

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

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:**

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION,
THROUGH THE ENGINEERING BUREAU CHIEF, FOR AMENDMENT OF
THE FOLLOWING RULES: 19.15.14.1201 NMAC (RULEMAKING
PROCEEDINGS); 19.15.14.1202 NMAC (EMERGENCY ORDERS AND RULES);
19.15.14.1204 (PUBLICATION OF NOTICE OF HEARING); 19.15.14.1205 NMAC
(CONTENTS OF NOTICE OF HEARING); 19.15.14.1207 NMAC (NOTICE
REQUIREMENTS FOR SPECIAL ADJUDICATIONS); 19.15.14.1208 NMAC
(PLEADINGS: COPIES); 19.15.14.1209 NMAC (CONTINUANCE OF HEARING
WITHOUT NEW SERVICE); AND 19.15.14.1221 NMAC (COPIES OF
COMMISSION AND DIVISION ORDERS)**

**CASE NO. 13187
ORDER NO. R-12084**

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (hereinafter referred to as "the Commission") on December 11, 2003 at Santa Fe, New Mexico, on application of the New Mexico Oil Conservation Division (hereinafter referred to as "the Division") through the Chief of the Engineering Bureau, and the Commission, having carefully considered the evidence, the pleadings, comments and other materials submitted in support of, and in opposition to, the proposal, now, on this 15th day of January, 2004,

FINDS:

1. Proper notices have been given of this proceeding and of the public hearing hereof, and the Commission has jurisdiction of the subject matter.
2. By this application, the Division seeks to amend certain procedural rules adopted pursuant to NMSA 1978 Section 70-2-7, as amended, governing procedures before the Division and the Commission.

The Division's Proposals

3. The Division seeks to amend Division Rule 1201 [19.15.14.1201 NMAC] relating to Rulemaking Proceedings (a) to provide for publication of notice of rulemaking proceedings concerning rules of statewide application in only one newspaper of general circulation in the state, (b) to provide for dissemination of notice of such proceedings to persons who have requested such notice, (c) to prescribe the time prior to hearing that statutory notice of proposed rulemaking must be published in the New Mexico Register, (d) to provide for posting of notices of rulemaking hearings on the Division's website, and (e) to provide that hearings concerning rules of statewide application shall be conducted before the Commission unless the division director otherwise orders.

4. The Division seeks to amend Division Rule 1202 [19.15.14.1202 NMAC] relating to Emergency Orders and Rules to authorize hearings less than 23 days after the filing of an application, and with less than 20 days notice, in case of an emergency.

5. The Division seeks to amend Division Rule 1204 [19.15.14.1204 NMAC] relating to Publication of Notice and Hearing (a) to provide for notice of hearings conducted before division hearing examiners only by dissemination of the dockets for such hearings to persons who have requested such notice and by posting on the Division's website and (b) to provide for notice of hearings conducted by the Commission by publication in a newspaper of general circulation in the state, in lieu of publication in each county, if an application to be heard by the Commission affects the entire state.

6. The Division seeks to amend Division Rule 1205 [19.15.14.1205 NMAC] relating to Contents of Notice of Hearing to more particularly specify the notice of subject matter that must be provided in notices of hearings before the Division or Commission.

7. The Division seeks to amend Division Rule 1207 [19.15.14.1207 NMAC] relating to Notice Requirements for Specific Adjudications (a) to authorize an expedited procedure for hearing applications for compulsory pooling in those cases where opposition is not anticipated, whether or not there are owners that cannot be located, (b) to conform the evidentiary requirements for expedited compulsory pooling hearings to the provisions of Division Rule 35 [19.15.1.35 NMAC] adopted by Order R-11992, entered in Case 13069 on July 17, 2003, effective August 15, 2003, (c) to conform the notice requirements for surface commingling applications to the provisions of Division Rule 303 [19.15.5.303 NMAC], as amended by Order R-11877 entered in Case 12935 on

December 13, 2002, effective March 31, 2003, and (d) to require an applicant to publish notice to persons entitled to notice who cannot be located.

