

STATE OF NEW MEXICO  
RULEMAKING HEARING  
OIL CONSERVATION COMMISSION

REPORTER'S PRE AND POST-HEARING  
TRANSCRIPT OF PROCEEDINGS

Friday, June 3, 2022

9:00 a.m.

This matter came on for hearing before the New Mexico Oil and Gas Commission on Friday, June 3, 2022, via Webex virtual conferencing platform hosted by the New Mexico Energy, Minerals and Natural Resources Department

APPEARANCES:

Felicia Orth, Hearing Examiner  
Adrienne Sandoval, Chairwoman  
Gregory Bloom, Commissioner  
Dr. William Ampomah, Commissioner, Energy  
Secretary  
Florence Davidsion, Commission Clerk  
Chris Moander, Commission Counsel

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1 CHAIRWOMAN SANDOVAL: Good morning,  
2 everybody. It is 9:03 a.m. on June 3rd, 2022, and  
3 this is a meeting of the Oil Conservation  
4 Commission. I am Adrienne Sandoval, Chair of the  
5 Oil Conservation Division and Director of the Oil  
6 Conservation Division.

7 Would the other two Commissioners please  
8 introduce yourselves.

9 COMMISSIONER BLOOM: Good morning,  
10 everyone, I'm Greg Bloom. I'm the designee of the  
11 Commission of Public Lands.

12 COMMISSIONER AMPOMAH: Good morning. I'm  
13 Dr. William Ampomah, professor of the New Mexico  
14 Tech and also the designee of the Energy Secretary.  
15 Thank you.

16 CHAIRWOMAN SANDOVAL: All right. Also  
17 with us today is Florene Davidson, Clerk to the  
18 Commission; Chris Moander, Counsel to the  
19 Commission; and Felicia Orth will be the Hearing  
20 Examiner for Agenda Item No. 4 on today's agenda.

21 All right. First item on the agenda is  
22 approval of the agenda. Is there a motion to  
23 approve the agenda?

24 COMMISSIONER BLOOM: I so move.

25 CHAIRWOMAN SANDOVAL: I'm still having a

1 hard time hearing you, Greg, you kind of fade in and  
2 out.

3 COMMISSIONER BLOOM: Is that better?

4 CHAIRWOMAN SANDOVAL: Yeah.

5 COMMISSIONER AMPOMAH: Madam Chair, I  
6 second.

7 CHAIRWOMAN SANDOVAL: Mr. Moander, would  
8 you please do a roll call vote.

9 MR. MOANDER: Yes, Madam Chair.

10 Dr. Ampomah?

11 COMMISSIONER AMPOMAH: Approved.

12 MR. MOANDER: Commissioner Bloom?

13 COMMISSIONER BLOOM: Approved.

14 MR. MOANDER: Madam Chair?

15 CHAIRWOMAN SANDOVAL: Approved.

16 MR. MOANDER: Motion carries.

17 (Agenda Item 2 approved unanimously.)

18 CHAIRWOMAN SANDOVAL: All right. Next  
19 item on the agenda is approval of the May 12th  
20 meeting minutes.

21 Is there a motion to adopt the minutes?

22 COMMISSIONER BLOOM: Chair, I so move.

23 COMMISSIONER AMPOMAH: Second.

24 CHAIRWOMAN SANDOVAL: Mr. Moander, would  
25 you do the roll call, please.

1 MR. MOANDER: Yes, Madam Chair.

2 Dr. Ampomah?

3 COMMISSIONER AMPOMAH: Approved.

4 MR. MOANDER: Commissioner Bloom?

5 COMMISSIONER BLOOM: Approved.

6 MR. MOANDER: Madam Chair?

7 CHAIRWOMAN SANDOVAL: Approved.

8 MR. MOANDER: The motion carries.

9 (Agenda Item 3 approved unanimously.)

10 CHAIRWOMAN SANDOVAL: All right. Next  
11 item on the agenda is Case Number 22719, Application  
12 of the Oil Conservation Division to amend Rules  
13 19.15.2 and 19.15.7 NMAC.

14 And with that, Ms. Orth, would you please  
15 take over.

16 HEARING OFFICER ORTH: Thank you very  
17 much, Madam Chair.

18 My name is Felisha Orth, appointed as a  
19 Hearing Officer to conduct the hearing in  
20 Case Number 22719, the Application of the Oil  
21 Conservation Division to amend Rules 19.15.2 and  
22 19.15.7 of the New Mexico Administrative Code.

23 The hearing is being conducted under the  
24 New Mexico Oil and Gas Act and the Commission's  
25 rulemaking rules in 19.15.3 of the New Mexico

1 Administrative Code.

2           Commissioners, the file includes -- and  
3 all of this is on the Commission's web page, the  
4 Application for Rulemaking from the Oil Conservation  
5 Division; a public comment from NMOGA; the notice of  
6 public hearing of the rulemaking this morning; the  
7 order of my appointment; a prehearing statement from  
8 the Oil Conservation Division, which is the  
9 petitioner here.

10           And I'll note that Exhibit 1 is the  
11 proposed rule. There were other exhibits, a  
12 prehearing statement from NMOGA. While the OCD  
13 prehearing statement had noted they would be calling  
14 two witnesses this morning, Mr. Brancard and  
15 Mr. Powell, NMOGA did not note that they would be  
16 calling witnesses this morning. Their comments are  
17 more technical or legal.

18           And then the slide presentation from the  
19 petitioner, OCD. Again, all of that is on the web  
20 page in the case imaging file for 22719.

21           All testimony will be taken under oath and  
22 is subject to cross-examination. And we'll invite  
23 public comment a couple of times. You can offer  
24 public comment in writing until noon today, as I  
25 understand, or when I invite it during the hearing.

1 So let's begin with the introduction of counsel  
2 here.

3 Mr. Tremaine?

4 MR. TREMAINE: Good morning, Madam Hearing  
5 Examiner, Commissioners, my name is Jesse Tremaine  
6 on behalf of the Oil Conservation Division.

7 HEARING OFFICER ORTH: Good morning.

8 Mr. Feldewert?

9 MR. FELDEWERT: Good morning, Ms. Orth,  
10 it's good to see you, Madam Chair, Commission. I'm  
11 here on behalf of the New Mexico Oil and Gas  
12 Association, otherwise known as NMOGA.

13 HEARING OFFICER ORTH: Thank you very  
14 much. And shall we begin with -- do you have an  
15 opening, Mr. Tremaine?

16 MR. TREMAINE: I have a very brief opening  
17 remarks, Ms. Orth.

18 HEARING OFFICER ORTH: Please go ahead.

19 CHAIRWOMAN SANDOVAL: Before you get  
20 going, Mr. Tremaine, Ms. Orth, should we just make  
21 sure nobody wants to do public comment? I think we  
22 had said we would do it upfront.

23 HEARING OFFICER ORTH: Well, okay. I  
24 hadn't thought that we would do it upfront.

25 If you are on the platform and you would



1 like to offer public comment on this petition in  
2 22719, please reach out through the chat. We'll  
3 pause a moment to take that comment if you reach out  
4 through chat.

5 CHAIRWOMAN SANDOVAL: It also appears that  
6 Mr. Bloom got kicked off, so we might want to wait  
7 for him for a moment.

8 MR. MOANDER: We definitely did lose him.  
9 I just got a text message. Yes, we should pause  
10 until we can reacquire our missing Commissioner.

11 COMMISSIONER BLOOM: Madam Chair, can you  
12 hear me?

13 CHAIRWOMAN SANDOVAL: Yes.

14 COMMISSIONER BLOOM: Sorry about that. I  
15 have no idea what happened. Last I heard, I think  
16 Mr. Feldewert was just introducing himself.

17 CHAIRWOMAN SANDOVAL: Okay. Well, let's  
18 get the recording back. All right. It's 9:17 a.m.  
19 and we're going to resume.

20 Sorry, Ms. Orth, I think let's go back to  
21 you. There's only, I think potentially one person  
22 online right now who may or may not have a comment.  
23 So go ahead, Ms. Orth.

24 HEARING OFFICER ORTH: And I don't know  
25 that I can see the chat. Would you tell me the name

1 please?

2 CHAIRWOMAN SANDOVAL: Nobody has chatted  
3 yet. There is just one person online who is not  
4 associated with the hearing directly.

5 Mr. Hall, so, Mr. Hall, if you have a  
6 public comment you can send me a chat directly and  
7 we can provide an opportunity for you to make a  
8 comment.

9 HEARING OFFICER ORTH: All right, we can  
10 wait a moment, Madam Chair, in the event Mr. Hall  
11 sends you a message.

12 CHAIRWOMAN SANDOVAL: Nothing, Ms. Orth.

13 HEARING OFFICER ORTH: All right. There  
14 will be several other opportunities to offer public  
15 comment in the event anyone is on the platform  
16 currently or joins us before we adjourn.

17 Commissioner Bloom, you missed nothing.  
18 Mr. Feldewert introduced himself and then we started  
19 looking for public comment and didn't have any.

20 So let's go then to Mr. Tremaine's opening  
21 remarks. Mr. Tremaine.

22 MR. TREMAINE: Thank you, Madam Hearing  
23 Examiner.

24 Good morning, Madam Chair, Commissioners,  
25 Hearing Examiner Orth.

1           The Oil Conservation Division filed this  
2 application to amend Rules 1915.2, and 19.15.7 NMAC  
3 for specific limited purposes. The purposes are to  
4 update the rules to clearly and accurately reflect  
5 the hearing optional structure of the Oil  
6 Conservation Divison, for instance, removal of  
7 references to specific districts for district  
8 offices that exist in the current rule. To also  
9 modernize the official operation of the Oil  
10 Conservation Division specifically to permit the  
11 electronic submission of documents by operators  
12 through the OCD permitting system, rather than  
13 relying on references to paper and hard copy  
14 submissions.

15           Another purpose is to consolidate and to  
16 clarify certain sections of the existing rules,  
17 which Mr. Brancard will testify to shortly.

18           And also, I just want to point out that  
19 Oil Conservation Division's proposals, these edits  
20 do not propose any amendments that make substantive  
21 changes to the Oil Conservation Division practice,  
22 these are administrative and procedural changes to  
23 reflect how agencies operate in 2022, and to kind of  
24 standardize and clarify existing language in the  
25 rules.

1           The Oil Conservation Division will present  
2 two witnesses today, Mr. Brancard and Mr. Powell.  
3 Depending on how the Commission wants to proceed, I  
4 am prepared to offer these witnesses in sequence or  
5 as a panel. It is entirely up to you. I can  
6 proceed with direct in sequence and make them  
7 available for questions as a panel, I leave that  
8 decision to you.

9           I want to point out briefly that the  
10 Division presents 10 total exhibits. We will  
11 address, Exhibit 1 through 5, during direct  
12 testimony and move their admission.

13           Exhibit 6 through 10, are notice documents  
14 that are not prepared by the division, but those are  
15 provided merely to assist the Commission in  
16 verifying those notice requirements. We can discuss  
17 those in detail later on as the Commission wishes,  
18 and I can describe the nature of each of those, but  
19 those are for the Commission to assist the  
20 Commission.

21           And that is my opening statement.

22           Thank you.

23           HEARING OFFICER ORTH: Okay, Mr. Tremaine.

24           Mr. Feldewert, do you have any opening  
25 remarks?

1 MR. FELDEWERT: Yes, Ms. Orth, I can  
2 explain a little bit why we're here and what we  
3 filed before we get started.

4 Is there a way I can share my screen?

5 CHAIRWOMAN SANDOVAL: I can give you  
6 screen share. I am having a little bit of trouble  
7 hearing you, Mr. Feldewert. I don't know if I am the  
8 only one.

9 MR. FELDEWERT: Is this better?

10 CHAIRWOMAN SANDOVAL: Yes.

11 MR. FELDEWERT: Okay. I'll make sure I  
12 lean in.

13 So I want to try to bring up what we filed  
14 as NMOGA Exhibit 1., which I'm hoping you now have  
15 on your screen.

16 Do you see that Madam Chair?

17 CHAIRWOMAN SANDOVAL: Yes.

18 MR. FELDEWERT: Okay, great. So what I  
19 have tried to communicate with NMOGA Exhibit 1, is  
20 that we took the Division Exhibit and I highlighted  
21 in yellow our proposed changes, and they should show  
22 up in blue. So the redline strike out that you see  
23 on here are all the Division changes which NMOGA has  
24 no concerns about.

25 Our concerns relate solely to

1 Section 19157.9, which is titled, Forms Required  
2 from Federal Land and Minerals.

3 COMMISSIONER BLOOM: Mr. Feldewert, excuse  
4 me. Madam Chair, Madam Hearing Officer, if you  
5 could Mr. Feldewert zoom in a little bit just to  
6 increase the font size there, that would be helpful.

7 MR. FELDEWERT: I will, thank you. So we  
8 have this general provisions.

9 Is that better Mr. Bloom?

10 COMMISSIONER BLOOM: Perfect, thank you.

11 MR. FELDEWERT: It's forms required on  
12 Federal Land or Minerals and there is two aspects  
13 about this rule that I want this changed, that I  
14 would want to focus on.

15 So, this is, as I understand, an update of  
16 the rules and it really updates the relationship  
17 between the Federal and Tribal governments in the  
18 Division.

19 Subsection D as in David, under 19157.9,  
20 deals with lands or minerals owned by a Native  
21 American Nation, Tribe, Pueblo or individual  
22 allottee.

23 It correctly recognizes that the Division  
24 does not have authority over those lands, but they  
25 do require that the forms be filed with the Division

1 so they keep track, as I understand, of things going  
2 on and I totally understand that. And they note at  
3 the bottom at the last sentence that such forms  
4 involving exclusively lands or minerals that the  
5 Native American Nation, Tribe, Pueblo or individual  
6 allottee owns, are not subject to Division review or  
7 approval unless such review or approval is  
8 authorized by written agreement between the Native  
9 American Nation, Tribe, Pueblo, and Division. And  
10 that is correct as a matter of law, as a matter of  
11 sovereignty.

12 The Division does not have jurisdiction  
13 over these lands, but I certainly may understand why  
14 they would want filings to occur within to keep  
15 track of what is occurring.

16 Now, when I get to Subsection C, this  
17 subsection deals with lands or minerals owned  
18 exclusively by the Federal Government. And as a  
19 matter of law I don't think there's any debate that  
20 the state agency, the Division likewise does not  
21 authority over Federal lands or minerals.

22 And so in updating these rules, it seems  
23 to me that the same type of structure that you see  
24 over here in subpart D, for Tribal lands similarly  
25 applies to Federal lands. The BLM has jurisdiction.

1 So what I did was, I took the last sentence that we  
2 see in subsection D, that I read to you, but there  
3 being a necessity of an agreement before those forms  
4 can be approved by the Division.

5 And added that to the provision dealing  
6 with Federal lands and minerals. And then I simply  
7 removed the first sentence in the, "for approval"  
8 language in there to reflect the legal position, and  
9 to state absent an agreement with the BLM does not  
10 have the authority to approve activities on purely  
11 Federal lands and minerals.

12 I don't think there's any debate about  
13 that. So that was the purpose of our change.  
14 That's why I'm here. And I appreciate your  
15 consideration of this, of these changes.

16 HEARING OFFICER ORTH: Thank you,  
17 Mr. Feldewert.

18 Back to Mr. Tremaine. Mr. Tremaine, my  
19 preference would be that you call your witnesses in  
20 sequence and that they then be questioned as a  
21 panel. That will be my preference.

22 MR. TREMAINE: Thank you, Madam Hearing  
23 Examiner.

24 The Oil Conservation Division will call,  
25 William Brancard.



1 HEARING OFFICER ORTH: Mr. Brancard, if  
2 you would please raise your right hand.

3 (Whereupon the witness was sworn.)

4 MR. TREMAINE: Ms. Orth, do you have any  
5 concerns with my sharing screen to share the exhibit  
6 binder?

7 HEARING OFFICER ORTH: No, no concerns at  
8 all and Madam Chair has that button in her control.

9 CHAIRWOMAN SANDOVAL: You should be able  
10 to do that now.

11 WILLIAM BRANCARD  
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. TREMAINE:

15 Q. Thank you. Mr. Brancard, could you please  
16 state your name for the record?

17 A. My name is William Brancard.

18 Q. And on whose behalf are you testifying  
19 today?

20 A. On behalf of the New Mexico Oil  
21 Conservation Division.

22 Q. I'm going to share screen.

23 Mr. Brancard, can you now see my screen?

24 A. Yes, I can.

25 Q. So I'm going to direct you to what is

1     **labeled as OCD Exhibit 1-001. Is this your**  
2     **curriculum vitae?**

3           A.    Yes, it is.

4           **Q.    Did you prepare this CV prior to this**  
5     **hearing?**

6           A.    Yes, I did.

7           **Q.    Does this curriculum vitae accurately**  
8     **represent your relevant education experience related**  
9     **to today's hearing?**

10          A.    I hope so.

11          **Q.    Okay.**

12                   MR. TREMAINE:   Madam Hearing Examiner, I  
13     would move admission of Exhibit 1, as Mr. Brancard's  
14     curriculum vitae.

15                   HEARING OFFICER ORTH:   All right. Unless  
16     I hear an objection, Exhibit 1, is admitted. And may  
17     I add, Mr. Brancard, you are very quiet.

18                           (Exhibit 1 admitted.)

