or submit them at the hearing.</p> <p>(3) Members of the [general] public who wish to present non-technical testimony should indicate their intent on a sign-in sheet at the hearing.</p>	
	<p>B. Technical testimony.</p> <p>(1) A person, including the division, who intends to present technical testimony or [cross-examine witnesses at the hearing] <u>to submit modifications to a proposed rule</u> shall, no later than [five] <u>10</u> business days before the scheduled hearing date, file six sets of a pre-</p>	Provide for a single pre-hearing statement which includes proposed modifications

NMAC Section	Proposed Revision	Origination
	<p>hearing statement with the commission clerk. Corporations, partnerships, governmental agencies, political subdivisions, unincorporated associations and other collective entities shall appear only through an attorney or through a duly authorized officer or member.</p> <p>(2) The pre-hearing statement shall include the person or entity's name and its attorney's name; the names of all witnesses the person or entity will call to testify at the hearing; a concise statement of each witnesses' testimony; all technical witnesses' qualifications including a description of the witnesses' education and experience; and the approximate time the person or entity will need to present its testimony; <u>and any proposed modifications to the proposed rule change with reasons for adopting the modifications.</u> The person or entity shall attach to the pre-hearing statement any exhibits it plans to offer as evidence at the hearing. A corporation or other entity not represented by an attorney shall identify in its pre-hearing statement the person who will conduct its presentation and shall attach a sworn and notarized statement from the corporation's or entity's governing body or chief executive officer attesting that it authorizes that person to represent the corporation or entity.</p> <p>(3) The commission may exclude any expert witnesses or technical exhibits not identified in or attached to the pre-hearing statement unless the testimony or exhibit is offered solely for rebuttal or the person or entity offering the testimony or exhibits demonstrates good cause for omitting the witness or exhibit from its pre-hearing statement.</p> <p>(4) The division shall post copies of pre-hearing statements filed with the commission clerk on the division's website as soon as practicable after they are filed. A person may review pre-hearing statements filed with the commission clerk at the division's Santa Fe office.</p>	
	<p>C. [Modifications to proposed rule changes.] Entry of appearance. A person, who is or may be affected by the proposed rule, <u>may file an entry of appearance as a party no later than 10 business days prior to the scheduled hearing date.</u></p> <p>[(1) — A person, other than the applicant or a commissioner, recommending modifications to a proposed rule change shall, no later than 10 business days prior to the scheduled hearing date, file a notice of recommended modifications with the commission clerk.</p> <p>— (2) The notice shall include:</p> <p>— (a) the text of the recommended modifications to the proposed rule change;</p> <p>— (b) an explanation of the recommended modification's impact; and</p> <p>— (c) reasons for adopting the modification.]</p>	
	[19.15.3.11 NMAC - Rp, 19.15.14.1204 NMAC, 12/1/2008; A,	

NMAC Section	Proposed Revision	Origination
	/ /2017]	
19.15.3.12	RULEMAKING HEARINGS:	
	<p>A. Conduct of hearings.</p> <p>(1) The rules of civil procedure and the rules of evidence shall not apply.</p> <p>(2) The commission shall conduct the hearing [so-as] to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome and without unnecessary repetition. The hearing shall proceed as follows:</p> <p style="padding-left: 40px;">(a) the hearing shall begin with a statement from the commission chairman identifying the hearing's nature and subject matter and explaining the procedures to be followed;</p> <p style="padding-left: 40px;">(b) the commission may allow [persons] <u>parties</u> to make a brief opening statement;</p> <p style="padding-left: 40px;">(c) unless otherwise ordered, the applicant, or in the case of commission initiated rulemaking, commission or division staff, shall present its case first;</p> <p style="padding-left: 40px;">(d) the commission chairman shall establish an order for other participants' testimony based upon [notices of intent to present technical testimony] <u>pre-hearing statements</u>, sign-in sheets, the availability of witnesses who cannot be present for the entire hearing and any other appropriate factor;</p> <p style="padding-left: 40px;">(e) the commission may allow [persons] <u>parties</u> to make a brief closing statement;</p> <p style="padding-left: 40px;">(f) if the hearing continues for more than one day, the commission shall provide an opportunity each day for public comment;</p> <p style="padding-left: 40px;">(g) at the close of the hearing, the commission shall determine whether to keep the record open for written submittals including arguments and proposed statements of reasons supporting the proposed commission decision; in considering whether the record will remain open, the commission shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision; if the commission keeps the record open, the commission chairman shall announce at the hearing's conclusion the subjects on which the commission will allow submittals and the deadline for filing the submittals; and</p> <p style="padding-left: 40px;">(h) if the hearing is not completed on the day that it commences, the commission may, by announcement, continue the hearing as necessary without further notice.</p>	Provide for consistent terminology
	<p>B. Testimony and cross-examination.</p> <p>(1) The commission shall take all testimony under oath or affirmation, which may be accomplished en masse or individually. However, a person may make an un-sworn position statement.</p> <p>(2) The commission shall admit relevant</p>	