8. The Division seeks to amend Division Rule 1208 [19.15.14.1208 NMAC] relating to Pleadings: Copies and Pre-Hearing Statements to require that pre-hearing statements be filed and served at least four days, rather than three days, before hearings.

9. The Division seeks to amend Division Rule 1209 [19.15.14.1209 NMAC] relating to Continuance of Hearing without New Service to eliminate any suggestion that a transcript must be made of each continuance.

10. Division seeks to amend Division Rule 1221 [19.15.14.1221 NMAC] relating to Copies of Commission and Division Orders to specify who are parties to commission or division cases for purposes of the requirement that parties be provided copies of orders entered in such cases.

Testimony and Comments

11. The Division presented the testimony of Florene Davidson, Staff Specialist employed by the Division, who testified in support of certain of the proposed amendments. Her testimony will be noted in connection with the particular amendments to which it relates.

12. The New Mexico Oil and Gas Association (NMOGA) filed written comments generally supporting the proposed amendments, but requesting changes to the proposed provisions regarding pre-hearing statements. The issues raised will be noted in relation to the amendments to Rule 1208.

13. Kate McGraw of R.W. Byram Company and John Bemis of the New Mexico State Land Office asked some questions about the proposed amendments. However, no person appeared at the hearing or offered testimony in opposition to the proposed amendments.

Rule 1201

14. Existing Rule 1201 sets forth the notice provisions applicable to rulemaking proceedings. The present rule requires that notice be published "in a newspaper of general circulation in the counties in New Mexico affected by the proposed rule 20 days prior to the public hearing."

15. While the present rule does not specifically say that notice must be published in a newspaper of general circulation in each of the affected counties, Ms. Davidson testified that the Division has attempted to publish such notices in local newspapers in each of the eleven counties where there is any oil and gas production. Ms. Davidson testified that publication in eleven newspapers could cost as much as \$800 for publication of a notice of rulemaking, as opposed to \$89 for publication only in the Albuquerque Journal.

16. Ms. Davidson further testified that the requirement that notices be published 20 days prior to the hearing in local newspapers has caused delays because not all local newspapers were able to promptly publish the advertisements forwarded to them for publication.

17. Ms. Davidson further testified to the practice of the Division of disseminating notices by mail and e-mail to persons who have requested to be informed of such matters. She further testified that the number of persons requesting such information has declined significantly since the Division began the practice of posting hearing dockets on the Division's website, thus indicating that many concerned persons rely on the Division's website as a source of notice.

18. There is no specific statutory requirement regarding newspaper publication of notices of proposed rulemaking pursuant to any of the statutes administered by the Division.

19. The Commission concludes that, in the case of rulemaking actions of statewide application, publication of notices in one newspaper of statewide circulation, coupled with dissemination of notices by mail and e-mail to parties who have requested to be informed and posting on the Division's website, provides adequate public notice of such actions, and the additional expense and delay incident to publication in multiple local newspapers is not justified. While the Commission believes that publication in one newspaper of statewide circulation would comply with the literal requirement of the existing rule, the Commission concludes that Rule 1201 should be amended to expressly so provide, as well as to make express provision for continuation of the existing practice of dissemination of dockets by mail and electronic means.

20. NMSA 1978 Section 14-4-7.1.B provides that the New Mexico Register is the official publication for all notices of rule makings by all state agencies. However, neither that statute nor any other statute or rule states at what time such notice must be published in the New Mexico Register before a public hearing on the proposed rulemaking may be held. NMSA 1978 Section 70-2-23 requires at least ten days notice of hearings conducted by the Commission or Division, except in case of emergencies. However, such requirement is not expressly applicable to notices published in the New Mexico Register.

21. In order to avoid confusion as to the applicable notice periods, the Commission concludes that Rule 1201 should be amended to require publication of notices of proposed rulemaking in the New Mexico Register at least ten days prior to the public hearing thereon.