19          A.    Okay.

20                   COMMISSIONER BLOOM:   And excuse me Madam  
21     Hearing Officer, Mr. Tremaine, if you could zoom him  
22     in a little bit on your screen share, that would be  
23     helpful as well.

24                           That's perfect, thank you.

25                   MR. TREMAINE:   Absolutely, thank you.

1           **Q.    (By Mr. Tremaine) So Mr. Brancard, would**  
2 **you please provide a summary of your education**  
3 **experience for the Commission?**

4           A.    Certainly.  I have a law degree,  
5 Bachelor's degree, and I have been working for the  
6 State of New Mexico since 1991 at various agencies,  
7 including the New Mexico State Land Office, the New  
8 Mexico Attorney General's Office.  I have been with  
9 the New Mexico Energy Minerals and Natural Resources  
10 Department since 2003, and I have worked as a  
11 Division Director as General Counsel and now I am  
12 Hearings Bureau Chief.

13           **Q.    And so your current position with MED is**  
14 **as the Oil Conservation Division's Hearings Bureau**  
15 **Chief?**

16           A.    Yes, with EMNRD that is, I am the Chief of  
17 the Hearings Bureau.

18           **Q.    Thank you.  And could you please briefly**  
19 **describe your role as your history as EMNRD's**  
20 **general counsel?**

21           A.    Yes.  As general counsel, I oversaw the  
22 actions of the attorneys working for the department  
23 who provided advice to all the Divisions of the  
24 department for streets, parks, energy conservation,  
25 mining and minerals, and OCD.  One of my tasks during

1 that timeframe was also, I was counsel to the Oil  
2 Conservation Commission.

3 Q. Thank you, Mr. Brancard. I would like to  
4 direct your attention now to OCD West Burgess, OCD  
5 Exhibit 3-001, and sequence, is this the Oil  
6 Conservation Division's proposed amendment to Rule  
7 19.15.2?

8 A. Yes.

9 Q. And did you assist in preparation of this  
10 document?

11 A. I was one of a number of employees at the  
12 OCD who worked on this draft coming up with the  
13 version you see before you.

14 Q. Okay. I would like to also now draw your  
15 attention to Oil Conservation Division Exhibit 4.

16 And likewise does this reflect the Oil  
17 Conservation Division proposed amendments to  
18 19.15.7?

19 A. Yes, it does.

20 Q. And did you also assist in preparation of  
21 this document?

22 A. Yes, again that is a part of all a larger  
23 team of people working on this.

24 Q. And last before we get into the specifics  
25 I'd like to draw your attention to OCD Exhibit 5.

1                   **Mr. Brancard, what is this exhibit?**

2           A.     This is the power plant presentation that  
3 summarized the testimony that myself and Mr. Powell  
4 will be providing.

5           **Q.     And did you assist in preparation of this**  
6 **document?**

7           A.     I did. Mr. Powell put a lot of work into  
8 it and I assisted.

9           **Q.     Okay. Madam Hearing Examiner, at this**  
10 **time I would move for admission of Exhibit 3 through**  
11 **10, but if you'd like I can provide some additional**  
12 **foundation for Items 6 through 10.**

13                   HEARING OFFICER ORTH: If I remember your  
14 opening remarks, 6 through 10, related to the notice  
15 public notice of this hearing. But let me pause for  
16 a moment in the event there are objections to  
17 Exhibits 3 through 10.

18                   MR. FELDEWERT: We have no objection to  
19 any of the Division's exhibits, so we can move  
20 forward.

21                   HEARING OFFICER ORTH: All right. So I  
22 think then we can admit, Exhibits 2 through 10, but  
23 remember 2 was Mr. Powell's resume. So, Exhibit 2  
24 through 10, are admitted. Thank you.

25                                   (Exhibit 2 through 10 admitted.)

1           Q. (By Mr. Tremaine) Thank you. Mr. Brancard,  
2 could you please give a summary of your testimony  
3 related to the proposed amendments today?

4           A. Yes, I'll try to give a little background  
5 on this. I guess first sort of up apologize to the  
6 Commission that this is not a very exciting rule  
7 making proposal.

8                   We're basically dealing here today with  
9 the processes that the Division uses to implement  
10 the Oil and Gas Act. These kinds of rule changes  
11 are often low priority, so they often get put off.  
12 In reality here on my recent rule makings where the  
13 Commission considered new programs or ideas in this  
14 case, we are having to change the rules to catch up  
15 with reality. Let me give you a little bit of  
16 background here.

17                   The Commission was created 87 years ago,  
18 and one of its first actions was to adopt a set of  
19 regulations to implement the new Oil and Gas Act.  
20 The Commission has been in the business of adopting  
21 rules for a very long time. And those rules have  
22 been added to an amendment over the years. Those  
23 were basically done as orders issued by the  
24 Commission. It wasn't until after 60 some-dd years  
25 that these rules were compiled into what you see now

1 under the New Mexico Administrative Code.

2 And also for 50 years the Commission was  
3 the agency. There was no Energy, Minerals, Natural  
4 Resources Department. There was no OCD. The  
5 Commission oversaw the entire implementation of the  
6 act, and so that's why some of the Commission's  
7 rules did and still do have sort of administrative  
8 procedures in them which we'll touch on at points  
9 today and whether it's appropriate for those to  
10 actually be rules of the Commission is the question  
11 that we are throwing out.

12 So the model that the Commission had for  
13 many years in implementing the Oil and Gas Act was  
14 requiring parties, generally, operators, oil and gas  
15 facilities to provide information documentation to  
16 an application to the agency on forms. These are  
17 written forms that you got from the Division, you  
18 filled them out, and you walk them over to the local  
19 OCD or to the Commission district office and  
20 submitted them. And that process is still largely  
21 reflected in the commissions rules.

22 What has happened, though, in the last few  
23 years is that the Division has been working on  
24 transitioning over to electronic submittal of forms  
25 and information. First a little bit, first is sort

1 of an option for them for certain operators, and  
2 then more full on in with the pandemic that whole  
3 process got accelerated, and thankfully with the  
4 pandemic this process was already implemented  
5 because it made life a whole lot easier for both the  
6 agency and the operators to be able to use  
7 electronic filing when Division offices were closed.

8 But that electronic filling is not at all  
9 reflected in the Commission's rules. And so  
10 we're -- what we're trying to do today is to update  
11 the Commission rules to reflect the current reality.

12 We could have, we probably maybe should  
13 have brought the entire set of Commission rules in  
14 to be amended and go through section by section  
15 every reference to how you file a document and  
16 changed it. But we decided to do a simpler process  
17 today and look at just two parts of the Commission  
18 rules. Part 2, which is a general provisions and  
19 Part 7, which is forms. It's an entire part just on  
20 forms. And tried to put in general provisions there  
21 that allow for electronic filing and override other  
22 requirements in the rules about having to walk into  
23 a district office.

24 So those are largely what we focused on in  
25 looking at Rules 2 and 7. We saw other areas that



1 needed updating in doing that and those will be  
2 discussed today by myself and Mr. Powell. Dealing,  
3 say, with the concept of district offices that the  
4 Commission when it was running the agency designated  
5 exactly where every Commission district office  
6 should be located.

7 And also, as Mr. Feldewert mentioned, we  
8 did try to update the provisions related to the  
9 filings of forms for Federal land and for Tribal  
10 lands.

11 For Federal land we really made no changes  
12 in the process. For Tribal lands we tried to update  
13 it based on the reality, as Mr. Feldewert noted, of  
14 the tribes being (audio cut out). So that's a  
15 little summary. I hope I didn't go on too long,  
16 Mr. Tremaine.

17 **Q. Thank you. Mr. Brancard, I'm going to**  
18 **share screen again and ask you to please describe.**

19 **All right. Can you see my screen now?**

20 HEARING OFFICER ORTH: I can,  
21 Mr. Tremaine, but there is a gray square, squarely  
22 in the middle of it. There we go. Thank you.

23 **Q. (By Mr. Tremaine) All right. Mr. Brancard,**  
24 **could you please describe the statutory authority**  
25 **under which OCD proposes the amendments reflected in**

1     **Exhibits 3 and 4?**

2                   MR. TREMAINE:   And I'll draw the  
3     Commission's attention to OCD Exhibit 5-003.

4           A.     Yes, the Commission Division are given  
5     rather broad authority under the Oil and Gas Act due  
6     to what actions are necessary to implement goals of  
7     the Act.  More specifically, if you look at  
8     Section 70-2-12, which is a grant not only the  
9     specific grant of authority but also authority to  
10    adopt rules, there are specific references to  
11    collecting data, making investigations and  
12    inspections, examining books and records, provide  
13    for keeping of records, et cetera.

14                   And then there are specific rules that we  
15    will touch a little bit today with many of these  
16    forms that relate to reports and locations of wells  
17    and ownership, etc....

18                   So of all these rules that we're talking  
19    about today that deal with filing of forms and  
20    reports, they're basically the implementation of the  
21    commission's and the division's responsibility under  
22    the act to regulate various activities in the Oil  
23    and Gas Industry.

24           **Q.     Okay.  If I could now draw your attention**  
25    **to OCD Exhibit 5-004.**

1           **Mr. Brancard, could you please describe**  
2 **the State (audio cut out) engagement which OCD**  
3 **engaged in related to this rulemaking?**

4           A.    Yes.  After an extensive internal review  
5 process that went on for a long time because a whole  
6 lot of these changes that we're discussing affect  
7 various people in the agency, and we really wanted  
8 to make sure that we were actually reflecting what  
9 the reality was on the ground in these rules.

10           We began an external process of getting  
11 engagement from other entities because we were  
12 dealing specifically with the rules regarding Oil  
13 and Gas Development on Tribal lands.  It was  
14 necessary to engage in Tribal consultation which we  
15 did in October of 2021 by mailing a draft of these  
16 rules out to all New Mexico Pueblos, Tribes, Nations  
17 and requesting input and discussion.

18           We did get feedback from the Tribes  
19 including support for the OCD continuing to serve as  
20 sort of a repository of information on Oil and Gas  
21 for the entire state.  So that was interesting we  
22 actually updated the rules to reflect the Tribes  
23 interest in that.

24           We also then soon after submitted this to  
25 agencies that we deal with more directly such as

1 State Land office in the Bureau of Land Management  
2 and had asked for feedback. I would say that we  
3 didn't get any feedback at all from those agencies.

4 Then we decided to do an informal public  
5 comment period prior to bringing this rule to the  
6 Commission. You know we have done versions of that  
7 for very detailed rules such as the Waste Rule  
8 Proposal that this Commission dealt with the last  
9 year or two. It hasn't necessarily been something  
10 that we have done with every rule, and I think that  
11 this may serve as a model for us to do kind of an  
12 informal public comment period prior to going to the  
13 Commission.

14 In this case we sent, we have a whole  
15 mailing list that we have for all rule hearings and  
16 Division proceedings, and so a copy of the draft  
17 rule was sent out to that entire mailing list and we  
18 had a period of about three to four weeks allowing  
19 for comments from parties.

20 The comments we received were from the New  
21 Mexico Oil and Gas Association. So, again, as we  
22 said we got comments from various parties,  
23 incorporated certain changes based on those  
24 comments, and then we filed the proposal rule  
25 changes with the Commission on March 30th.

1           **Q.    Mr. Brancard, I would like to draw your**  
2 **attention to OCD Exhibit 5-005.  Could you please**  
3 **describe or summarize the notices that were issued**  
4 **by OCD related to this rulemaking?**

5           A.    Yes.  The Commission is required to  
6 provide notice to a number of entities.  These  
7 requirements are both in the State Rules Act and in  
8 the Commission's Rules of Procedure which actually  
9 go a little further than the Rules Act.  And so we  
10 worked with the Commission Clerk to make sure that  
11 notice was published in the proper locations and  
12 were sent out not just to people on the rulemaking  
13 list as indicated here, but also I believe we have  
14 to send it to the Legislative Counsel, it has to be  
15 posted on the State Sunshine Portal.  So there is a  
16 whole number of items that we have to check off and  
17 we work with the Commission Clerk to make sure that  
18 that happened.

19           **Q.    Thank you.  I'm going to move forward to**  
20 **OCD Exhibit 5-007.**

21                   **Mr. Brancard, please provide an overview**  
22 **of the proposed changes represented in Exhibit 3 and**  
23 **4 today.**

24           A.    All right.  I'll try to be brief.  
25 Mr. Powell will have a lot more details, especially

1 since he is sort of the person on the ground who  
2 deals with a lot of these realities and can provide  
3 you with the information about what it is that we  
4 exactly do and how the rules now comport with that  
5 reality.

6 But the main change here is to both  
7 Parts 2 and 7, is to recognize that now the agency  
8 is requiring that documents, forms, information, et  
9 cetera, all be electronically filed with the agency.  
10 And so there are various sections in Parts 2 and 7  
11 that Mr. Powell will go into more detail on that  
12 provide exactly that requirement now. That instead  
13 of dropping something off at the district office, as  
14 I indicated earlier, you file electronically. And  
15 the electronic system has been up and running for  
16 some time now, you know, I think we have worked  
17 through any bugs in it, we continue to refine it  
18 constantly and it's working quite well. So this is  
19 a good time to make this part of our rules here.

20 What we tried to do then again, as I said,  
21 instead of going back through every little mention  
22 of filing that's in all the Commission rules, we  
23 just made a general statement that wherever filing  
24 is required you will do it electronically according  
25 to the provisions in Parts 2 and 7. So that's a big

1 chunk of what this rulemaking is all about.

2 As I mentioned, we went through other  
3 parts of while we were at it, 2 and 7, to make a few  
4 changes to try to deal with current reality, such as  
5 the reality of district offices, et cetera. And  
6 then we also the language in Part 7, relating to  
7 Federal and Tribal governments it was two separate  
8 sections far apart from each other. We merge them  
9 into one and tried to make that document work better  
10 and also reflect how we currently deal with these  
11 filings on both Federal and Tribal land.

12 **Q. Thank you.**

13 MR. TREMAINE: Ms. Orth and Commissioners,  
14 I'm going to ask Mr. Brancard a series of questions  
15 about part of the certain future slides, but the  
16 bulk of the remaining slides will be testified to in  
17 more detail by Mr. Powell. So with that I'd like to  
18 move on.

19 **Q. (By Mr. Tremaine) And Mr. Brancard, I**  
20 **would like to direct your attention to OCD**  
21 **Exhibit 5-009.**

22 **This slide references the Oil and Gas Act**  
23 **and I'm hoping that you can describe the amendments**  
24 **referenced on Page Slide 9, as they relate**  
25 **specifically to the Oil and Gas Act.**

1           A.    Yes.  We added three new definitions.  Two  
2    were sort of remarkable, but they were never put in  
3    the definition sections, maybe because they seem  
4    obvious to people, but you know there are references  
5    constantly through the Commission's rules to the Oil  
6    and Gas Act and to the rules themselves.

7                    And so we just wanted to try to come up  
8    with a more consistent use of how one refers to both  
9    the Oil and Gas Act and the Commission's rules and  
10   created definitions therefore for the Act and the  
11   Rules.

12                   The third definition comes out of issues  
13   and, you know, Mr. Feldewert is quite aware of these  
14   issues, too.  Related to many of our notice  
15   requirements require that notice be provided by  
16   certified mail and it's just becoming quite the  
17   problem with the U.S. Postal Service these days.  
18   And it's a struggle to get the mailings done in a  
19   timely way and it's a struggle, too, for both the  
20   Division, and the operators, the applicants to  
21   provide proof that they provided this notice.

22                   And so with the recommendations from the  
23   EMNRD Legal Division we have a sort of a broader  
24   definition of certified mail here, and hopefully  
25   meets the goal of having notice be provided in the



1 manner that can be tracked while not necessarily  
2 being tied to the U.S. Postal Service.

3 Q. Thank you, Mr. Brancard. I will now draw  
4 your attention to Slide 5-012. I'm going to have  
5 the same question.

6 This slide references, I apologize to the  
7 Commission, for the -- this is a lawyer pet peeve  
8 when there's a typo of statute to statute, and so I  
9 apologize for that, but this references State  
10 Statutes.

11 And I want to ask Mr. Brancard to please  
12 describe the amendments referenced on this slide as  
13 they relate to the State Competition of Time  
14 Statute.

15 A. Yes, I think the Commission has for a long  
16 time had a rule it's been in various locations in  
17 the Commission rules over the decades about how you  
18 compute time, because there is a number of  
19 requirements in the Commission rules about deadlines  
20 based on time. And so the Commission had sort of  
21 common sense rules about how to compute that time.

22 In the intervening years the legislation  
23 enacted this document called the Uniform Statute and  
24 Rule Construction Act which has an entire section  
25 about how you compute time. Now it -- and so rather

1 than the Commission trying to make up its own rule,  
2 it seemed easier to simply refer to this statute.  
3 The statute actually has, almost entirely agrees  
4 with the way the Commission had interpreted time to  
5 begin with except for one item which actually is  
6 improvement given today's world of electronic  
7 filing. Which is, the Commission Rule refers to a  
8 period of time of a day running to the close of the  
9 business of the day, is that means 5 p.m. I'm not  
10 sure.

11 If you look at this statute in the Uniform  
12 Statute Rule Construction Act it says a day begins  
13 at midnight and ends at midnight. So in today's  
14 world of electronic filing that makes a lot more  
15 sense, too.