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	<p>evidence, unless the commission determines that the evidence is incompetent or unduly repetitious.</p> <p>(3) A person who testifies at the hearing is subject to cross-examination by [a person who has filed a pre-hearing statement] the commissioners, commission counsel or a party on the subject matter of the person's direct testimony. A person who presents technical testimony may also be cross-examined on matters related to the person's background and qualifications. The commission may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.</p>	
	<p>C. Exhibits.</p> <p>(1) A person offering an exhibit shall provide six sets of the exhibit for the commission, copies for each [of those individuals or entities that have filed an intent to present technical testimony or cross-examine witnesses at the hearing] party and five additional copies for others who may attend the hearing.</p> <p>(2) Exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially.</p>	
	<p>[D. Transcript of proceeding.]</p> <p>(1) The commission shall make a verbatim record of the hearing.</p> <p>(2) A person may obtain a copy of the hearing transcript. The person requesting the copy shall pay for the cost of the copy of the hearing transcript.</p>	Moved to 19.15.3.14
	<p>E. Deliberation and decision.</p> <p>(1) If a quorum of the commission attended the hearing, and if the hearing agenda indicates that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and make a decision in open session on the proposed rule change based on a motion that includes reasons for the decision.</p> <p>(2) If, during the course of deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.3.9 NMAC.</p> <p>(3) The commission shall issue a written order adopting or refusing to adopt the proposed rule change, or adopting the proposed rule change in part, and shall include in the order the reasons for the action taken.</p> <p>(4) Upon the commission's issuance of the order, the commission clerk shall post the order on the division's website and mail or e-mail a copy of the order to each person who presented non-technical testimony at the hearing or who filed a pre-hearing statement, or the person's attorney.</p>	Moved to 19.15.3.13
	<p>F. Filing. The division shall file with the state records center and archives and publish any rule the commission adopts, amends or repeals consistent with the</p>	Moved to 19.15.3.15(A)