22. The Commission further concludes that, as a codification of existing practice, Rule 1201 should be amended to provide that hearings concerning rulemaking of statewide application should be held before the Commission unless the Division Director otherwise directs.

Rule 1202

23. Existing Rule 1202, tracking the provisions of NMSA 1978 Section 70-2-23, provides that the Commission or the Division may not issue any rule or order without a hearing except in case of an emergency, and that a rule or order issued in an emergency without a hearing shall remain in force for no more than fifteen days. However, existing Rule 1207.B requires notice twenty (20) days prior to any hearing, and Rule 1203.B requires that an application be filed twenty-three (23) days prior to a hearing thereon. There is no provision in existing rules for shortening these time periods in case of an emergency. Thus an emergency order issued without hearing could expire before a hearing could be scheduled with notice given pursuant to the existing rules.

24. The Commission concludes that Rule 1202 should be amended to authorize shortening the times prior to a hearing when an application must be filed and notices given, so that an emergency hearing can be held within the fifteen-day emergency order period authorized by NMSA 1978 Section 70-2-23.

Rule 1204

25. Existing Rule 1204 requires the Division to publish notice of all hearings before the Commission or a Division examiner in "a newspaper of general circulation in the counties that are affected by the application."

26. As in the case of the notice required for rulemaking by Rule 1201, the Division has published notices of hearings in local newspapers in each affected county, even when the effect of an application was statewide.

27. Ms. Davidson testified that the cost to the Division of publishing notices of examiner hearings in newspapers ran from \$300 to \$700 per two-week period.

28. There is no statutory requirement that notices of hearings before Division examiners be published in any newspaper.

29. The Commission concludes that notice of hearing before the Commission of matters that effect the entire state can be properly given by publication in one newspaper of general circulation in the State, and that Rule 1204 should be amended to expressly so provide.

30. The Commission further concludes that the cost of newspaper publication of notices of Division examiner hearings is not justified in view of other channels through which notice of such hearings is communicated, including personal notice required to be given by the applicant to directly interested parties, notices disseminated by mail and e-mail to persons who have requested to be informed concerning such matters, and posting on the Division's website. Accordingly, Rule 1204 should be amended to require dissemination of notice of examiner hearings to persons requesting notice and posting thereof on the Division's website, and to repeal the requirement for newspaper publication of such notices.

31. Amended Rule 1204 as proposed by the Division would require that hearing dockets be furnished to "each person or organization" so requesting. Because person is defined in Rule 7 to include entities other than individuals, the words "or organization" are unnecessary, and should be omitted.

Rule 1205

32. Existing Rule 1205 states the information that must be included in notices given by the Division of hearings. Among other requirements, it requires that the notice state "the common source or sources of supply that may be affected."

33. The Commission concludes that the common sources of supply (pools) affected are an appropriate criterion for identifying the potential impact of some types of applications, but not others. For example, a compulsory pooling hearing only affects the spacing unit to be pooled and has minimal effect on the pool.

34. Requiring that notices of hearing specify the pools affected raises possible questions about irregularities arising from failure of notices to completely or accurately enumerate the affected pools.

35. The Commission therefore concludes that Rule 1205 should be amended (1) to specifically require identification of pools affected only in notices relating to special pool rules, non-standard units, unorthodox locations or allowables, (2) to require specific identification of the lands and formations affected in notices relating compulsory pooling or statutory unitization, and (3) in other applications to require that the notices reasonably describe the subject matter.

36. In the interest of clarification, the list of proceedings for which pool information should be provided in any notice should include proceedings to alter, as well as to establish non-standard units, and the phrase "compulsory pooling or unitization" in the Division's proposed amendments should be changed to read, "compulsory pooling or statutory unitization."