16 **Q. Thank you, Mr. Brancard. I'm going to move**  
17 **on to OCD Exhibit 5-015. And, again, a similar**  
18 **question here to slide references specifically to**  
19 **the Oil and Gas Act.**

20 **And so, I'd like to ask you to please**  
21 **describe the amendments reference on this slide as**  
22 **they relate to the Oil and Gas Act.**

23 **A. Yes. As I mentioned earlier, the**  
24 **Commission was the administrator of the Oil and Gas**  
25 **Act for 50 years. And so, you know, having the**

1 Commission issue an order saying there will be  
2 districts and they are these counties and the  
3 offices will be in these locations made sense back  
4 then. But now administration of the agency has  
5 passed to the Energy and Minerals and Natural  
6 Resources Department, and the Oil Conservation  
7 District, and the Division Director. And so it just  
8 seems the longer that that's really who should be  
9 the one in charge of figuring out where the district  
10 offices are.

11 Plus what we are finding with the whole  
12 electronic filing in how to properly use personnel  
13 is that the Division really needs to have a better  
14 view of how to move people around. It's interesting  
15 you might know, the director would know this, but I  
16 believe the second largest office that the Division  
17 has now is no longer one of the district offices,  
18 it's an office in Albuquerque that we opened a few  
19 years ago, because that seemed like a better place  
20 to position people.

21 So it really is, you know, something that  
22 should be in the purview of the Division Director in  
23 their role under the Oil and Gas Act to determine  
24 where it's the best way to have offices and position  
25 people.

1           Q.    Okay. Mr. Brancard, I would like to now  
2           direct your attention to Slide 5-017. And again  
3           this slide references Federal and Tribal lands.

4                     Sir, could you please describe the  
5           amendments proposed and reflected on this slide as  
6           they relate to Tribal and Federal interests?

7           A.    Yes. As I mentioned earlier, the current  
8           rules of the Commission there are two sections,  
9           19.15.7.11 and 7.37. Right, not right next to each  
10          other that deal with Federal lands and Tribal lands  
11          and forms. That seems a bit awkward so we decided  
12          to merge those into one section where all of the  
13          information was in one place.

14                   Where Federal lands we really did not make  
15          any substantive changes here except perhaps that we  
16          no longer reference actual names and numbers of  
17          Federal forms. That's not really our job and the  
18          Feds can change those forms any day without  
19          consulting us and then our rules will be  
20          out-of-date. So we eliminated those references to  
21          specific Federal forms.

22                   The Tribal we did because the existing  
23          rules kind of deal with Federal and Tribal lands in  
24          a similar manner and they're not. The Tribe, the  
25          lands, as Mr. Feldewert noted are, you know, subject

1 to the authority of a separate sovereign. And so  
2 the state has limited, very limited jurisdiction at  
3 all over Tribal land. And so we try to reflect that  
4 in Subsection D, about how we're treating Tribal  
5 lands. The Federal lands there is really no change.  
6 The provisions that are in there are the larger, the  
7 provisions taken out of the existing rules and the  
8 process remains the same. We tried to deal a little  
9 bit with timing issues because sometimes that  
10 becomes a question and we're often waiting for a  
11 form, et cetera, but other than that the basic  
12 concept that you go to the Federal Government first  
13 with your filing and then you can send that Federal  
14 form to us and we will review it that that's still  
15 there. It's the same language.

16 **Q. Okay. Mr. Brancard, have you had the**  
17 **opportunity to review the prehearing statement that**  
18 **was submitted by NMOGA?**

19 A. Yes, I have.

20 **Q. And are you aware of the proposed changes**  
21 **referenced by Mr. Feldewert in his opening statement**  
22 **and reflected in that prehearing statement regarding**  
23 **Federal lands and/or minerals?**

24 A. Yes.

25 **Q. Can you -- zooming out for a second -- can**

1    **you please describe the nature of any of OCD**  
2    **authority as it relates to Federal lands or**  
3    **minerals?**

4           A.    Well, the State has authority to deal with  
5    Federal lands in dealing with environmental natural  
6    resource regulation.  There is simply really no  
7    question that that authority is concurrent with  
8    whatever authority the Federal Government agencies  
9    may also exercise in that regard.  But that is long  
10   standing law and we do it not just for OCD, but we  
11   do it perhaps even more so in mining, et cetera, in  
12   this department so that's simply the way it is.  You  
13   know it always has been and has been supported by  
14   numerous New Mexico and US Supreme Court decisions.

15           **Q.    In your opinion, are NMOGA's proposed**  
16    **edits as they relate to the Federal lands or**  
17    **minerals issue necessary or appropriate for this**  
18    **rulemaking?**

19           A.    Well, the -- the main change that NMOGA is  
20    proposing is delete a sentence in subsection C of  
21    7.9, that says that forms filed with the BLM  
22    involving Federal lands and minerals are subject to  
23    Division approval.  That sentence is taken directly  
24    from the current regulation.  So that sentence is  
25    not a new requirement, that is the existing

1 requirement. So eliminating that requirement would  
2 be a huge policy change on behalf of the State to  
3 give up what it has always done in regard to Federal  
4 forms.

5 Mr. Powell, you know, deals directly with  
6 the BLM on many issues and he can give you a lot  
7 more detail about how that process works. And so he  
8 may be very useful in sort of getting diving into  
9 the nuts and bolts of how that works.

10 **Q. Thank you, Mr. Brancard.**

11 MR. TREMAINE: I have no further  
12 questions.

13 HEARING OFFICER ORTH: If you would  
14 present Mr. Powell then.

15 COMMISSIONER BLOOM: Uh.

16 MR. TREMAINE: I thank you.

17 The Oil Conservation Division will call,  
18 Brandon Powell.

19 THE WITNESS: Good morning.

20 MR. TREMAINE: Good morning, Mr. Powell.  
21 could you please state your name for the record?

22 THE WITNESS: Brandon Powell.

23 HEARING OFFICER ORTH: Mr. Powell, if you  
24 would raise your right hand.

25 (Whereupon, the witness was sworn.)





1 environmental bureau or engineering Bureau Chief, I  
2 apologize, in 2020 and that's where, the position I  
3 currently hold.

4 **Q. So could you please describe in a little**  
5 **bit more detail your current duties as the**  
6 **bureauBureau Chief?**

7 A. Yes. So my current duties as bureau  
8 chief, I oversee the administrative permitting  
9 section of the engineering bureau that oversees  
10 permitting for all of the oil field operations, down  
11 hole operations that relate to the well.

12 I oversee the underground injection  
13 control part of the engineering bureau that oversees  
14 all injection wells that are operations permitting  
15 on that side of it.

16 And then I also oversee the inspection  
17 program for the north and south part of the states  
18 which oversee all of the inspectors, and the  
19 inspection supervisors, and implementing the  
20 inspection processes.

21 **Q. And in your, you know, in your current**  
22 **role and actually overall, are you familiar with the**  
23 **Oil Conservation Divisions treatment to Federal**  
24 **forms and relationship with the Bureau of Land**  
25 **Management?**

1           A.    Yes, I am. I've processed several Federal  
2 forms. That was part of my day-to-day duties pretty  
3 much throughout my career with the OCD.

4           **Q.    Okay. Before we get into the specifics,**  
5 **I'd ask you to provide for the Commission a brief**  
6 **summary of your testimony related to the proposed**  
7 **changes today.**

8           A.    So my testimony for the proposed changes  
9 today I'll be going through the exhibits that we  
10 have. I'll give a brief overview of what rule  
11 change or specific rule change we'll be going over,  
12 and then what those changes are, and the overall  
13 objectives of that rule change.

14           **Q.    Thank you. I'd like to direct your**  
15 **attention to OCD Exhibit 5-009, and I'll start**  
16 **screen share again.**

17                   **Mr. Powell, can you see my screen?**

18           A.    Yes, I can.

19           **Q.    Okay. So specifically related to this,**  
20 **slide 5-009, can you please describe the amendment**  
21 **that is identified on this slide?**

22           A.    Sure, certainly. It's an amendment to  
23 19.15.2.7 Definitions. The Division is requesting  
24 to add three definitions to ensure consistent  
25 understanding of their use. Overall it ensures

1 proper understanding of references up to the Oil and  
2 Gas Act and applicable NMSA references. It provides  
3 a detailed explanation of requirement for certified  
4 mail and then it details references of the rules  
5 contained in 1915--2 through 39, NMAC. These rules  
6 in which making, 15--2 NMAC, are applicable.

7 **Q. Okay. Direct your attention to,**  
8 **Exhibit 5-010.**

9 **Mr. Powell, could you please describe the**  
10 **amendment that is referenced in this slide?**

11 A. Certainly. It goes over the amendment to  
12 19.15.2.10 online application and submittals. This  
13 is a new section detailing the process for online  
14 applications and submittals. It establishes a rule  
15 for online applications, recognizes the fee  
16 requirements for applicable forms, and details  
17 processes for the extension allowances if there's a  
18 technical failure on the OCD's online application  
19 process.

20 **Q. Is it fair to say that the rule change**  
21 **references OCD's movement to use the E-permitting**  
22 **system and electronic filing?**

23 A. It does. It recognizes that ability that  
24 the Division now currently has.

25 **Q. And is it fair to say that OCD is tempting**

1 to move away from hard copy submissions of various  
2 forms from operators?

3 A. It is, we were working and have worked to  
4 move totally online for those submittal  
5 applications. It allows for more efficient  
6 processing both by the OCD, but also by the  
7 operators. Our new system allows for immediate  
8 submittals to the OCD so you're not waiting for the  
9 mail to come in each day opening to see what's  
10 there.

11 You're also giving the ability, the  
12 operators get the ability to where they can track  
13 their applications to see if it has been submitted  
14 and see if it has been approved yet.

15 Q. Does electronic submission increase the  
16 efficiency or tracking capability for OCD  
17 internally?

18 A. Yes, it does. We can see all of the  
19 application of a specific type now. We can review  
20 them, see what's outstanding to be reviewed, and see  
21 what we've processed in the past.

22 Q. Okay. I'll move on to Exhibit, OCD  
23 Exhibit 5-011.

24 Same question Mr. Powell, can you please  
25 describe the amendment that is reflected on this

1 **slide?**

2 A. Certainly. It's 19.15.2.12 filing and  
3 notification. This is a repeal and replacement of  
4 the existing rule. The new rule provides process on  
5 how operators should submit filings or  
6 notifications. It establishes submittals can be  
7 filed online through the OCD's website.  
8 Notifications can be made by email or pursuant to  
9 contact instructions provided by the OCD. However,  
10 it does provide the financial assurance is still  
11 required to be provided pursuant to 19.15.8 NMAC.

12 **Q. Can you please just clarify for the**  
13 **Commission that distinction that's made regarding**  
14 **the financial assurance component?**

15 A. Financial assurance is one of the few  
16 items that we still have to receive hard copy, so,  
17 we have to receive the hard copy bond, I mean for  
18 any bonding it's required.

19 **Q. Okay. And I have the same question for you**  
20 **related to Slide 5-012.**

21 **Please describe the amendment that's**  
22 **reflected on this slide.**

23 A. As Mr. Brancard talked previously it's  
24 for, 19.15.2.13 Computation of Time. This provides  
25 how the computation of time is established. It

1 ensures consistency with proper state statutes in  
2 that computation of time. It ensures there's no  
3 conflicts in the future.

4 **Q. And does that change substantively in any**  
5 **way that OCD operates?**

6 A. No.

7 **Q. All right. Moving on to Slide 5-013.**

8 **And again, please describe for the**  
9 **Commission the amendments that are reflected on this**  
10 **slide.**

11 A. So this one is, 19.15.2.16 Duties and  
12 Authority of Division Personnel. This change  
13 updates the rule to be consistent with the current  
14 organizational structure of the OCD and ensures the  
15 OCD gets the proper documentation of any changes.  
16 It allows proper OCD personnel to make minor  
17 deviations to approvals per field operations due to  
18 changes in circumstances encountered in the field to  
19 avoid waste and protection of public health and the  
20 environment.

21 The rule then requires any changes to be  
22 submitted to the OCD on proper forms historicizing  
23 that change.

24 **Q. Does this proposed amendment in,**  
25 **Part 2.16, does that propose any substantive changes**

1    **for OCD staff, or such as change of duties, or**  
2    **anything else?**

3           A.    No.  It's more to recognize the current  
4    organizational structure of the OCD.  Where we  
5    previously had district offices and those offices  
6    would house things like geologists that would make  
7    calls for pluggings that are going on in the field.  
8    Those geologists are now housed under the  
9    Engineering Bureau.

10           So if changes are made, they are not made  
11    from quote on quote a field office or a field  
12    personnel any longer, they're made by Engineering  
13    Bureau personnel.  So it's just recognizing the  
14    current organizational structure.

15           **Q.    Are you able to actually describe for the**  
16    **Commission and just very briefly what that**  
17    **restructure looks like?**

18           A.    Sure.  So it's a more centralized  
19    structure and makes it more cohesive in the state.  
20    So instead of having individual district offices in  
21    the different parts of the state because of the  
22    online applications in the improvements and  
23    processing, as far as being able to review things  
24    statewide, the district offices are not silos in  
25    information any longer.

1           What it is, is all of those applications  
2 get submitted to the OCD in general. The OCD  
3 district offices were split up more into the  
4 Engineering, Environmental and Administrative  
5 Bureaus where those processes are more of a  
6 statewide process and handled on statewide  
7 structures. So, for example, APDs, instead of going  
8 to the individual district offices, those go to the  
9 Engineering Bureau for review.

10           **Q. Thank you. I think you covered this but I**  
11 **just want to be clear, so the prior version of the**  
12 **rule is it accurate to say that the rule**  
13 **historically references field personnel?**

14           A. It did.

15           **Q. Okay. And new version of the rule is**  
16 **intended to reference bureau personnel?**

17           A. That is correct. Because of the  
18 organizational structure there may be people that  
19 are in the, say, Engineering Bureau or the  
20 Environmental Bureau that when, quote on quote, be  
21 classified as field personnel because they are not  
22 in a field office any longer, but they are still the  
23 same responsible people for making those decisions.

24           **Q. So the same responsible people and they're**  
25 **doing the same work; is that correct?**



1           A.    That is correct.

2           Q.    Okay. Then I would like to move on and  
3 reference, refer you to OCD Exhibit 5-014.

4                    And to the question, please describe for  
5 the Commission the amendments that are reflected on  
6 this slide.

7           A.    Certainly. This is very similar to the  
8 past, the information given in the past slide. It's  
9 for 19.15.2.17, Organizational Units.

10          A.    This changes the updates and the rule to  
11 be consistent with the current organizational  
12 structure, the OCD. The OCD no longer operates in  
13 the individual district units due to online process.  
14 This is now more of a cohesive organizational  
15 process.

16                    The rule does recognize the OCD may need  
17 to develop particular units as appropriate when the  
18 need arises and will provide a map of such units.

19          Q.    Are the changes here likewise  
20 administrative in nature?

21          A.    They are.

22          Q.    And I would refer you to OCD  
23 Exhibit 5-015.

24                    Please describe the amendment that's  
25 reflected on this slide.

1           A.    This one's to 19.15.7.8, the General  
2   Statement. It applies to how operators should submit  
3   forms. The changes also update processes to be  
4   consistent with the statutes. It updates the rule to  
5   allow for the creation and implementation of online  
6   submittals, provides the OCD will maintain the  
7   submittal processes for forms and applications on  
8   the OCD's website, and other updates for consistency  
9   with the current Oil and Gas Act.

10           **Q.    The submission of forms, does this change,  
11   alter in any way the substance of the forms that are  
12   submitted by operators?**

13           A.    No, it doesn't. It's just the manner in  
14   which they're submitted.

15           **Q.    Okay. I will move on to Slide 5-016.**

16                   **Mr. Powell, could you please describe for  
17   the Commission the amendments reflected on this  
18   slide?**

19           A.    It's a repeal of the current 19.15.7.9 and  
20   10. These rules are current versions of the rules  
21   strictly applied to hard copy forms and submittals  
22   that are no longer used.

23           **Q.    So with this rule change OCD is moving to  
24   strictly be permitting submissions and no more hard  
25   copies, correct?**

1           A.    Correct.

2           **Q.    Thank you.  Then I will move on to 5-017.**

3                   **Mr. Powell, please describe the amendments**  
4 **that are reflected on this slide.**

5           A.    Mr. Brancard also went over this to an  
6 extent it's for, 19.15.7.9 Forms Required on Federal  
7 Lands or Minerals, it combines and repeals,  
8 19.15.7.11 and 37.

9                   In this new section we will combine and  
10 modernize the current parts of 11 and 37 regarding  
11 Application on Federal Lands or Minerals.  The rule  
12 recognizes the form types filed on Federal and  
13 Tribal lands.  It removes the sections where the BLM  
14 would forward the forms to the OCD as they've also  
15 changed their process to an online submittal  
16 process.  It recognizes Tribal rights in sovereignty  
17 and it provides a mechanism for the OCD to get  
18 critical information if there is a delay in Federal  
19 process.

20           **Q.    And a few, couple follow-up questions on**  
21 **this one.**

22                   **Is it accurate to say that one of the**  
23 **primary functions of this proposed amendment is to**  
24 **consolidate those references in the separate section**  
25 **of the rule?**

1           A.    Yes.  It consolidates both 11 and 37.  
2  They're very similar in their overall statements of  
3  filing Federal forms to the OCD and it combines  
4  those.