NMAC Section	Proposed Revision	Origination
	State Rules Act.]	
	[19.15.3.12 NMAC - Rp, 19.15.14.1205 NMAC, 12/1/2008; A, / /2017]	
19.15.3.13	COMMISSION DELIBERATION AND ACTION:	
	A. Deliberation. If a quorum of the commission attended the hearing, and if the hearing agenda indicates that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and decide in open session on the proposed rule change. The commission may otherwise deliberate and act in open session at any commission meeting where such deliberation and possible action is listed on the meeting agenda.	Moved from 19.15.3.12(E)
	B. If, during deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.3.9 NMAC.	Moved from 19.15.3.12(E)
	C. Order. The commission shall issue a written order adopting or refusing to adopt the proposed rule change, or adopting the proposed rule change in part, and shall include in the order the reasons for the action taken. The commission's order shall serve as the "concise explanatory statement" required by Section 14-4- NMSA 1978 (2017).	2017 N.M. Laws, Ch. 137, § 7
	D. Termination. The commission may terminate a rulemaking at any time by a motion approved at a commission meeting. The commission shall publish a notice of termination in the New Mexico register and provide notice of the termination in the manner provided in 19.15.3.9 NMAC. If the commission does not act within two years after publication of a proposed rule change in the New Mexico register, the rulemaking is automatically terminated unless the commission approves a motion to extend the rulemaking and files a statement of good cause in the record. The commission shall also provide for additional public notice, comment and public hearing.	2017 N.M. Laws, Ch. 137, § 3
	[19.15.3.13 NMAC - N, / /2017]	
19.15.3.14	RECORD:	
	A. The commission shall maintain a record for each rulemaking proceeding. The record shall be available for public inspection at the division's Santa Fe office and a copy shall be provided to the sunshine portal.	2017 N.M. Laws, Ch. 137, § 6(A)
	B. The record shall contain: (1) a copy of all publications in the New Mexico register relating to the proposed rule; (2) a copy of any technical information that was relied upon in formulating the final rule; (3) any official transcript of the public hearing or, if not transcribed, any audio recording or verbatim transcript of the hearing; (4) a copy of all comments and other material received by the commission during the public comment period and at the public hearing; (5) a copy of the full text of the initial	2017 N.M. Laws, Ch. 137, § 6(B)

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	<p>proposed rule and the full text of the final adopted rule and the order adopted by the commission; and</p> <p><u>(6) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.</u></p>	
	[19.15.3.14 NMAC - N, //2017]	
19.15.3.15	FILING AND APPEAL:	
	<p>A. Filing. Any rule adopted under 19.15.3 NMAC, along with the commission order, shall be filed in accordance with the State Rules Act. No rule shall be filed until the latter of 20 days after the commission has entered an order or has refused a rehearing application pursuant to Section 70-2-25 NMSA 1978. The end of the 20-day rehearing period, if no rehearing is requested, or the action of the commission on a rehearing application shall constitute the “adoption of the rule” for the purposes of Section 14-4-5.D NMSA 1978 (2017). The rule shall be filed with the state records administrator within 15 days after the adoption of the rule.</p>	NMSA 1978, Section 70-2-12.2(B); 2017 N.M. Laws, Ch. 137, §§ 2, 3(D)
	<p>B. Notice. Upon filing of the rule, the commission shall provide notice of the adoption of the rule to the public. The notice, which shall include the final rule and order or information on how to obtain a copy of the final rule and order, shall be:</p> <p><u>(1) posted on the division’s website;</u></p> <p><u>(2) posted on the sunshine portal;</u></p> <p><u>(3) made available in the division’s district offices;</u></p> <p><u>(4) sent by mail or electronic mail to persons who have made a written request for notice from the commission of announcements addressing the subject of the rulemaking proceeding and who have provided a mail or electronic mail address to the commission;</u></p> <p><u>(5) sent by mail or electronic mail to persons who have participated in the rulemaking and who have provided a mail or electronic mail address to the commission; and</u></p> <p><u>(6) delivered to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;</u></p>	2017 N.M. Laws, Ch. 137, § 3(D)
	<p>C. Corrections. If the state records administrator provides the commission with a record of corrections to the filed rule, as provided in Section 14-4-3 NMSA 1978 (2017), the commission shall within 30 days provide notice of the correction in the same manner as the notice in Subsection A of 19.15.3.9 NMAC.</p>	2017 N.M. Laws, Ch. 137, § 2(D)
	<p>D. Appeal. Pursuant to Section 70-2-12.2 NMSA 1978, any party of record to the proceeding before the commission or any person adversely affected by a rule adopted under the Oil and Gas Act may appeal to the court of appeals within 30 days after filing of the rule under the State Rules Act.</p>	NMSA 1978, Section 70-2-12.2(C) (2015)
	[19.15.3.15 NMAC - N, //2017]	