Rule 1207

37. Existing Rule 1207 states the parties to whom an applicant must give notice of particular types of applications, the time and manner of notice required, and the contents of such notices, and also prescribes an expedited procedure for presenting applications for compulsory pooling.

38. Under existing Rule 1207.A(1)(b), the expedited procedure for compulsory pooling is applicable when two conditions exist: (1) the applicant is unable to locate all owners in the unit to be pooled, and (2) the application is unopposed by those located.

39. The Commission perceives no reason why the expedited procedure should not be available in cases where the application is unopposed by any known owner merely because all owners have been located.

40. Existing Rule 1207.A(1)(b)(viii) requires submission of geologic and engineering evidence to support the risk charge requested in compulsory pooling cases presented under this rule.

41. Rule 35, adopted by the Commission on July 17, 2003, and effective August 15, 2003, dispenses with the necessity of engineering and geologic testimony in uncontested compulsory pooling cases, creating a conflict between such rule and existing Rule 1207.

42. Rule 303, adopted by the Commission on December 13, 2002, and effective March 31, 2003, provides specific notice requirements pertaining to applications for surface commingling.

43. Existing Rule 1207 does not require applicants to give notice by publication to persons otherwise entitled to notice who cannot be located. Amendment of Rule 1204 to delete the requirement that the Division publish notice of examiner hearings, however, necessitates that such published notice be given to secure due process rights to affected parties who cannot be located for actual notice.

44. For the foregoing reasons, the Commission concludes that Rule 1207 should be amended to:

a. extend the applicability of the expedited procedure for compulsory pooling cases to all cases where the application is unopposed by the known owners;

b. conform Rule 1207 to Rule 35 by eliminating the requirement for geologic and engineering evidence in unopposed compulsory pooling cases;

c. require that notice of surface commingling applications be given in accordance with Rule 303; and

d. require that an applicant publish notice directed to parties otherwise entitled to notice of the application whose whereabouts are unknown.

45. Amended Rule 1207 A.(1)(b) as proposed by the Division could be read to suggest that the expedited procedure there provided could be applicable to statutory unitization cases, as well as compulsory pooling cases. The Division's proposal should be changed to make clear that this procedure is applicable only to compulsory pooling cases.

46. Existing Rule 1207 A.(1)(b)(iv) contains a parenthetical statement that could be read to say that the Division lacks power to pool a spacing unit larger than provided in statewide or pool rules, contrary to the holding in *Rutter & Wilbanks Corp. v. OCC*, 87 NM 286, 532 P.2d 582 (Sup. 1975). The Commission concludes that the parenthetical statement means only that the expedited procedure provided in Rule 1207.A(1)(b) would not apply in such a case, and the Rule should be amended to make this intent clear.

47. The words "persons entitled to notice" should be substituted for "interest owners" in the Division's proposed amendment of Rule 1207.B in the interest of clarity.

48. Rule 1207.E should be amended to require that notices pursuant to that rule include the time and place of hearing, to be consistent with Rule 1207.B.

Rule 1208

49. Existing Rule 1208 provides, among other matters, for filing of pre-hearing statements by parties to contested cases. It requires that such statements be filed and served on opposing counsel three days prior to a hearing.

50. In order to provide parties to contested cases a slightly longer time to respond to opposing parties' contentions, the Division has proposed that the time for filing and service of pre-hearing statements be advanced to four days prior to the hearing.

51. In comments filed with the Commission, NMOGA has requested that the time be advanced to one week prior to the hearing, and that the rule bar participation in the hearing by a party who fails to file a timely statement.

52. The Commission concludes that four days service of pre-hearing statements is adequate except possibly in the case of a hearing scheduled on a Friday, in which case four days would not include an intervening weekend, and that, accordingly, pre-hearing statements should be filed and served four days prior to the hearing, but not later than the Friday preceding the hearing. Rule 1208 should be amended accordingly.