5           Q.    Did I understand your previous statement  
6  to be that the Bureau of Land Management, at least  
7  to the extent of your understanding, relies your  
8  focuses on electronic filing at this point?

9           A.    Yes, that's my understanding.

10          Q.    And I want to ask you specifically about  
11  the change of forms referenced here.

12                    Is this in reference to, we heard  
13  testimony earlier about a delay in Federal forms and  
14  so I'd ask you to kind of -- can you provide a  
15  little more detail in how these amendments relate to  
16  OCD's receipt and review of Federal forms or  
17  information when there is that delay in a Federal  
18  form.

19                    Sorry, did that question make sense to  
20  you?

21          A.    I think so.

22                    So what it is, is the OCD, there's forms  
23  that we get critical information off of for  
24  subsequent reports via casing completion reports,  
25  those kind of forms.  So because of BLM processing

1 or their workload, there's times where there's  
2 delays in us getting their forms. So this rule  
3 provides an avenue to the operator to get that  
4 critical information to us in a timely manner so we  
5 can get that inputted into our system and make sure  
6 there's no conflicts in what we're seeing. So it  
7 provides that avenue to get that information to us.

8 **Q. Okay. Could you please provide for us,**  
9 **the Commission, an understanding of how operator**  
10 **assets may be identified as Federal within OCD's**  
11 **system?**

12 A. So the way the OCD system works, we have  
13 overriding assignments for minerals. So anytime  
14 there's any Federal minerals assigned to the well,  
15 that well in the OCD system gets classified as a  
16 Federal well even though all minerals may not be  
17 Federal. Similar to if it has State minerals but no  
18 Federal, but it may have private, it gets classified  
19 as a State well.

20 So it has overriding functions to be shown  
21 in the OCD system.

22 **Q. So that the assets or wells in particular**  
23 **that are referenced within the OCD system as**  
24 **Federal, those are not limited to those wells or**  
25 **assets that are exclusively Federal; is that**

1     **correct?**

2           A.     That is correct.  They could be  
3     exclusively or they could be, for example, 1 percent  
4     Federal and they would still be classified as  
5     Federal.

6           **Q.     Now could you please provide for the**  
7     **Commission and kind of summarize from your**  
8     **experience working with OCD, OCD's history of**  
9     **approving and/or conditioning activities which**  
10    **affect Federal lands or minerals?**

11          A.     So my experience is consistent with the  
12    rule that's currently in place that all forms  
13    referenced in those rules are subject to the same  
14    review and approval by the Division.  So once we  
15    receive the Federally approved sundry, we review it,  
16    ensure State rules and State obligation are met by  
17    the operator.  If they're not, we'll add conditions  
18    of approval.

19                My understanding historically is if there  
20    is a conflict in the conditions that we add with the  
21    BLM, it would have to be a direct conflict.  If  
22    that's the, case then we contact the BLM and work  
23    with them to resolve that conflict before having  
24    that condition.  But we regularly add conditions of  
25    approval to Federal forms to ensure that whatever

1 operations are being submitted comply with State  
2 rules and regulations.

3 Q. So am I understanding your testimony  
4 correctly to be that OCD's receipt, review, and  
5 approval of Federal forms is to the extent of OCD's  
6 enforcement oversight related to Oil and Gas Act and  
7 OCD rule?

8 A. That is correct.

9 Q. Okay. Now I would like to move on to  
10 refer you to Exhibit 5-018.

11 And I want to ask you briefly to describe  
12 the amendments that are reflected in this slide.

13 A. So this slide shows the Amendment  
14 19.15.7.16, Well Completion or Recompletion Report  
15 and Log forms C105, its update to the rule to  
16 recognize current processes. It updates the rule to  
17 be consistent with the current organizational  
18 structure of the OCD and it updates the application  
19 of the injection well types that don't require a  
20 C104.

21 Q. And is there a typo in that second  
22 objective there?

23 A. There is. In the second objective, the  
24 words, "the on" should be struck.

25 Q. Okay. Could you just please clarify for

1 **the Commission what's meant by that particularly**  
2 **second objective there?**

3 A. Certainly. So the C105, is the completion  
4 report gives us pertinent data and substantial data  
5 for our review. It ensures that completions are  
6 inside formation because it provides formation tops,  
7 perforation depth, all of the additional casing  
8 information. The intent of that section,  
9 historically it has been if we don't get that  
10 critical information it is to suspend operations  
11 until we do to make sure they're in compliance.  
12 Previously it referenced the C104 process, because  
13 the C104 process isn't applicable to injection  
14 wells, it was just a gap in information. So we  
15 added the injection well types to be suspended to  
16 allow us to get that critical information before  
17 continuing to make sure all of the critical  
18 information is reviewed.

19 **Q. Does this proposed amendment change in any**  
20 **way the (audio cut out) reflect a change in policy**  
21 **for the Oil Conservation Division?**

22 A. No, it doesn't. The intent of that  
23 provision was always to allow the operations to stop  
24 until we got that critical information, it just  
25 ensures that it applies appropriately.



1           **Q.    Thank you, Mr. Powell.**

2           MR. TREMAINE:   Hearing Examiner, I have no  
3 more questions for Mr. Powell.

4           HEARING OFFICER ORTH:   Thank you very  
5 much, Mr. Tremaine.

6           Mr. Feldewert, do you have questions of  
7 the Division panel based on their testimony, either  
8 of Mr. Powell or Mr. Brancard?

9           MR. FELDEWERT:   I do have a few questions.  
10           But I'm wondering since it's 10:30 a.m.,  
11 if we can take a quick break so I can step down the  
12 hall, to be honest with you.

13           HEARING OFFICER ORTH:   Yes, of course. The  
14 well-known bio-break.

15           Let's come back at 10:40 am.   That's 14  
16 minutes.

17           Thank you.

18           (Recess taken at 10:26 to 10:40.)

19           HEARING OFFICER ORTH:   Mr. Feldewert, if  
20 you would please, your questions for the Division  
21 panel.

22           MR. FELDEWERT:   Yes, thank you.

23           First off I'll say I struggle that I don't  
24 know if I missed the old days or not because I kind  
25 of like the days when we used to deal with paper and

1 you had something tangible and I still print stuff  
2 out. I saw, Ms. Orth, you actually print stuff out,  
3 too.

4 And I have in the personal contact between  
5 the agency and the industry, you know, those  
6 day-to-day filings, that person contact. But, you  
7 know, I know we had to move to the next generation.  
8 I know the Division invested substantially in all  
9 this electronic filing so, you know, here we go into  
10 the next generation, I guess.

11 I want to thank the Division, Mr. Brancard  
12 for especially the statute you had an input there on  
13 changing certified mailings because as you pointed  
14 out, that has become very difficult with the United  
15 States Postal Service. I'm looking forward to that  
16 change passing so that we can perhaps use other  
17 courier services that provide better updates on what  
18 has actually been, you know, sent and received by  
19 certified mail, particularly for pooling cases.

20 On the computation of time, Mr. Brancard,  
21 I am going to ask for some free legal advice. You  
22 were kind enough to point out that the new statute  
23 primarily tracks the old computation of time rule  
24 that we've been using for a long time.

25 My question is, I'm assuming that legal

1 holiday issues still exist under the current statute  
2 in computing those ten days?

3 MR. BRANCARD: Yes, Mr. Feldewert, it  
4 follows the same rule, which is anything less than  
5 11 days.

6 MR. FELDEWERT: Yeah?

7 MR. BRANCARD: Is subject to Saturday,  
8 Sunday, or public holidays.

9 MR. FELDEWERT: Okay. All right. Thank  
10 you.

11 If I could share, have sharing  
12 capabilities?

13 CHAIRWOMAN SANDOVAL: Yes, let me pass  
14 that to you. You should be able to now.

15 CROSS-EXAMINATION

16 BY MR. FELDEWERT:

17 Q. Yes, do you all see this? This is the  
18 NMOGA Exhibit 1, and I am going to increase it  
19 there. Thank you.

20 So I want talk a little bit about these  
21 what we proposed here and what the Division has  
22 done.

23 I understand from the Division exhibits  
24 when I looked at, Slide 7 of Exhibit 5, that one of  
25 the Division's changes that you sought to accomplish

1 here was to, and I am looking at the her third  
2 bullet here. Other changes seek to replace outdated  
3 rule language with provisions that reflect the  
4 current reality of the OCD current organization, and  
5 the relationship with Federal and Tribal  
6 governments.

7 Now we talked about those changes in,  
8 19.15.7.9 which was on your Slide 17. Are there any  
9 other changes that really fall into that bucket of  
10 recognizing the relationship of Federal and Tribal  
11 governments?

12 A. I guess I'll jump in, I think it was just,  
13 7.9 which is a combination of the Old 7.11 and 7.37.

14 Q. Okay. All right. So then if I go to the,  
15 Old 19.15.7.11, and I think that's what your  
16 referencing, Mr. Brancard?

17 A. That's correct.

18 Q. Okay. Now so starting where things were.  
19 It said for wells located on land that the United  
20 States or a Native American Nation, Tribe, or Pueblo  
21 owns, an operator shall file, and then it goes on to  
22 describe that and then it had the last sentence,  
23 "all such forms, however, are subject to Division  
24 approval in the same manner and to the same extent  
25 as the corresponding Division forms."

1           Now am I correct that under this, I guess  
2       it's still an existing rule, division approval was  
3       required for forms that were filed on purely Federal  
4       lands or purely American Nation, Tribe or Pueblo  
5       owned like both, right?

6           A.    The explicit language of the rule applies  
7       to both, in reality that had not been the situation  
8       for some time that the State was not exercising  
9       jurisdiction over Tribal lands.

10           Mr. Powell may have, you know, some  
11       history on that that he can elucidate.

12           Q.    All right. So we start with that and then  
13       one of the things that the Division did was to, as  
14       we pointed out, address the circumstance with  
15       American Nation, Tribe and Pueblo lands by taking  
16       out that approval requirement; is that right?

17           A.    Yes.

18           Q.    Okay. But the similar change was not done  
19       for Federal lands?

20           A.    Correct.

21           Q.    Even for what I heard you term or others  
22       term exclusively Federal lands and minerals, so not  
23       where we have a mixture of lands, but the Division  
24       is still taking the position that it approves forms  
25       and activities on purely Federal lands and minerals?

1 A. Yes.

2 Q. Okay. Now I'm not there's no statute that  
3 grants that tort; right, Mr. Brancard?

4 A. Yeah, the U.S. Constitution.

5 Q. Okay. And you're talking about -- when  
6 you say that you are talking about concurrent  
7 jurisdiction?

8 A. Yes, I think that's one way it's referred  
9 to, yeah.

10 Q. Is that, I think that's what you  
11 referenced to in your testimony; is that right?

12 A. I may have.

13 Q. Okay. At one time, Mr. Brancard, wasn't  
14 there an agreement between the Division and the  
15 Bureau of Land Management that specifically  
16 authorized the Division to exercise jurisdiction  
17 over Federal lands?

18 A. I'm not aware of such agreements. In my  
19 time here there have been attempts to negotiate  
20 memorandum of understanding or agreement with the  
21 BLM to sort of work out the details of the  
22 processes, but I'm not aware of any agreements and  
23 certainly we wouldn't have been granted that  
24 authority because we already have that authority.

25 Q. You're not aware that there used to be a

1 **memorandum of understanding back?**

2 A. Well, that's before I was at the  
3 department, yes.

4 **Q. Have you been -- were you apprised that**  
5 **there use to be a memorandum of understanding**  
6 **between the two agencies?**

7 A. No.

8 MR. FELDEWERT: Mr. Powell, were you aware  
9 of that?

10 MR. POWELL: I'm generally aware that  
11 there was a memorandum. I haven't seen that. My  
12 understanding of the memorandum and then subsequent  
13 actions to give that memorandum understanding after  
14 wasn't granting the State authority over Federal  
15 lands.

16 It was a memorandum on how certain actions  
17 would be dealt with between the BLM and the State as  
18 far as reviews and those kinds of things and to make  
19 sure there wasn't a duplication of efforts to help  
20 streamline some of it, but my understanding of the  
21 memorandums wasn't to grant authority. It was to  
22 work through processes between the two agencies.

23 **Q. (By Mr. Feldewert) So if I read**  
24 **subparagraph C now, am I correct that you were**  
25 **purely Federal lands and that is just what I'm**

1 focused on, purely Federal lands, because our last  
2 sentence just deals with exclusively Federal lands,  
3 okay?

4 If I have an, if the operators have an  
5 activity on purely Federal lands or purely Federal  
6 minerals they are to file their forms with the  
7 Bureau of Land Management, correct?

8 A. Correct. They would file it with the  
9 Bureau of Land Management first.

10 Q. Okay. So that may be an application drill  
11 which would be the equivalent of your C101?

12 A. Correct.

13 Q. Might be a sundry notice which would be  
14 equivalent of your C103?

15 A. Correct.

16 Q. And then they wait for the Division to  
17 approve that? I'm sorry, the BLM to approve that?

18 A. That is correct.

19 Q. And you reference the fact that in some  
20 activities there are some delays in getting the  
21 approval from the BLM and thereby allowing you to  
22 act?

23 A. The delays that I have previously  
24 referenced was on the subsequent reports to get  
25 information after an action had taken place.



1           **Q.    Are you aware of delays in getting**  
2 **approvals from the BLM for applications to drill or**  
3 **other sundry notices?**

4           A.    I've heard there's delays because of the  
5 different regulations that BLM enforces versus the  
6 OCD.  APDs are a great example sometimes I've heard  
7 it can take years for Federal approval, however,  
8 once we the Federal approval is received and that  
9 APD is submitted to the OCD, the OCD processes them  
10 typically under 10 business days.

11          **Q.    Currently?**

12          A.    Currently.

13          **Q.    We don't know what's going to happen in**  
14 **the future, right?**

15          A.    Okay.

16          **Q.    And then once they get the BLM approval**  
17 **before they can act according to the way this is**  
18 **written purely Federal lands, they now have to file**  
19 **it with the Division and I know you-all said review,**  
20 **but they have to file it with the Division and wait**  
21 **for approval before they can act?**

22          A.    That would be correct.  That it's still  
23 processed the same as every other State form.

24          **Q.    Did the Division have any discussion with**  
25 **the BLM about this concept that the Division is**

1    **required to approve activities on purely Federal**  
2    **lands?**

3           A.    So I've had discussions with the BLM  
4    historically.  Bill can talk about the rulemaking  
5    specifically because I believe that notice came from  
6    him.  But I've worked in the northwest part of the  
7    State for my career or the majority of my career,  
8    and Federal lands make up and I'm going to say  
9    roughly 70 percent of the northwest.  So I've had  
10   normal interactions with the Federal government with  
11   the BLM.

12                   And we have discussed, you know, State  
13   COAs, State approval processes for the majority of  
14   my career.  The rights of the State on Federal lands  
15   has never been in question.  Sometimes the means in  
16   which we add those conditions were discussed such as  
17   an APD, the BLM didn't want us to write directly on  
18   the form but they were acceptable of a condition of  
19   approval that was separate on top of the form.  So  
20   they've never questioned the authority of the State  
21   being able to add conditions.

22                   However, the only question was not writing  
23   correctly on the form as was done in the old days.  
24   So it just made it a cleaner look.

25           **Q.    Was there any discussion about this**

1 language change with the BLM for this specific  
2 language? I guess Mr. Brancard that will go to you?

3 A. Yes. Well, as I mention the language that  
4 you're deleting in C, is not a change. But we did  
5 submit this to the BLM and I think the  
6 correspondence we got in return was that they  
7 circulated around their folks and didn't have any  
8 comments.

9 Q. So they did indicate to you that they had  
10 reviewed it?

11 A. Yes, I mean we sent it to them  
12 specifically and then followed-up later with, hey we  
13 haven't heard from you.

14 Q. All right. What happens, let's say we got  
15 purely Federal money. What happens if the BLM  
16 approves a form but then the Division denies that  
17 approval, what happens?

18 MR. POWELL: I can probably answer that  
19 the best. So if the BLM approves the form and it  
20 does not meet State standards, the OCD may reject  
21 that form but that's not a final action. We may  
22 reject it for not meeting certain circumstances to  
23 meet that Federal application so hard to meet that  
24 application requirement so the operator then could  
25 add additional items to that form and resubmit that

1 form.

2 Sometimes it's the inclusion of a plat  
3 that maybe was submitted to the BLM but not to the  
4 OCD. And that goes to point also pools and things  
5 like that aren't regulated by the BLM, they're  
6 regulated by the OCD. So there's some applications  
7 of an APD that have to be reviewed by the OCD to  
8 ensure they're meeting full rules of spacing  
9 setbacks, those kinds of things, because those are  
10 regulated exclusively by the OCD. So if the  
11 operator fails to say submit a C102, with that APD,  
12 we may reject that application. The operator would  
13 then have to upload that 102 in that package and  
14 then resubmit it to the OCD.

15 By rejecting an application it's not a  
16 final rejection that can't be resubmitted. It's  
17 saying that the application was submitted with  
18 incomplete and needs to be completed and  
19 resubmitted.