53. With respect to the proposal to bar participation in the hearing by parties who fail to file a timely pre-hearing statement, the Commission concludes that:

a. the effect of the amended language proposed by the Division is to leave the extent of participation by a party failing to file a timely pre-hearing statement to the discretion of the examiner or the Commission; and

b. in view of the varying sophistication of parties responding to applications and the varying times at which responding parties may have received actual notice of the hearing, such discretion is appropriate.

Rule 1209

54. Existing Rule 1209 provides for continuance of a Commission or Division hearing by announcement at the hearing, without further notice.

55. By Order No. R-11964, issued in Case No. 13030 on May 15, 2003, the Commission amended Rule 1209 to delete the final sentence thereof that could be construed as requiring a transcribed record of a continued hearing. However, due to defective notice, such order never became effective.

56. For the reasons set forth in Order No. R-11964, Rule 1209 should be amended as therein provided.

Rule 1221

57. Existing Rule 1221 requires the Division to furnish copies of Commission and Division orders to each party, but does not define "party."

58. In order to provide additional certainty to the process of notification of persons affected by Commission and Division orders, Rule 1221 should be amended to define party as any person who files a written appearance in the case or enters an appearance of record at a hearing.

59. The reference in the Division's proposed amendments to Rule 1221 to "filing a pleading or notice of appearance" should be changed to "filing a protest, pleading or notice of appearance," to resolve any question about whether a protest to an administrative application would constitute a pleading.

Final Conclusion

60. The Commission has concluded that 19.15.14 NMAC, including Rules 1201, 1202, 1204, 1205, 1207, 1208, 1209 and 1221, should be amended to read as shown in Exhibit A hereto.

IT IS THEREFORE ORDERED:

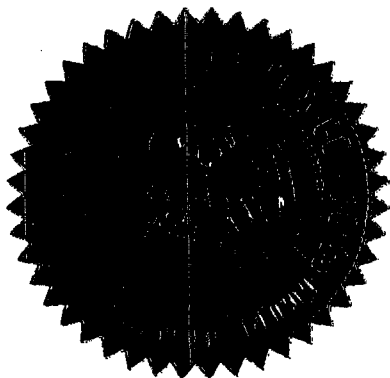
1. Part 14 of Chapter 15, Title 19, NMAC, including OCD Rules 1201, 1202, 1204, 1205, 1207, 1208, 1209 and 1221, shall be amended to read as shown in Exhibit A hereto, effective upon the date of publication thereof in the New Mexico Register.

2. Staff of the Oil Conservation Division is instructed to secure prompt publication of the referenced amendments in the New Mexico Register.

3. Jurisdiction of this matter is retained for entry of such further orders as may be necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



Lori Wrotenbery
LORI WROTENBERY, CHAIR

Jami Bailey
JAMI BAILEY, MEMBER

Robert Lee
ROBERT LEE, MEMBER

SEAL

EXHIBIT A to Order No. R-12084

19.15.14.1201 RULEMAKING PROCEEDINGS:

A. Before any rule, including revocation or amendment thereof, ~~of an existing rule~~, shall be made by the division or commission, a public hearing before the commission or a duly appointed division examiner shall be held at such time and place as may be prescribed by the commission in accordance with Section 10-15-1 NMSA 1978.

B. When the commission, the division, an operator or any interested person applies to adopt, amend or rescind any rule, such application shall constitute a request for rulemaking ~~for which the following notice requirements apply~~, and the division shall publish notice of the proposed rulemaking:

(1) ~~the division shall publish notice of the proposed rule one time~~ in a newspaper of general circulation in the counties in New Mexico affected by the proposed rule (or if the proposed rule will be of statewide application, in a newspaper of general circulation in this state), with the publication date not less than 20 days prior to the date set for the public hearing; and

(2) ~~the division shall publish notice of the proposed rule on the commission applicable docket for the commission or division hearing at which the matter will be heard and shall send the docket to which shall be sent by regular mail or electronic mail to all who have requested such notice~~, not less than 20 days prior to the public hearing;

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

(4) by posting to the division's website not less than 20 days prior to the public hearing.