20 **Q. Is there a mechanism, for example, let's**  
21 **say it's not necessarily a condition but an outright**  
22 **rejection of the activity by the Division that has**  
23 **been approved by the BLM. Is there a mechanism to**  
24 **address that conflict?**

25 A. I think I stated that previously. If

1 there's going to be a final conflict between the BLM  
2 conditions and the OCD conditions, then we would  
3 reach out to the BLM and discuss those conflicts and  
4 resolve them, get back to the operator that's a  
5 standard process we've done in my career. If there  
6 is a direct conflict then we work with the BLM to  
7 resolve that conflict and then get back with the  
8 operator.

9 MR. FELDEWERT: Do you know, Mr. Powell,  
10 how long that has taken?

11 MR. POWELL: It depends on the conflict.  
12 Anywhere from a few days to a couple of weeks  
13 depending on the level of the conflict. It's not a  
14 normal circumstance so I can't give you a better  
15 idea than that. It's more an exception of the rule  
16 because that's why we require the BLM approval prior  
17 to the State approval is because we try to work  
18 within the bounds of the BLM conditions.

19 MR. FELDEWERT: But I guess that same  
20 process doesn't apply to Tribal lands?

21 MR. POWELL: So historically the way the  
22 Tribal lands have been handled is they're reviewed,  
23 looked at by the OCD and then conditions may be  
24 placed on there but if the Tribal agencies disagree  
25 or have concerns we then support the Tribes and

1 their decisions.

2 MR. FELDEWERT: But the Tribe is the  
3 ultimate decision-maker?

4 MR. POWELL: Correct.

5 MR. FELDEWERT: And the Federal scenario  
6 is the BLM, the ultimate decision-maker?

7 MR. POWELL: So with the BLM -- so with  
8 Tribes they're the ultimate decision-maker as far as  
9 the complete package with the BLM. We ensure there's  
10 not a conflict between the OCD conditions of  
11 approval and the Federal. So there is a slight  
12 difference between the two.

13 MR. FELDEWERT: Okay. You said you're  
14 sure there's not a conflict. Okay. So if there  
15 becomes a conflict and you're working with the BLM,  
16 who is the ultimate decision-maker if you're at  
17 loggerheads?

18 MR. POWELL: You know, if there's a  
19 loggerhead, we would work it out between the legal  
20 bureaus and I don't know where that would go,  
21 because I haven't experienced that in my career.

22 MR. FELDEWERT: Okay. Okay, thank you.  
23 That's all the questions I have.

24 HEARING OFFICER ORTH: Okay. Thank you,  
25 Mr. Feldewert.

1           Madam Chair, do you have any questions of  
2 the Division panel?

3           CHAIRWOMAN SANDOVAL: If you don't mind,  
4 I'd like to go last.

5           HEARING OFFICER ORTH: All right. Thank  
6 you.

7           CHAIRWOMAN SANDOVAL: I do have a lot of  
8 questions.

9           HEARING OFFICER ORTH: All right.

10          Mr. Bloom, do you have questions of the  
11 Division panel?

12          COMMISSIONER BLOOM: Yes, Madam Hearing  
13 Officer, I do have a couple of questions.

14          Mr. Tremaine, if you could pull up,  
15 19.15.2.16, Duties and Authority of Division  
16 Personnel, I have some questions related to that.  
17 If you can share your screen.

18          MR. TREMAINE: I am doing that now, so the  
19 Proposed Rule Changes in 19.15 to?

20          COMMISSIONER BLOOM: 16.

21          MR. TREMAINE: Is that visible, Mr. Bloom?

22          COMMISSIONER BLOOM: That is perfect,  
23 thank you. I appreciate that.

24          I'll let the panelists here decide who  
25 would like to answer, you know, these question or

1 you-all can determine that.

2 CROSS-EXAMINATION

3 COMMISSIONER BLOOM: So what we're seeing  
4 here is new language that says, "Division personnel  
5 may allow minor deviations from approved field  
6 operations plans such as drilling and plugging  
7 plans."

8 What do minor deviations entail?

9 MR. POWELL: If you'd like, Bill, I can  
10 address that. So minor deviations would entail, a  
11 great example is plugging a well. There are the  
12 operator will submit plugs in a well. That will be  
13 a variety of different plugs and then they'll go in  
14 to do that well and start working on plugging that  
15 well.

16 When they submit their intent they may not  
17 know the entirety of the condition they hold. So as  
18 they start going down hole they may encounter tight  
19 spots. They may encounter areas where they can't  
20 set a cement retainer or those kinds of things. So a  
21 deviation may be, an example was, in the notice of  
22 intent, the operator was going to set a cement  
23 retainer at 2,000 feet, because of something that  
24 hold may not be able to set at 2,000 feet but they  
25 might be able and set it at 1,980 feet.



1           So they would call it in to the Division  
2 personnel and say, "We're requesting to move the  
3 plug from 1,980 feet to -- from 2,000 feet to 1,980  
4 feet and here some additional cement that we're  
5 going to have."

6           So the Division or personnel would give  
7 verbal approval to do that and or approval to do  
8 that, the reason why that approval is critical to  
9 come in this portion of the rule, is because there  
10 is a rig on-site. There's a crew on-site. And we  
11 don't want to excessively delay those operations.

12           COMMISSIONER BLOOM: So currently does OCD  
13 allow minor deviations, and I guess allow minor  
14 deviations from approved field operational plans in  
15 the cases of drilling and plugging?

16           MR. POWELL: We do. The differences is  
17 just recognizing that under the constructure of the  
18 OCD. Historically add oil and gas inspectors,  
19 deputy oil and gas inspectors, scouts, engineers,  
20 geologists, the Division dually appoints. For a  
21 great example is the geologist that I spoke with  
22 earlier. Those used to be stationed in each district  
23 office. Now those are stationed in the Engineering  
24 Bureau as part of the permitting section. And  
25 they're no longer called Division Geologists they're

1 Engineering Specialist of that group. But it's  
2 roughly the same people, the same experience that  
3 are getting that information and making those calls.

4 COMMISSIONER BLOOM: Okay. Is someone  
5 involved in rulemaking? Sometimes I get concerned  
6 about too much wiggle room.

7 Would you be able to say what  
8 circumstances, minor deviations are necessary right  
9 now, it reads minor deviations from approved field  
10 operations plans such as drilling and plugging  
11 plans, but it seems one could interpret this to read  
12 that there are other sorts of plans that could be  
13 deviated from in a minor way. Is there a way  
14 precisely to find which plans would be allowed to  
15 have minor deviations or drop, for example, that  
16 such as from this?

17 MR. POWELL: There may be other scenarios  
18 where they are doing a well work-over and they  
19 submitted this as a condition of approval to do that  
20 well work-over and they find that different  
21 conditions now hold. So it's really any field  
22 operations they could find abnormal events when they  
23 go down hole.

24 But I would note because the way the OCD  
25 is structured the people making those decisions

1 would be the same people that would be approving the  
2 original notice of intent. So the review is the  
3 same, the expectations are the same, I mean it's the  
4 same people performing those reviews. In making  
5 sure that they still comply the other OCD rules such  
6 as isolation of strata, casing requirements,  
7 defective casing requirements, those kind of things.  
8 So they still, even though they are giving approval  
9 for those deviations, one now it's codifying they  
10 have to submit those changes on a sundry. But it  
11 really is the same person or the same type of group  
12 that's approving the initial application that would  
13 be making these changes.

14 COMMISSIONER BLOOM: Okay. So this is  
15 really just a way to maintain your operational  
16 flexibility that you previously had here under,  
17 19.15.2.16?

18 MR. POWELL: Yes, that is correct. Like I  
19 said whoever is making those changes are still bound  
20 by the other OCD rules that regulate those pertinent  
21 activities.

22 COMMISSIONER BLOOM: Okay.

23 MR. BRANCARD: Mr. Bloom, if I could,  
24 Commissioner, if I could jump in.

25 Well, the initial goal looking at this

1 section was when the lawyer in me read it, I went  
2 wow "that's really broad." And so we started to  
3 narrow it down and then, you know, with Mr. Powell's  
4 help kind of focused in on, the really one of the  
5 situations when this is most important. And so  
6 that's what we tried to do to narrow this section  
7 down to those specific situations where it's really  
8 important to have that kind of flexibility as  
9 opposed to the current language which says if you  
10 want minor deviations from any rule, you know, our  
11 field personnel can just give it to you, so we  
12 thought, no, let's focus in.

13 So now it's just plans, certain plans that  
14 you get deviations from. And plus there's the  
15 follow-up that Mr. Powell indicated is really  
16 important. So it isn't just, you know, that's all  
17 right just go ahead and do this because it's costing  
18 you too much money.

19 COMMISSIONER BLOOM: Okay. Thank you  
20 Mr. Powell and Mr. Brancard.

21 I appreciate that you've allayed some of  
22 my concerns and I think, Mr. Feldewert, that's all  
23 my questions about your relationship with the BLM  
24 and APDs, was aware of some of that but didn't know  
25 the history, that was very helpful.

1           No further questions at this time, Madam  
2           Hearing Officer, I am turning it back to you.

3           HEARING OFFICER ORTH: Thank you,  
4           Commissioner Bloom.

5           Dr. Ampomah, do you have questions?

6           COMMISSIONER AMPOMAH: Yes, I do have a  
7           few questions. And maybe the panelists can respond  
8           to this.

9                                   CROSS-EXAMINATION

10           COMMISSIONER AMPOMAH: So the first  
11           question is I know the NMOCD has implemented the  
12           online submission portal for some time now. So can  
13           you comment or can you describe to the Commission  
14           how effective this online system has been so far?

15           MR. POWELL: So I can take that, Bill, if  
16           you'd like. It's been extremely effective as far as  
17           being able to diversify our reviewers and be able to  
18           track what applications we have. Historically, when  
19           we were doing written applications they were going  
20           to a district office and a great example is the  
21           current activity in the State where the northwest  
22           has very little drilling currently or in the  
23           southeast we have a massive drilling.

24           Historically, the southeast would get all  
25           of those written applications and have to process

1     them without help essentially where the northwest  
2     wouldn't be processing APDs because there was little  
3     activity.

4             Now with the way online structure, a  
5     geologist or engineering specialist, as we call them  
6     now in the northwest, is also reviewing and  
7     approving APDs for the southeast. So it's able to  
8     allocate our resources more effectively to the areas  
9     that need them.

10            COMMISSIONER AMPOMAH: Thank you, very  
11     helpful.

12            So how are these applications going to the  
13     archive in the online system?

14            MR. POWELL: So the OCD in generally  
15     speaking because I don't know all the IT speak of  
16     it, but the OCD has an online portal and it also  
17     keeps the online records. So anything that is  
18     submitted to the OCD on a sundry is historicized in  
19     the well files and now in our application submittal  
20     portal where any actions that we take is attached to  
21     that well and held indefinitely.

22            COMMISSIONER AMPOMAH: Mr. Powell, when  
23     you were explaining the issues with regards to BLM  
24     and NMOCD oversight on these applications, you made  
25     mention of one instance especially when there's a

1 pooling application whether to figure out BLM  
2 doesn't deal with that.

3 I want to know what about if there is a  
4 pooling application is that involves the Tribal  
5 land. So how does that -- how do you guys deal with  
6 that?

7 MR. POWELL: So historically the OCD has  
8 set those pooling applications on Tribal lands as  
9 well. And part of the overall pooling in  
10 consultation with the Tribes if there was ever any  
11 disagreement or conflict then we would go with the  
12 Tribe's recommendation on approval of that, those  
13 submittals because the Tribe would have ultimate  
14 oversight of those wells on the Tribal land.

15 COMMISSIONER AMPOMAH: Okay, very helpful.  
16 So you made mention of you don't really know who is  
17 the ultimate decision-maker when it comes to BLM  
18 lands. When there's a, let's say if the State and  
19 BLM is not able to reach an agreement, do you feel  
20 that this issue needs to be dealt with?

21 MR. POWELL: Bill, as a lawyer can  
22 probably talk higher than I can. But historically  
23 the OCD has worked really hard to ensure that  
24 there's not an ultimate conflict between the two. I  
25 think if there was an ultimate conflict and the OCD

1 would be interrupting a Federal mandate, the BLM may  
2 have an ultimate say for that exact for that  
3 specific conflict but maybe Bill has more  
4 information on that than I do.

5 MR. BRANCARD: Thank you. As Mr. Powell  
6 indicates, we have dealt with these issues in  
7 numerable times informally through personal  
8 interactions but that's not to say that, you know,  
9 the Memorandum of Agreement that NMOGA's proposal  
10 references would not at some point be a good idea to  
11 create a more formal process to deal particularly  
12 with conflicts that may need to get elevated.

13 So I think that's something that, you  
14 know, the Division in our spare time, you know, may  
15 try to follow-up with.

16 COMMISSIONER AMPOMAH: Okay. So I --

17 MR. POWELL: I apologize, I was just going  
18 to add a little bit to that, Bill.

19 So the memorandum that they speak of, we  
20 still have the ability to enter into those  
21 cooperative agreements, memorandums. That's also in  
22 Rule 2, and we are not changing that portion of the  
23 rule. We have that authority to cooperate with  
24 other agencies in those types of agreements.

25 COMMISSIONER AMPOMAH: Thank you.



1           So I want to turn your attention to the  
2 proposed rule changes in the document, so  
3 19.15.2.17, Organizational Units.

4           So you -- in that section we talk about  
5 the director may divide the State into districts or  
6 other organizational units as appropriate. So I  
7 want to know, is it a sole decision of the director  
8 to do this or it has to be based on some  
9 consultation?

10           MR. BRANCARD: Commissioner, this would be  
11 the director's decision but obviously, you know,  
12 input from not only other OCD personnel but other  
13 people within those stakeholders would be -- would  
14 influence this decision. The district boundaries are  
15 sort of historic but at some point they were just  
16 arbitrary decisions about which counties fall into  
17 which districts. And so we're trying now to come up  
18 with more practical solutions about how to allocate  
19 these districts in terms of moving resources around.

20           Our districts don't match Federal  
21 districts, resource areas, et cetera. So, you know,  
22 that may be one way of looking at it in the future  
23 but, you know, there may be lots of reasons and  
24 other ways of looking at that, but ultimately the  
25 decision would be the director's.

1                   COMMISSIONER AMPOMAH: Okay. Thanks so  
2 much.

3                   I don't have any further questions.

4                   MR. MOANDER: Madam Chair, can I ask a  
5 couple of questions?

6                   HEARING OFFICER ORTH: Okay. Yes, thank  
7 you. That's all right.

8                   Mr. Moander.

9                   CROSS-EXAMINATION

10                  MR. MOANDER: Mr. Brancard, I just want to  
11 clarify a few things to make sure I'm understanding  
12 the testimony today as well. Is it the intention of  
13 the OCD under the Proposed Amendments under  
14 19.15.7.9, to violate or ignore Federal law  
15 concerning Federal lands?

16                  MR. BRANCARD: No.

17                  MR. TREMAINE: Okay. And I realize that  
18 seems potentially like a silly question, but I just  
19 wanted to clarify that since concurrent jurisdiction  
20 as arisen today to just clarify the Division's  
21 position vis-a-vis Federal law in particular, so,  
22 thank you for that.

23                  HEARING OFFICER ORTH: Is that all,  
24 Mr. Moander?

25                  MR. MOANDER: Yes, my apologies, Madam

1 Hearing Officer, that's all I have.

2 HEARING OFFICER ORTH: Thank you. Madam  
3 Chair, do you have questions remaining of the  
4 Division panel?

5 CHAIRWOMAN SANDOVAL: I just have a couple  
6 of questions.

7 CROSS-EXAMINATION

8 CHAIRWOMAN SANDOVAL: In the  
9 reorganization that the Division has done, have any  
10 of the district offices been closed?

11 MR. POWELL: No, they have not.

12 CHAIRWOMAN SANDOVAL: Have any staff been  
13 required to move?

14 MR. POWELL: No, they have not. But an  
15 example of effective use of staff would be southeast  
16 part of New Mexico where it was previously split up  
17 into two districts. Staff wasn't allowed to cross  
18 county lines or district lines because they're  
19 really close together and now that inspection group  
20 is one team instead of two teams and we effectively  
21 send those inspectors where needed depending on  
22 overall availability of inspectors.

23 CHAIRWOMAN SANDOVAL: Prior to the change  
24 in structure, did the Division have consistency  
25 problems between districts?

1 MR. POWELL: Extreme consistency problems,  
2 yes.

3 CHAIRWOMAN SANDOVAL: Has the restructure  
4 helped to alleviate those problems?

5 MR. POWELL: Yes, it has.

6 CHAIRWOMAN SANDOVAL: Thank you.

7 I guess probably for Mr. Powell, are you  
8 familiar with the quarterly requirements to provide  
9 performance measures to the Legislative Finance  
10 Committee?

11 MR. POWELL: Yes, generally yes.

12 CHAIRWOMAN SANDOVAL: Have you been asked  
13 in the past to put those responses together for the  
14 Legislative Finance Committee on some of the items  
15 such as percent of applications to drill that were  
16 approved within ten days?

17 MR. POWELL: Yes, I have.

18 CHAIRWOMAN SANDOVAL: Let's see, for FY  
19 '21, does it sound appropriate that, 87.6 percent of  
20 applications were approved within ten days and then  
21 our last quarter in, FY '22, 95.6 percent, were  
22 approved within ten days?

23 MR. POWELL: Yes, that sounds appropriate  
24 and I would also note that those were for all APDs,  
25 not just State or fee, but also include Federal.

1           CHAIRWOMAN SANDOVAL: So do you think  
2 there that, generally, on permits to drill OCD  
3 causes any sort of backlog in timing or process?

4           MR. POWELL: No, I don't believe that we  
5 cause any backlog in APDs.

6           CHAIRWOMAN SANDOVAL: Okay. Thank you.  
7 I'm guessing my question is for Mr.  
8 Brancard.

9           It's sort of been asserted I think during  
10 some of the questions that Tribal jurisdictions and  
11 Federal jurisdictions are comparable.

12           Are there differences between the Tribal  
13 jurisdictions versus the Federal jurisdictions that  
14 might be helpful to elicit for the Commission in  
15 terms of how they function, and if they're sovereign  
16 nations things like that, like what the interaction  
17 differences would be?

18           MR. BRANCARD: Well, this is sort of basic  
19 American Constitutional Law, it's in the  
20 Constitution that Tribes are separate sovereigns and  
21 they are treated that way. So therefore their  
22 sovereignty is in some ways analogous to a State on  
23 their own land, although they would never admit  
24 that.

25           But the Federal system, though, is a

1 system of federalism which is the State's and the  
2 Federal government sort of share and spread the  
3 authority amongst themselves for various things, and  
4 there are certain areas where there is exclusive  
5 Federal jurisdiction. For instance, there is the  
6 Property Clause of the Constitution, and so, we as a  
7 State don't have a right to veto a Federal decision  
8 to lease land to somebody. That's their  
9 distinction. When it comes to regulating activities  
10 on the land there is concurrent jurisdiction between  
11 the State and Federal governments.

12 CHAIRWOMAN SANDOVAL: Thank you. And so  
13 just taking that one step further, there is not --  
14 there is concurrent jurisdiction between the State  
15 and the Feds, but there is not concurrent  
16 jurisdiction between the State and the Tribes,  
17 correct?

18 MR. BRANCARD: That's correct. I mean I  
19 think in reality as Mr. Powell has discussed, we  
20 have had a fairly involved process with Tribal oil  
21 and gas development which I think is somewhat unique  
22 but it's clear that we don't have the ultimate  
23 authority in those situations.

24 CHAIRWOMAN SANDOVAL: And I think you said  
25 this earlier, but did OCD provide consultation with

1 the Tribes?

2 MR. BRANCARD: Yes, a copy of the draft  
3 rules were sent out to all New Mexico Tribes,  
4 Nations, Pueblos.

5 CHAIRWOMAN SANDOVAL: Did they provide any  
6 feedback?

7 MR. BRANCARD: Yes. There was from a few  
8 Tribes they did, and as I mentioned earlier, they  
9 very much wanted to see OCD's role as a repository  
10 of information be maintained.

11 CHAIRWOMAN SANDOVAL: Thank you. Let's  
12 see.

13 And 19.15.7.9, I think that's, C1, yeah  
14 19.15.7.9 C1. I just want to make sure that I  
15 understand this. It says, "for subsequent reports  
16 of worked performed that are first reported to the  
17 BLM on a, C103 or C105 equivalent if within 30 days  
18 of submittal the BLM has not approved or processed  
19 such submittal, the operator shall within ten days  
20 file the State equivalent form of the Division."

21 Is that basically saying that if nothing,  
22 if the BLM has not approved a form within 30 days,  
23 the operator then starting on day 31 has ten days to  
24 submit that form on the State form to the Division,  
25 so basically 40 but they need to submit the State

1 form by the 40th day?

2 MR. POWELL: That would be correct.

3 CHAIRWOMAN SANDOVAL: Okay. Would the  
4 Division see any concerns with just adding a little  
5 bit of clarification in that to say something like,  
6 "following the 30 days," I don't know, "shall within  
7 ten days file a State equivalent," just to be a  
8 little bit clearer?

9 MR. POWELL: I don't see an issue adding  
10 third (audio cut out) language to that.

11 CHAIRWOMAN SANDOVAL: Okay. Just one more  
12 question.

13 So of that, Citation 79C1, and then  
14 looking at, 19.15.7.16, I wanted to make sure I'm  
15 understanding this right.

16 Are there slightly different timelines,  
17 like this seems to say, "45 days for a CY05, where  
18 as up in, C1 above it might be 40 days, or are these  
19 slightly different pieces?

20 MR. POWELL: So they're slightly different  
21 pieces they would work consecutively with each  
22 other. So the 45 days is they would have to submit  
23 their application to the agencies. So on the BLM  
24 agency they would get the 45 days plus then the  
25 additional 40 days.



1           CHAIRWOMAN SANDOVAL: Okay. Okay, got it.  
2           So one more question back to, 79C1, why is  
3 that provision important for the Division to have,  
4 you know, the requirement to submit on the State  
5 form if not approved by BLM within 30 days?

6           MR. POWELL: So subsequent reports contain  
7 typically critical information to make sure  
8 correlative price and human health in the  
9 environment are protected. For example, the C105,  
10 that's where we get all the casing information,  
11 completion information and formation information on  
12 the same form and it's the only place we get  
13 information from an operator.

14           So having that information and then being  
15 able to compare with where they completed, ensures  
16 that they completed within zone and that that zone  
17 is properly isolated, which protects correlative  
18 rights and ensure strata isolation, those kinds of  
19 things. So having that delay in a completion report  
20 would be critical for us to make sure that the  
21 operators producing the formations that they should  
22 be producing.

23           CHAIRWOMAN SANDOVAL: Thank you. Sorry,  
24 two seconds. Does the OCD have privacy for the UIC  
25 which is Underground Injection Control Program from

1 the EPA?

2 MR. POWELL: Yes. We have privacy for the  
3 UIC events from the EPA for everything but Tribal  
4 lands.

5 CHAIRWOMAN SANDOVAL: Does the BLM have  
6 that same authority?

7 MR. POWELL: Not that I'm aware of, no.

8 CHAIRWOMAN SANDOVAL: Do you foresee any  
9 potential problem, so with some of the proposal by  
10 the New Mexico Oil and Gas Association if there was  
11 potentially a well, an injection well that was  
12 purely on Federal land, you know, do you see any  
13 potential conflict with the language proposed by  
14 NMOGA that basically says such forms involving  
15 exclusively Federal lands or minerals are not  
16 subject to Division review or approval unless it's  
17 authorized by some sort of written agreement?

18 Do you think that could be a conflict  
19 particularly for UIC wells that might only be on  
20 Federal land?

21 MR. POWELL: Yes, I believe that would be  
22 directly conflict.

23 CHAIRWOMAN SANDOVAL: Because the OCD has  
24 primacy for that program and the Federal government  
25 does not?

1 MR. POWELL: That is correct.

2 CHAIRWOMAN SANDOVAL: So that would  
3 inhibit our ability to administer our program  
4 potentially?

5 MR. POWELL: Yes. It would potentially  
6 jeopardize that program ensuring that the  
7 regulations we put in place for the UIC rules, to  
8 meet that Federal mandate would not enforced.

9 CHAIRWOMAN SANDOVAL: Okay. I think that's  
10 all the questions I have.

11 Thank you, Mr. Brancard and Mr. Powell.

12 HEARING OFFICER ORTH: Thank you Madam  
13 Chair.

14 Are there other questions from anyone of  
15 the Division panel? Please speak up if there are  
16 any follow-up questions.

17 MR. FELDEWERT: Ms. Orth, may I ask one  
18 question about the C105, under 19.15.7.16?

19 HEARING OFFICER ORTH: Go ahead,  
20 Mr. Feldewert.

21 RE CROSS EXAMINATION

22 BY MR. FELDEWERT:

23 Q. Mr. Powell, Ms. Sandoval, directed you to  
24 that provision and I just want to make sure I  
25 understand it, assuming it gets enacted.

1           So if I have operations on Federal lands,  
2 I'm sorry, if someone has operations on Federal  
3 lands when do they file their Forms C105; is it not  
4 45 days?

5           Did I hear you say it's actually what  
6 could be, 85?

7           A. So they would file their C105 with the  
8 regular auditory agency which on Federal lands would  
9 be BLM first within the 45 days.

10          **Q. Okay.**

11          A. And if BLM doesn't process that within 30  
12 days, then they would have to then file the State  
13 equivalent with ten days after that. So the initial  
14 submittal would be 45 days and then there would be a  
15 30-day period waiting for Federal approval and then  
16 a-ten day period to resubmit after that for those  
17 who work together.

18          **Q. Okay. So do I file within 45 days, does**  
19 **an operator file the C105 with the Division and the**  
20 **BLM or with the BLM first?**

21          A. With the BLM first.

22          **Q. Okay. Okay. And then if you don't**  
23 **receive approval from the Division within 30 days of**  
24 **that submission then you file it with the State?**

25          A. That is correct. I would note that you

1 could file the 105 earlier than the 45 days under  
2 16, and then the 30 days would start from that  
3 point. So say you filed at ten days after you do  
4 your completion.

5 **Q. Yeah.**

6 A. With the BLM that 30 days would start at  
7 that point. So it's not a cut and dry 45 days plus  
8 30 plus 10. The 30 plus 10 is after submittal to the  
9 BLM in that point in time.

10 **Q. Got it. Okay.**

11 MR. FELDEWERT: Thank you very much.

12 HEARING OFFICER ORTH: Thank you,  
13 Mr. Feldewert.

14 Any other questions of the Division panel,  
15 please speak up?

16 No.

17 Well, thank you very much.

18 Mr. Brancard, Mr. Powell, and  
19 Mr. Tremaine, we will move then to the Oil and Gas  
20 Association, but let me first ask because we're at a  
21 transition point.

22 If there's anyone on the platform who is  
23 here to offer oral public comment, if you are on the  
24 platform to offer oral public comment, I would like  
25 to do so at this time. Please reach out through

1 chat and I'll accept your comment now. I will also  
2 invite public comment after we've heard from the Oil  
3 and Gas Association. So this isn't quite the last  
4 time, but we'll be -- we'll be wrapping up not too  
5 long from now. Anyone at all, just reach outreach  
6 out through chat.

7 CHAIRWOMAN SANDOVAL: I'm not seeing  
8 anybody, Ms. Orth.

9 HEARING OFFICER ORTH: Okay. Thank you,  
10 very much, Madam Chair.

11 Mr. Feldewert, would you like to offer  
12 NMOGA's presentation?

13 MR. FELDEWERT: I really have nothing more  
14 to offer. I know that there's NMOGA's initially  
15 submitted these proposed changes, but I don't know  
16 to what extent there's any dialogue used to the  
17 reason why they were not accepted and I appreciate  
18 your submission by Division's witnesses here today.

19 You know, it's really kind of a legal  
20 question. I recognize there's concurrent  
21 jurisdiction but everybody knows there's limitations  
22 on that, particularly if you have conflicts between  
23 what the BLM is saying must be done on Federal lands  
24 and what the OCD may be saying is to be done on  
25 Federal lands. I think that's where there's a lot of

1 confusion. Perhaps there could be some  
2 clarification and it does seem to me that there is  
3 some concern when you have the BLM approving an  
4 activity on Federal lands and the Division saying  
5 that you cannot where there's no agreement with the  
6 BLM that the Division has jurisdiction to in a sense  
7 be told or nullify approval by the BLM. So that's  
8 the concern.

9 HEARING OFFICER ORTH: All right. Thank  
10 you, Mr. Feldewert.

11 Mr. Tremaine, do you have any questions of  
12 Mr. Feldewert based on his statement just now?

13 MR. TREMAINE: No, Madam Hearing Examiner.

14 HEARING OFFICER ORTH: All right. Madam  
15 Chair, do you any question of Mr. Feldewert?

16 CHAIRWOMAN SANDOVAL: Maybe just one.

17 CROSS-EXAMINATION

18 BY CHAIRWOMAN SANDOVAL:

19 **Q. Are you aware of any conflicts in your**  
20 **career that could not have been that were not**  
21 **resolved between OCD and BLM?**

22 A. Not that I'm aware of. I know there's a  
23 memorandum of understanding for a long time about,  
24 at least -- well, I shouldn't say for a long time.  
25 If for part of what you call my career that was in

1 place that I think it dealt with a lot of that.

2 And I may have been, you know, I think  
3 the -- a lot of times this issue comes up with what  
4 are we doing with purely Federal units? Are we  
5 getting Division approval for purely Federal units,  
6 things of that nature. And I think it's been kind  
7 of a moving target as to what extent is the Division  
8 involved in those types of activities, but to answer  
9 correctly, your question directly, I have not seen a  
10 circumstance where it hasn't been resolved so that  
11 we didn't have to litigate the issue of, can the  
12 Division come in and regulate an activity of Federal  
13 lands that is in direct conflict with what the BLM  
14 has required.

15 CHAIRWOMAN SANDOVAL: Thank you.

16 That was my only question.

17 HEARING OFFICER ORTH: All right. Thank  
18 you.

19 Commissioner Bloom, do you have any  
20 questions of Mr. Feldewert?

21 COMMISSIONER BLOOM: Madam Hearing  
22 Officer, I do not have any questions, thank you.

23 HEARING OFFICER ORTH: Thank you.

24 Commissioner Ampomah?

25 COMMISSIONER AMPOMAH: I do not have any



1 questions. Thank you.

2 HEARING OFFICER ORTH: All right, and  
3 Mr. Moander, any questions?

4 MR. MOANDER: No, Madam Hearing Officer.  
5 Thank you for asking.

6 HEARING OFFICER ORTH: All right. Thank  
7 you, very much, Mr. Feldewert, for your statement.

8 Let me put out a final call for oral  
9 public comment. This is your final opportunity to  
10 offer that comment. Please reach out through chat  
11 if you're on the platform.

12 CHAIRWOMAN SANDOVAL: Nothing Madam Chair.

13 HEARING OFFICER ORTH: Okay. I believe you  
14 confirmed earlier with the commissioner  
15 administrator that no written public comment had  
16 been received.

17 CHAIRWOMAN SANDOVAL: Correct. I believe  
18 that they were allowed to be submitted and correct  
19 me if I'm wrong, through noon today?

20 HEARING OFFICER ORTH: That's my memory.

21 CHAIRWOMAN SANDOVAL: Ms. Davidson, if  
22 you're able to chime in, have you received anything  
23 up until now since this morning?

24 MS. DAVIDSON: No, I have not.

25 CHAIRWOMAN SANDOVAL: Thank you.

1 MS. DAVIDSON: You're welcome.

2 HEARING OFFICER ORTH: So, Madam Chair, I  
3 believe we've come to the end of the evidentiary  
4 hearing on this rulemaking. And you may want to  
5 take a brief break before you can deliberate there.  
6 But I will turn it over then to you and to  
7 Mr. Moander.

8 Thank you all very much.

9 CHAIRWOMAN SANDOVAL: Thank you. So I  
10 think we should probably wait until a little bit  
11 after noon make sure we haven't received any  
12 additional written comments.

13 Are there -- maybe just a quick question.  
14 Are there closing statements or is everything  
15 basically been presented at this point?

16 HEARING OFFICER ORTH: I can ask. I  
17 didn't ask. I see Mr. Feldewert's hand.  
18 Mr. Feldewert.

19 MR. FELDEWERT: Yes, you know, I  
20 apologize, because I was looking through my notes  
21 and I may have something that might be of help. I  
22 mean but I'm looking at 19.15.7.9 talk about Forms  
23 Required on Federal land or minerals. Yet there is a  
24 provision in here that talks about forms required  
25 from what is now Native American Nation, Tribe,

1 Pueblo, or individual allottees. I'm just wondering  
2 for those of us dealing with this rule in the future  
3 whether there should be some reference in the title  
4 to the fact that this deals with not just Federal  
5 lands, but perhaps Tribal lands or Native lands, I  
6 don't know what the right term would be but just  
7 some food for thought.

8 HEARING OFFICER ORTH: All right. Thank  
9 you, Mr. Feldewert.

10 Mr. Tremaine, would you like to address  
11 that question?

12 MR. TREMAINE: Sure. To the extent that,  
13 I mean, I think it could be appropriate for the  
14 title to be amended reflecting Federal lands or  
15 minerals or like Federal or other interests, I think  
16 that would be appropriate.

17 I don't know offhand. I haven't thought  
18 about that question before so I apologize but I  
19 don't know that that is strictly necessary, but  
20 Mr. Feldewert does bring up an important point  
21 because we are distinguishing between Tribal and  
22 Federal units.

23 So I don't think that the Division would  
24 oppose and, you know, any modification to that and I  
25 guess my request would be that we do retain the

1 language that's in the current title and simply add  
2 to that to reflect that OCD may act as that  
3 repository of farms and information related to other  
4 lands besides those Federal.

5 HEARING OFFICER ORTH: So let me ask a  
6 question, Mr. Tremaine.

7 If we were to take a 15-minute break for  
8 example, and you could confer with Mr. Brancard and  
9 Mr. Powell, would it be helpful to come back in 15  
10 minutes, offer a brief closing remark complete with  
11 perhaps a suggested change in the title for  
12 19.15.7.9, would that be helpful?

13 MR. TREMAINE: Certainly. I will confer.

14 HEARING OFFICER ORTH: All right.  
15 Madam Chair, would that be okay if we came back in  
16 15 minutes for that?

17 CHAIRWOMAN SANDOVAL: Yeah, that's fine by  
18 me.

19 HEARING OFFICER ORTH: Thank you very  
20 much. Let's return at noon, please. We'll have  
21 brief closing remarks and then I believe the  
22 Commission can proceed to deliberations if they  
23 choose to do that. Thank you.