C. If the rule proposed to be adopted, amended or rescinded is of statewide application, the hearing shall be conducted before the commission in the first instance unless the division director otherwise directs.

D. This section shall not apply to special pool rules, which may be adopted, amended or rescinded in adjudicatory proceedings subject to the notice provisions of sections 1204 and 1207 of this part.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1201, 8-29-03]

19.15.14.1202 EMERGENCY ORDERS AND RULES:

A. Notwithstanding any other provision of these rules this part, in the event an emergency is found to exist by the division or commission, which requires adoption of a rule or the issuance of an order without a hearing, such emergency rule or order shall have the same validity as if a hearing had been held before the division or commission after due notice. Such emergency rule or order shall remain in force no longer than 15 days from its effective date.

B. Notwithstanding any other provision of this part, in the event an emergency is found to exist by the division or commission, a hearing may be conducted upon any application within less than twenty-three (23) days after the filing thereof, and notice of such hearing may be given within such lesser time than twenty (20) days as the director of the division shall order.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1201, 8-29-03]

19.15.14.1204 PUBLICATION OF NOTICE OF HEARING:

A. The division shall give notice of each hearing before the commission or a division examiner by (1) posting notice on the division's website, and (2) delivering notice by ordinary first class United States mail or electronic mail to each person who has requested in writing to be notified of such hearings.

B. In addition, The division shall give notice of each hearing before the commission or a division examiner by publication once in accordance with the requirements of Chapter 14, Article 11 NMSA 1978, in a newspaper of general circulation in the counties that are affected by the application or, if the effect of the application will be statewide, in a newspaper of general circulation in this state. [1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1204, 8-29-03]

19.15.14.1205 CONTENTS OF NOTICE OF HEARING:

A. Published notices shall be issued in the name of "The State of New Mexico" and signed by the director of the division, and the seal of the commission shall be impressed thereon.

B. The notice shall specify: whether the case is set for hearing before the commission or a division examiner; the number and style of the case; the time and place of hearing; and the general nature of the application. The notice shall also state the name of the applicant, ~~and unless the contemplated order or rule is intended to apply to and affect the entire state, it shall specify or generally describe the common source or sources of supply that may be affected if the application is granted.~~ If the application seeks to adopt, revoke or amend special pool rules, establish or alter a non-standard unit, permit an unorthodox location, or establish or affect the allowable of any well or proration unit, the notice shall specify each pool or common source of supply that may be affected if the application is granted. If the application seeks compulsory pooling or statutory unitization, the notice shall contain a legal description of the spacing unit or geographical area sought to be pooled or unitized. In all other cases, the notice shall reasonably identify the subject matter so as to alert persons who may be affected if the application is granted.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1205, 8-29-03]

19.15.14.1207 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:

A. Applicants for the following adjudicatory hearings before the division or commission shall give notice, in addition to that required by 19.15.14.1204 NMAC as set forth below:

(1) Compulsory Pooling and Statutory Unitization:

(a) Notice shall be given to any owner of an interest in the mineral estate of any portion of the lands proposed to be pooled or unitized whose interest is evidenced by a written document of conveyance either of record or known to the applicant at the time of filing the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause).

(b) When an applicant is unable to locate all the owners of interests to be pooled and the application is unopposed by those located, the applicant may file under the following alternate procedure if notice is given as required by 19.15.14.1207 NMAC in (a) above, of an application for compulsory pooling and the application is unopposed by those owners located, the applicant may file under the following alternate procedure.— The application shall include the following:

- (i) a statement that no opposition for hearing is expected and why;
- (ii) a map outlining the spacing unit(s) to be pooled, showing the nature and percentage of the ownership interests and location of the proposed well;
- (iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that a diligent search has been conducted of all public records in the county where the well is located and of phone directories, including computer searches;
- (iv) the names of the formations and pools to be pooled (Note: ~~the division cannot~~ this procedure does not apply to an application to pool a spacing unit larger in size than provided in these rules or applicable special pool orders);
- (v) a statement as to whether the pooled unit is for gas and/or oil production (see note under iv, above);
- (vi) written evidence of attempts made to gain voluntary agreement including but not limited to copies of relevant correspondence;
- ~~(vii) geological map(s) of the formation(s) to be tested and a geological and engineering assessment of the risk involved in the drilling of the well and a proposed risk penalty to be assessed against any working interest owner who does not pay its share of estimated well costs;~~
- ~~(viii)~~ (vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;
- ~~(ix)~~ (viii) the location and proposed depth of the well to be drilled on the pooled units; and
- ~~(ix)~~ (ix) a copy of the authorization for expenditure (AFE) to be submitted to the interest owners in the well.

(c) All submittals required shall be accompanied by sworn and notarized statements by those persons who prepared the submittals, attesting that the information is correct and complete to the best of their knowledge and belief.

(d) All unopposed pooling applications will be set for hearing. If the division finds the application complete, the information submitted with the application will constitute the record in the case, and an order will be issued based on the record.

(e) At the request of any interested person or upon the division's own initiative, any pooling application submitted shall be set for full hearing with oral testimony by the applicant.

(2) Unorthodox Well Locations:

(a) Definition: "affected persons" are the following persons owning interests in the adjoining spacing units:

- (i) the division-designated operator;
- (ii) in the absence of an operator, any lessee whose interest is evidenced by a written document of conveyance either of record or known to the applicant as of the date the application is filed; and

(iii) in the absence of an operator or lessee, any mineral interest owner whose interest is evidenced by a written document of conveyance either of record or known to the applicant as of the date the application was filed. In the event the operator of the proposed unorthodox well is also the operator of an existing adjoining spacing unit and ownership is not common between the adjoining spacing unit and the spacing unit containing the proposed unorthodox well, then "affected persons" include all working interest owners in that spacing unit.

(b) If the proposed location is unorthodox by being located closer to the outer boundary of the spacing unit than permitted by Rule, notice shall be given to the affected persons in the adjoining spacing units towards which the unorthodox location encroaches.

(c) If the proposed location is unorthodox by being located in a different quarter-quarter section or quarter section than provided in special pool orders, notice shall be given to all affected persons.

(3) Non-Standard Proration Unit: Notice shall be given to all owners of interests in the mineral estate to be excluded from the proration unit in the quarter-quarter section (for 40-acre pools or formations), the one-half quarter section (for 80-acre pools or formations), the quarter section (for 160-acre pools or formations), the half section (for 320-acre pools or formations), or section (for 640-acre pools or formations) in which the non-standard unit is located and to such other persons as required by the division.

(4) Special Pool Orders Regulating or Affecting a Specific Pool:

(a) Except for non-standard proration unit applications, if the application involves changing the amount of acreage to be dedicated to a well, notice shall be given to:

- (i) all division-designated operators in the pool; and
- (ii) all owners of interests in the mineral estate in existing spacing units with

producing wells.

(b) If the application involves other matters, notice shall be given to:

- (i) all division-designated operators in the pool; and
- (ii) all division-designated operators of wells within the same formation as the

pool and within one (1) mile of the outer boundary of the pool which have not been assigned to another pool.

(5) Special Orders Regarding any Division-Designated Potash Area: Notice shall be given to all potash lessees, oil and gas operators, oil and gas lessees and unleased mineral interest owners within the designated potash area. (a) through (d). The material on unorthodox locations was moved to Paragraph (2) of Subsection A of 19.15.14.1207 NMAC.

(6) Downhole Commingling: Notice shall be given to all owners of interests in the mineral estate in the spacing unit if ownership is not common for all commingled zones within the spacing unit.

(7) Surface Disposal of Produced Water or Other Fluids: Notice shall be given to any surface owner within one-half mile of the site.