24 CHAIRWOMAN SANDOVAL: Thank you.

25 (Recess taken at 11:44 to 12:01.)

1 HEARING OFFICER ORTH: All right. We are  
2 back after a short break. I'll turn to Mr. Tremaine  
3 first.

4 Mr. Tremaine, do you have any closing  
5 remarks and in particular do you have any  
6 suggestions around the title of Section 19.15.7.9?

7 MR. TREMAINE: Certainly. Madam Hearing  
8 Examiner, I'll start with 19.15.7.9. OCD would  
9 propose that that title would be changed to read,  
10 "Form Requirement on Federal or Tribal Land or  
11 Minerals." And I can distribute that by email or in  
12 the chat if that would be helpful for the  
13 Commissioners.

14 I really have two general comments  
15 otherwise. I just want to point out to the  
16 Commission that as we talked about several times  
17 today, OCD's proposed changes serve to update,  
18 modernize the rules. There are administrative and  
19 and procedural changes. They're frankly intended  
20 only for that purpose and they're fairly boring. So  
21 these do not reflect any substantive or policy  
22 changes on OCD'S part.

23 Secondly, I do want to address directly  
24 the NMOGA's proposal and I'll limit my comments to  
25 say that I don't believe that that change, proposed

1 change is supported in the record. I do understand  
2 Mr. Feldewert's and NMOGA'S point, but I think that  
3 speaks to an issue of a request for clarity. And  
4 rather than any specific legal reasons why OCD's  
5 proposal's inappropriate. The record does not  
6 reflect any specific reason to that effect.

7 Rather, that request for additional  
8 clarity could be answered and is actually permitted  
9 under the rule, and we'll use your further detailed  
10 agreements between the agencies would be appropriate  
11 and permitted as agencies are available to do so.

12 And those are my only comments.

13 Thank you, Madam Hearing Examiner.

14 HEARING OFFICER ORTH: Thank you,  
15 Mr. Tremaine. If you would repeat one more time  
16 please, the proposed new title of Section 9.

17 MR. TREMAINE: Form Requirements on  
18 Federal or Tribal Lands or Minerals.

19 HEARING OFFICER ORTH: Thank you.

20 Mr. Feldewert, any closing remarks?

21 MR. FELDEWERT: No. Other than I  
22 apologize for not snapping to perhaps that title  
23 issue until yesterday. I totally agree with the  
24 change proposed by the Division. I think that  
25 provides some clarity to anybody looking through the

1 index of the rules.

2 HEARING OFFICER ORTH: Thank you for that,  
3 Mr. Feldewert?

4 Madam Chair, no one has reached out  
5 through the chat or to my knowledge in any other  
6 format to offer public comment, so I think at this  
7 time we'll close the evidentiary record.

8 And I will turn to floor over to you and  
9 Mr. Moander. Thank you, very much.

10 CHAIRWOMAN SANDOVAL: Thank you, Ms. Orth.

11 I guess, Commissioners, are we, I would  
12 propose that we move straight into deliberations.

13 Okay?

14 So I think we should probably take this  
15 section by section.

16 Mr. Moander procedural question does it  
17 help to do a vote on each section or like vote by  
18 rule? Like address each section and maybe like do  
19 an overarching on the rule, each rule?

20 MR. MOANDER: You have the option to kind  
21 of do this as you like. My unsurprisingly neurotic  
22 lawyer mind likes to end up voting on every little  
23 change. I also recognize the tedium in doing that.

24 Because this rule is pretty short, at  
25 least relatively speaking, and it does fall under

1 its own, it's just one, it's Part 2 is all that's  
2 being touched on. I do not have an issue with the  
3 final vote to accept the changes as will be dealt  
4 with in deliberation, but it might be helpful to  
5 break it down by subsection.

6 So, you know, you got, 2.7 to 2.10 to  
7 2.12, and I think that might be the best way to make  
8 a record but that's sort of the happy medium between  
9 one vote and 1500 votes.

10 CHAIRWOMAN SANDOVAL: Okay. That makes  
11 sense.

12 All right. Let's start at the beginning.  
13 19.15.2.

14 MR. MOANDER: Madam Chair.

15 CHAIRWOMAN SANDOVAL: Yes.

16 MR. MOANDER: Customarily you've had me  
17 put the rule up on the screen so we can do realtime  
18 changes and the Commission can see what I'm doing.

19 Are you willing to be able to do that  
20 today?

21 CHAIRWOMAN SANDOVAL: Yes, that would be a  
22 great idea. Let me make you the presenter. And now  
23 you should be able to share your screen.

24 MR. MOANDER: All right. Okay. And I know  
25 last time we went through this and the time before



1 that. Everyone was getting motion sickness from this  
2 feature, for moving up and down so I apologize in  
3 advance but I am at your disposal, Madam Chair.

4 CHAIRWOMAN SANDOVAL: Can you make it a  
5 little bigger?

6 MR. MOANDER: Better?

7 CHAIRWOMAN SANDOVAL: Yes. All right,  
8 let's start at the very beginning.

9 All right. 19.15.2.7, which is the  
10 definitions. There was or there were three  
11 definitions added in A, C, and R. A definition for  
12 Act or Oil and Gas Act, which refers back to the  
13 statute.

14 A definition of certified mail which was  
15 discussed by, I believe, Mr. Brancard as to why the  
16 Division is proposing to expand the definition of  
17 certified mail outside of just the U.S. Postal  
18 Service due to some previous slowdowns and tracking  
19 problems, so adding to cover other mail delivery.

20 And then a definition of Rules which  
21 basically refers to the Rules pursuant to the Oil  
22 and Gas Act 19.15.2 to 19.15.39.

23 Are there any edits or changes to this  
24 section?

25 COMMISSIONER BLOOM: Madam Chair, not on

1 my end, no, thank you.

2 COMMISSIONER AMPOMAH: No, from my end,  
3 too, Madam Chair.

4 CHAIRWOMAN SANDOVAL: Is there a motion to  
5 adopt the proposed changes by the Division to  
6 1915.2.7?

7 COMMISSIONER BLOOM: Madam Chair, I so  
8 move.

9 COMMISSIONER AMPOMAH: Madam Chair, I  
10 support. I second.

11 CHAIRWOMAN SANDOVAL: Mr. Moander, would  
12 you roll call please?

13 MR. MOANDER: Yes, Madam Chair.  
14 Dr. Ampomah?

15 COMMISSIONER AMPOMAH: Approved.

16 MR. MOANDER: Commissioner Bloom?

17 COMMISSIONER BLOOM: Approved.

18 MR. MOANDER: Madam Chair?

19 CHAIRWOMAN SANDOVAL: Approved.

20 MR. MOANDER: The motion carries.

21 (Motion carries unanimously.)

22 CHAIRWOMAN SANDOVAL: All right. Let's  
23 move on to 1915.2.10.

24 So this section was renamed and basically  
25 what it does is it tells the Division to develop an

1 online mechanism to submit forms and applications.  
2 It references the statute that requires fees be paid  
3 on those forms and applications. And then it has  
4 some language regarding if there's a technical  
5 failure of the system. I think this was discussed by  
6 Mr. Brancard and Mr. Powell as to why the Division  
7 is moving to an online system. You know what that  
8 does for modernizing the Division and streamlining  
9 processes. And so they provided testimony on that.

10 Are there any proposed edits or changes to  
11 this section?

12 COMMISSIONER BLOOM: No, Madam Chair.

13 COMMISSIONER AMPOMAH: No, Madam Chair.

14 CHAIRWOMAN SANDOVAL: Mr. Moander, another  
15 roll call, please.

16 MR. MOANDER: Yes, Madam Chair.

17 Dr. Amopah?

18 COMMISSIONER AMPOMAH: Approved.

19 COMMISSIONER BLOOM: I'm sorry, do we need  
20 a motion?

21 MR. MOANDER: Actually, you do. That's a  
22 good point.

23 CHAIRWOMAN SANDOVAL: I do need a motion.

24 All right, is there a motion to approve, 19.15.2,  
25 changes as proposed by the Division?

1 COMMISSIONER BLOOM: Madam Chair, I so  
2 move.

3 COMMISSIONER AMPOMAH: I second.

4 CHAIRWOMAN SANDOVAL: Now would you do a  
5 roll call?

6 MR. MOANDER: Happily, Madam Chair.

7 Dr. Ampomah?

8 COMMISSIONER AMPOMAH: Approved.

9 MR. MOANDER: Commissioner Bloom?

10 COMMISSIONER BLOOM: Approved.

11 MR. MOANDER: Madam Chair?

12 CHAIRWOMAN SANDOVAL: Approved.

13 MR. MOANDER: Motion carries.

14 (Motion carries unanimously.)

15 CHAIRWOMAN SANDOVAL: Thank you. Next  
16 section is 19.15.2.12, which is being repealed and  
17 replaced with the new section and proposed language  
18 The previous section was titled, "The Numbering of  
19 Division Orders." Is now going to be titled, "Filing  
20 a Notification." And the previous language was  
21 struck so this section basically what it does, it  
22 tells you how to file and I think Mr. Brancard  
23 described throughout the OCD rules it refers to how  
24 you can file with the Division, and in the  
25 appropriate district offices, and in lieu of

1 changing every single rule that OCD has on the  
2 books. This section was meant to sort of be an  
3 overarching instruction section and accomplish that.  
4 Testimony was provided I think by both Mr. Brancard  
5 and Mr. Powell as to again why this makes the most  
6 sense and how it modernizes the Division, and  
7 tracking, and processes.

8 Are there any comments or edits to this  
9 section?

10 COMMISSIONER BLOOM: No, Madam Chair.

11 COMMISSIONER AMPOMAH: No, Madam Chair.

12 CHAIRWOMAN SANDOVAL: Okay. Is there a  
13 motion to adopt the new language in 19.15.2.12  
14 repealing the previous language as proposed by the  
15 Division?

16 COMMISSIONER BLOOM: Madam Chair, I so  
17 move and would also move to approve the new language  
18 as well.

19 COMMISSIONER AMPOMAH: Madam Chair, I do  
20 second.

21 CHAIRWOMAN SANDOVAL: Mr. Moander, roll  
22 call, please.

23 MR. MOANDER: Yes, Madam Chair.

24 Dr. Ampomah?

25 COMMISSIONER AMPOMAH: Approved.

1 MR. MOANDER: Commissioner Bloom?

2 COMMISSIONER BLOOM: Approved.

3 MR. MOANDER: Madam Chair?

4 CHAIRWOMAN SANDOVAL: Approved.

5 MR. MOANDER: The motion carries.

6 (Motion carries unanimously.)

7 CHAIRWOMAN SANDOVAL: All right. Moving  
8 now to Section 19.15.2.13, Computation of Time. I  
9 believe Mr. Brancard spoke about this in his  
10 testimony. And, you know, described the edits and  
11 changes to comply with the uniform statute and Rule  
12 Construction Act which is NMSA 1978, Section 12-2-7,  
13 and detailed as to how that would work and why the  
14 change was being made.

15 MR. MOANDER: Madam Chair, I believe it's  
16 section 12-2A-7, just to clarify.

17 CHAIRWOMAN SANDOVAL: Oh, I'm sorry. I'm  
18 rolling too quickly.

19 Yes, thank you.

20 Are there any edits or concerns regarding  
21 this section?

22 COMMISSIONER BLOOM: No, Madam Chair.

23 COMMISSIONER AMPOMAH: No, Madam Chair.

24 CHAIRWOMAN SANDOVAL: Is there a motion to  
25 adopt the changes to 19.15.2.13, as proposed by the

1 Division?

2 COMMISSIONER BLOOM: Madam Chair, I so  
3 move.

4 COMMISSIONER AMPOMAH: Madam Chair, I  
5 second.

6 CHAIRWOMAN SANDOVAL: Mr. Moander, would  
7 you do a roll call, please?

8 MR. MOANDER: Yes, Madam Chair.  
9 Dr. Ampomah?

10 COMMISSIONER AMPOMAH: Approved.

11 MR. MOANDER: Commissioner Bloom?

12 COMMISSIONER BLOOM: Approved.

13 MR. MOANDER: Madam Chair?

14 CHAIRWOMAN SANDOVAL: Approved.

15 MR. MOANDER: The motion carries.

16 (Motion carries unanimously.)

17 CHAIRWOMAN SANDOVAL: All right. Next  
18 section is 19.15.2.16. There are proposed changes  
19 to both the title, as well as the content of this  
20 section. I believe both Mr. Brancard and Mr. Powell  
21 discussed this section and that the modifications  
22 were made to both sort of narrow the previous  
23 language, and also make it align with how the  
24 Division currently functions, and that they are  
25 Division personnel as opposed to field personnel.

1           Yeah, are there any edits or questions on  
2 this section?

3           COMMISSIONER BLOOM: Madam Chair, it  
4 raised a question about the, "such as," being  
5 potentially unnecessarily broad. So I apply that  
6 again in case either of you share any of those  
7 concerns, but I think overall my concerns were  
8 relayed by either that testimony of Mr. Powell and  
9 Mr. Brancard under cross-examination.

10          COMMISSIONER AMPOMAH: I do not have any  
11 questions on this.

12          CHAIRWOMAN SANDOVAL: I think any question  
13 I had were answered by Mr. Powell following what you  
14 brought up, Commissioner Bloom. So I am good with  
15 the language as is currently proposed.

16          COMMISSIONER BLOOM: Very good, Madam  
17 Chair, then I would move to approve the changes to  
18 19.15.2.16.

19          COMMISSIONER AMPOMAH: I do second.

20          CHAIRWOMAN SANDOVAL: Mr. Moander, will  
21 you please do a roll call vote?

22          MR. MOANDER: Yes, Madam Chair.

23          Dr. Ampomah?

24          COMMISSIONER AMPOMAH: Approved.

25          MR. MOANDER: Commissioner Bloom?



1 COMMISSIONER BLOOM: Approve.

2 MR. MOANDER: Madam Chair?

3 CHAIRWOMAN SANDOVAL: Approved.

4 MR. MOANDER: The motion carries.

5 (Motion carries unanimously.)

6 MR. MOANDER: Madam Chair, just a brief  
7 scribner before we proceed to the next section and  
8 if I'm wrong hopefully Mr. Tremaine will correct me.  
9 I do believe that should read in italics just above  
10 the excised version of, 19.15.2.17. That should  
11 likewise read the italics, 19.15.2.17; is that  
12 right, Mr. Tremaine?

13 MR. TREMAINE: I believe that is correct.

14 MR. MOANDER: Because it looks like right  
15 below the excise language is the new 19.15.2.17.

16 MR. TREMAINE: I think that's correct. I  
17 think that it was overlooked simply because there  
18 was also the repeal of 19.15.2.12.

19 MR. MOANDER: Which is, I'm not blaming  
20 anybody here just so to be clear but just to clarify  
21 what's happening here.

22 MR. TREMAINE: Absolutely, yes.

23 That should refer to 217 as both 212 and  
24 217. Current versions are repealed by the proposed  
25 amendments.

1 MR. MOANDER: Thank you, Mr. Tremaine.

2 CHAIRWOMAN SANDOVAL: Thank you for  
3 catching that, Mr. Moander.

4 So this section I think with the  
5 modification that we'll need to ensure that that  
6 modification I think that's made, because the  
7 proposal was to repeal the current, 19.15.2.17  
8 District Offices Section, and replace it with a new  
9 19.15.2.17 section titled Organizational Units. I  
10 believe, again, Mr. Brancard and Mr. Powell both  
11 spoke about this section, and sort of described the  
12 history of the Division and why it was set up  
13 previously how it was, and how that no longer  
14 reflects how the Division operates, and also, you  
15 know, allows the Division more flexibility to set up  
16 its own organizational units as makes sense for  
17 modern time and functionality.

18 Are there any edits or comments in this  
19 section?

20 COMMISSIONER BLOOM: No, Madam Chair.

21 CHAIRWOMAN SANDOVAL: Okay.

22 COMMISSIONER AMPOMAH: No, Madam Chair.

23 CHAIRWOMAN SANDOVAL: Okay. Is there a  
24 motion to approve these changes with the  
25 modification that the text should read, "Repeal

1 Current 19.15.2.17 and replace with, New Section as  
2 opposed to 19.15.2.12?"

3 COMMISSIONER BLOOM: Madam Chair, I so  
4 move.

5 COMMISSIONER AMPOMAH: I second.

6 CHAIRWOMAN SANDOVAL: Mr. Moander, would  
7 you do roll call, please?

8 MR. MOANDER: Yes, Madam Char.

9 Just a point of order that motion all  
10 included the full replacing language because I  
11 wasn't sure I caught that correctly. So it covers  
12 all the changes that are prosed through 19.15.2.17?

13 CHAIRWOMAN SANDOVAL: Correct. Both the  
14 repealing of the current language and the  
15 replacement with the new language.

16 MR. MOANDER: Dr. Ampomah?

17 COMMISSIONER AMPOMAH: Approved.

18 MR. MOANDER: Commissioner Bloom?

19 COMMISSIONER BLOOM: Approved.

20 MR. MOANDER: Madam Chair?

21 CHAIRWOMAN SANDOVAL: Approved.

22 MR. MOANDER: The motion carries.

23 (Motion carries unanimously.)