~~(8) Surface Commingling: Notice shall be given as prescribed in 19.15.5.303 NMAC.~~

~~(8)(9) Adjudications not listed above: Notice shall be given as required by the division.~~

~~(9) This paragraph has been moved and renumbered to Paragraph (6) of Subsection A of 19.15.14.1207 NMAC.~~

~~(10) This paragraph has been moved and renumbered to Paragraph (7) of Subsection A of 19.15.14.1207 NMAC.~~

~~(11) This paragraph has been moved and renumbered to Paragraph (8) of Subsection A of 19.15.14.1207 NMAC.~~

B. Type and Content of Notice. Any notice required by this rule shall be sent by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the date of hearing of the application and shall include: a copy of the application, the date, time and place of the hearing, and the means by which protests may be made. When an applicant has been unable to locate all persons entitled to notice after exercising reasonable diligence, notice shall be provided by publication, and proof of publication shall be submitted at the hearing. Such proof shall consist of a copy of the legal advertisement that was published in a newspaper of general circulation in the county or counties in which the property is located or if the effect of the application is statewide, in a newspaper of general circulation in this state.

C. At the hearing, the applicant shall make a record, either by testimony or affidavit signed by the applicant or its authorized representative, that: (a) the notice provisions of this rule have been complied with; (b) the applicant has conducted a good-faith diligent effort to find the correct address of all persons entitled to notice; and (c) pursuant to this rule, notice has been given at that correct address as required by this rule. In addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof.

D. Evidence of failure to provide notice as required in this rule may, upon proper showing, be considered cause for reopening the case.

E. In the case of an administrative application where the required notice was sent and a timely filed protest was made, the division shall notify the applicant and the protesting party in writing that the case has been set for hearing and the date, time and place of the hearing. No further notice is required. |
[1-1-86...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1207, 8-29-03]

19.15.14.1208 PLEADINGS: COPIES AND PRE-HEARING STATEMENTS

A. For pleadings and correspondence filed in cases pending before a division examiner, two copies must be filed with the division. For pleadings and correspondence filed in cases pending before the commission, five copies must be filed with the division. The division will disseminate copies to the members of the commission. The party filing the pleading or correspondence shall at the same time either hand deliver or transmit by facsimile or electronic mail to any party who has entered an appearance therein or the attorneys of record, a copy of the pleading or correspondence. An appearance of any interested party shall be made either by letter addressed to the division or in person at any proceeding before the commission or before a division examiner, with notice of such appearance to the parties of record.

B. Parties to an adjudicatory proceeding who intend to present evidence at the hearing must shall file a pre-hearing statement, and serve a copy thereof on opposing counsel of record in the manner provided in subsection A of this section, at least four-three days in advance of a scheduled hearing before the division or the commission, but in no event later than the Friday preceding the scheduled hearing. The statement must include: the names of the parties and their attorneys; a concise statement of the case; the names of all witnesses the party will call to testify at the hearing; the approximate time the party will need to present its case; and identification of any procedural matters that are to be resolved prior to the hearing. [9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1208, 8-29-03]

19.15.14.1209 CONTINUANCE OF HEARING WITHOUT NEW SERVICE: Any hearing before the commission or a division examiner held after due notice may be continued by the person presiding at such hearing to a specified time and place without the necessity of notice of the same being again served or published. ~~In the event of any continuance, a statement thereof shall be made in the record of the hearing that is continued.~~

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1209, 8-29-03]

19.15.14.1221 COPIES OF COMMISSION AND DIVISION ORDERS: Within 10 days after an order, including any order granting or refusing rehearing or order following rehearing, has been issued, a copy of such order shall be mailed by the division to each party or its attorney of record. For purposes of this section only, the parties to a case are the applicant and each person who has entered an appearance in the case, in person or by attorney, either by filing a protest, pleading or notice of appearance with the division or by entering an appearance on the record at a hearing.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1221, 8-29-03]