24 CHAIRWOMAN SANDOVAL: All right. That  
25 takes us through the changes as proposed by the

1 Division of 19.15.2 in NMAC. We can move down into  
2 19.15.7 in NMAC, which is titled, "Forms and  
3 Reports."

4 The first section here in 19.15.7.8A,  
5 again, I think Mr. Brancard and Mr. Powell spoke  
6 about this. This helps to modernize the Division and  
7 aligns things with an online reporting mechanism so  
8 that all of the submittals go on to that online  
9 portal, as opposed to being turned in in-person.

10 Are there any questions or edits for A?

11 COMMISSIONER BLOOM: No, Madam Chair.

12 CHAIRWOMAN SANDOVAL: Okay.

13 COMMISSIONER AMPOMAH: No, Madam Chair.

14 CHAIRWOMAN SANDOVAL: All right. Let's now  
15 look at 19.15.7.8B. There is a minor change to the  
16 end of this section, I think just sort of aligning  
17 with the Oil and Gas Act and the language in there  
18 in that section.

19 Any edits or questions on that?

20 COMMISSIONER BLOOM: No, Madam Chair.

21 COMMISSIONER AMPOMAH: No, Madam Chair.

22 CHAIRWOMAN SANDOVAL: Okay.

23 C, same thing here just sort of  
24 streamlining the language instead of listing all of  
25 the potential pipes and potentially missing

1 something. The language reads, "a person subject to  
2 the Oil and Gas Act."

3 Is are there any edits, or questions,  
4 comments on that?

5 COMMISSIONER BLOOM: No, Madam Chair.

6 COMMISSIONER AMPOMAH: No, Madam Chair.

7 CHAIRWOMAN SANDOVAL: Okay.

8 Let's look at D. So under the written  
9 notices request permits and reports. This again once  
10 again aligns with the Division's intent to use an  
11 online platform, and to collect forms, and turn  
12 those forms in as well as states explicitly that  
13 this list is not intended to be comprehensive  
14 necessarily and it does not limit the Division's  
15 authority to develop any new forms as are necessary.

16 Is there any question or edits to that  
17 section?

18 MR. MOANDER: Madam Chair, if I look at  
19 this correctly, I think it's on, D10. It looks like  
20 there's also that word produced was added for the,  
21 Forms C108.

22 CHAIRWOMAN SANDOVAL: Oh, thank you.

23 MR. MOANDER: Just to check, make sure  
24 there's nothing else. Okay. I think that's it.

25 CHAIRWOMAN SANDOVAL: I think so.

1 Division has a whole lot of forms.

2 COMMISSIONER BLOOM: Madam Chair, on this  
3 on D, we have the following list of forms as  
4 intended for informational purposes, is not intended  
5 to limit the Division's authority. I don't know if  
6 we would just want it to say it does not limit the  
7 Division's authority or make no difference. I  
8 flagged that, I probably should have raised that in  
9 our questioning. I think it's fine either way.

10 MR. MOANDER: Commissioner Bloom, so your  
11 language would be, I would describe your language as  
12 stronger. I want to say clearer but it takes a  
13 stronger position on the fact that the list would  
14 not limit the Division's authority, so just from a  
15 statutory regulatory construction perspective.

16 CHAIRWOMAN SANDOVAL: I'm fine with making  
17 that change. I think that's what the language was to  
18 use that language intended to do. But I agree that  
19 your language Commissioner Bloom is a little bit  
20 stronger and would be appropriate.

21 COMMISSIONER BLOOM: Okay. Thank you.

22 CHAIRWOMAN SANDOVAL: Commissioner  
23 Ampomah.

24 COMMISSIONER AMPOMAH: Yeah, I'm okay with  
25 the change.

1 CHAIRWOMAN SANDOVAL: All right. And then  
2 let's see Mr. Moander pointed out in 1915.7.8 the  
3 Pen, there was also the addition of the word  
4 produced and I think that addition just makes things  
5 a little bit clearer. Generally, it's referred to  
6 as produced water not salt water, and so I think  
7 that just provides clarity in the rule.

8 All right. I think that, Oh, shoot, I  
9 think that is all for the changes in 19.15.7.8.

10 Opening it back up, are there any  
11 questions or edits on anything in 19.15.7.8, as  
12 proposed by the Division?

13 COMMISSIONER BLOOM: No, Madam Chair.

14 COMMISSIONER AMPOMAH: No, Madam Chair.

15 CHAIRWOMAN SANDOVAL: Okay.

16 Is there a motion to approve, 19.15.7.8,  
17 with the changes to, 19.15.7.8D, that were proposed?

18 COMMISSIONER BLOOM: Madam Chair, I so  
19 move.

20 COMMISSIONER AMPOMAH: Madam Chair, I  
21 second.

22 CHAIRWOMAN SANDOVAL: Mr. Moander, would  
23 you do a roll call vote, please.

24 MR. MOANDER: Yes, Madam Chair.

25 Dr. Ampomah?

1 COMMISSIONER AMPOMAH: Approved.

2 MR. MOANDER: Commissioner Bloom?

3 COMMISSIONER BLOOM: Approved.

4 MR. MOANDER: Madam Chair?

5 CHAIRWOMAN SANDOVAL: Approved.

6 MR. MOANDER: The motion carries.

7 (Motion carries unanimously.)

8 COMMISSIONER BLOOM: Madam Chair, when you  
9 mentioned that we initiated that motion there, we  
10 certainly noted the changes to D, but did we with  
11 that motion adopt all the changes to the entirety?

12 (Court Reporter read back testimony.)

13 CHAIRWOMAN SANDOVAL: So the next section  
14 we take these and do the repeals first and then go  
15 into the replacement pieces.

16 First off, there are proposals to repeal  
17 19.15.7.9 and 19.15.7.10, as they currently read in  
18 the rule again this was, you know, it aligns with  
19 the modernization effort and to search a work online  
20 as opposed to filing things in person and on paper.

21 Are there any questions or edits to the,  
22 Repeal Portions of 19.15.79 and 710?

23 COMMISSIONER BLOOM: No, Madam Chair.

24 COMMISSIONER AMPOMAH: No, Madam Chair.

25 CHAIRWOMAN SANDOVAL: Mr. Moander, would



1 you do a roll call.

2 MR. MOANDER: I think we need a motion  
3 first.

4 CHAIRWOMAN SANDOVAL: Okay. I keep  
5 getting just too excited.

6 Is there a motion to repeal 19.15.7.9 and  
7 7.10, as are currently written?

8 COMMISSIONER BLOOM: Madam Chair, I so  
9 move.

10 COMMISSIONER AMPOMAH: Madam Chair, I  
11 second.

12 CHAIRWOMAN SANDOVAL: Would you do a roll  
13 call?

14 MR. MOANDER: I will, Madam Chair.  
15 Dr. Ampomah?

16 COMMISSIONER AMPOMAH: Approved.

17 MR. MOANDER: Commissioner Bloom?

18 COMMISSIONER BLOOM: Approve.

19 MR. MOANDER: Madam Chair?

20 CHAIRWOMAN SANDOVAL: Approved.

21 MR. MOANDER: The motion carries.

22 (Motion carries unanimously.)

23 CHAIRWOMAN SANDOVAL: All right.

24 Let's now move into the replacement for  
25 19.15.7.9, and then we can move into I think the

1 repeal of 11 and 37.

2 HEARING OFFICER ORTH: Madam Chair, this  
3 is Felicia. May I make an observation here, please?

4 CHAIRWOMAN SANDOVAL: Please.

5 HEARING OFFICER ORTH: Well, when I  
6 invited Mr. Tremaine to name the provide a new name  
7 for this section, he actually used the words or  
8 minerals. So it'd be Form Requirements for Federal  
9 or Tribal Lands or Minerals.

10 MR. MOANDER: Thank you, Ms. Orth. I knew  
11 I had missed something on there.

12 CHAIRWOMAN SANDOVAL: I think is it for or  
13 is it supposed to be on requirements? I thought he  
14 said on.

15 Does it matter?

16 HEARING OFFICER ORTH: I think  
17 Mr. Tremaine can clarify now.

18 MR. MOANDER: Yes.

19 MR. TREMAINE: I did say "on." I don't  
20 know that it actually makes a difference, but the  
21 proposal was form requirements on Federal or Tribal  
22 land or minerals.

23 CHAIRWOMAN SANDOVAL: On would align with  
24 how the language is currently on there which is  
25 Forms Required on Federal Lands or Minerals, so.

1           MR. MOANDER: It matches subsection A for  
2 wells on Federal lands, yeah.

3           CHAIRWOMAN SANDOVAL: Okay. Let's take  
4 1915.7.9, in the new language and then we can jump  
5 back up for the repeal of 11 and 37.

6           Okay. So I think that captures what the  
7 changes were for the title.

8           Let's start with A. So a lot of this  
9 language is I think Mr. Brancard and Mr. Powell  
10 discussed this during their testimony. Part of what  
11 was intended to do was get rid of the hard  
12 references to the BLM form numbers so in case they  
13 changed their rules, you know, our rule is not  
14 immediately outdated so more generalized references  
15 in A.

16           Any questions, or edits, or comments on,  
17 9A?

18           COMMISSIONER BLOOM: No, Madam Chair.

19           COMMISSIONER AMPOMAH: No, Madam Chair.

20           CHAIRWOMAN SANDOVAL: Okay. Let's move to  
21 B.

22           All right. This section, again, this just  
23 helps to modernize things, geophysical logs,  
24 electronic logs, other testing results, you know,  
25 they shall be submitted on an electronic copy using

1 that online process, you know, for Federal lands or  
2 minerals.

3 Again this just helps to modernize things.  
4 Logs can when submitted on paper can actually be,  
5 you know, may be challenging to scan, and Mr. Powell  
6 I believe discussed this section.

7 Any proposed edits or comments on this  
8 section?

9 COMMISSIONER BLOOM: No, Madam Chair.

10 COMMISSIONER AMPOMAH: No, Madam Chair.

11 CHAIRWOMAN SANDOVAL: Okay, C.

12 I believe it's C, is where NMOGA made  
13 their proposed edits and NMOGA proposed to strike  
14 the first sentence and then get rid of, "for  
15 approval within C." So, "for approval," was on,  
16 Line 4.

17 Generally, I don't think that I heard  
18 testimony from NMOGA that really backed up as to why  
19 this change should be made. I think the Division  
20 provided extensive testimony on how the process has  
21 worked in the past. But I believe upon question,  
22 there have been no such issues of conflicts and  
23 issues. And Mr. Brancard discussed concurrent  
24 jurisdiction and generally how that works.

25 My proposal would be to keep the language

1 as is by the Division and not adopt changes as were  
2 proposed by NMOGA.

3 COMMISSIONER BLOOM: Madam Chair, I agree.

4 I also had some questions coming into this  
5 about the historical relationship between OCD and  
6 BLM and how APD approvals and other sorts of  
7 approvals were handled and what the nature of these  
8 overlapping jurisdictions is.

9 But having heard Mr. Brancard and  
10 Mr. Powell's answers to Mr. Feldewert's questions, I  
11 felt that these changes I shouldn't say changes, I  
12 guess some of this language was actually previously  
13 in the rule, that this language that we're seeing  
14 before us is correct and warranted.

15 So I have no further concerns or questions  
16 about the proposals at this time. Thanks.

17 COMMISSIONER AMPOMAH: I do entirely  
18 support the argument by yourself and Commissioner  
19 Bloom. So, thank you.

20 CHAIRWOMAN SANDOVAL: Okay.

21 On C, so it will be, 9C1, my only thought  
22 here would be, I mean, when I first heard it, I just  
23 had a little bit of hesitation at the ten days  
24 backed up off of the 30. I'm wondering if there's  
25 just a simple way to clarify it. The BLM has not

1 approved or processed such submittal, the operator  
2 shall within ten days follow the initial 30 days or  
3 following the 30 days, something like that.

4 MR. MOANDER: Madam Chair, I read this  
5 several times. I understand where the argument comes  
6 from about trying to simplify this, but this reads  
7 like a fairly typical regulation. And then the way  
8 its structured is you submit to BLM and within 30  
9 days if you've not gotten an approval or the other.

10 Well, stepping back the other thing is if  
11 the approval for process, so approved is different  
12 than process. Process strikes me as the application  
13 is now under consideration. That's fundamentally  
14 distinct from a not approved or approve, whatever  
15 the case is. But the other thing is I think the way  
16 that we take that out for a second. Take that  
17 clause out and I do recommend adding a comma behind  
18 submittal to just clarify that that's an independent  
19 clause. Within 30 days submittal the operator shall  
20 within ten days file, I do think that's pretty  
21 legible from a legal perspective. I don't know that  
22 trying to simplify it may actually make it more  
23 complicated. And I have seen that have the opposite  
24 of the intended effect here.

25 CHAIRWOMAN SANDOVAL: Okay. If I'm the

1 only one who struggled to reading that, then I'm  
2 fine leaving it as is.

3           Commissioners, were you clear when you  
4 read that?

5           COMMISSIONER AMPOMAH: Yeah, I'm okay with  
6 it. Yeah, it seems clear to me.

7           MR. MOANDER: You've been hanging out with  
8 lawyers quite a bit there, Doctor. You're starting  
9 to read things the way we do.

10           COMMISSIONER BLOOM: Yes, Madam Chair. I  
11 am okay with this.

12           CHAIRWOMAN SANDOVAL: Okay.

13           MR. MOANDER: And, again, the point I'm  
14 recommending that comma behind submittal to separate  
15 the clause. That's just me, I don't expect to  
16 get -- my neuroses.

17           CHAIRWOMAN SANDOVAL: Okay. Do we need to  
18 talk about, since you brought the BLM has not  
19 approved or processed?

20           MR. MOANDER: Yeah, I just caught that  
21 because that's something when I look at it there's a  
22 big distinction from and I'll just shorthand it. A  
23 rejection rather than not approved or whether  
24 something's in process, I mean, there that's two  
25 different functions. What I see here is knowing how

1 the Federal system works, something being in process  
2 and I will say I'm not knowledgeable at least not  
3 thoroughly on BLM regulations vis-a-vis this  
4 regulation, but that could be when I read that, I  
5 read that open-ended is what I read. It's in  
6 process, so if you guys are well within your rights  
7 to examine that.

8 COMMISSIONER BLOOM: Madam Chair, let me  
9 ask, I guess it's my understanding that an operator  
10 can see if their C103 or C105 is being processed but  
11 I'm also wondering here if it's not more clear and  
12 perhaps it gets to where OCD needs to be if we were  
13 to strike "or processed," so that it would read "if  
14 within the 30 days the submittal to BLM is not  
15 approved such admittal, the operator shall within  
16 ten days file the State Equivalent Form."

17 CHAIRWOMAN SANDOVAL: Yeah, I'm trying to  
18 rack my brain. I don't know if all forms are,  
19 quote, approved. I think some of them are filed and  
20 they're processed like it has been received it's  
21 complete. But you don't get like a you're approved.  
22 I mean, it's like a sundry, right?

23 So, you know, I think approval could  
24 probably still work in those situations. It's like  
25 somebody, I think that's where it's trying to get is



1 somebody has like it's a sundry, right, and  
2 somebody's received it. It's complete. It's  
3 verified for completeness and it's good to go as  
4 opposed to they've reviewed it and it's missing  
5 three pieces of information, so it's rejected.

6 But the process isn't always the same as  
7 approved but I'm wondering if there's another word  
8 we could use or if approved would still probably  
9 cover those situations like, it was received, it's  
10 complete, it's approved.

11 MR. MOANDER: Madam Chair, that's a good  
12 point because if it's not rejected, then what is it.  
13 One could presume it's approved like there's no  
14 objection to it.

15 COMMISSIONER BLOOM: When I was reading  
16 this I was thinking about, you know, APDs where you  
17 can see that they are being processed and then later  
18 on we know that they're approved. I hadn't thought,  
19 Madam Chair, about what you just mentioned where  
20 there's some Forms C103, C105, they could just be  
21 submitted to BLM and they process them without an  
22 approval, so in that case could this language may  
23 very well stand unless we can think of another  
24 better way of clarifying.

25 MR. MOANDER: Dr. Ampomah, it sounds like

1 you had a thought.

2 COMMISSIONER AMPOMAH: Yes. So what I was  
3 thinking is normally when you submit the application  
4 it needs to be processed for completeness. So  
5 sometimes you will see that once you submit to be  
6 submitted, but once it has gone through the initial  
7 review then you see it to change to under review.  
8 Right, so I don't know if that distinguishes that.

9 MR. MOANDER: It's sounding like process.

10 CHAIRWOMAN SANDOVAL: What we said -- what  
11 if we said process to completion?

12 COMMISSIONER BLOOM: Let me see.

13 CHAIRWOMAN SANDOVAL: Approved or  
14 processed to completion?

15 COMMISSIONER BLOOM: Has not processed to  
16 completion or approved?

17 CHAIRWOMAN SANDOVAL: Yeah. If not  
18 approved or processed to completion section.

19 COMMISSIONER AMPOMAH: Yeah, that works.

20 CHAIRWOMAN SANDOVAL: We can always so put  
21 that draft language in there and then come back to  
22 this at the very end, if we want to let it sit for a  
23 minute.

24 COMMISSIONER BLOOM: Sure.

25 CHAIRWOMAN SANDOVAL: Okay.

1                   MR. MOANDER:   Okay, so I think we are now  
2   on, C sub 2.

3                   CHAIRWOMAN SANDOVAL:   C sub 2, NMOGA also  
4   had proposed changes to this part.  This is where  
5   they proposed to add the language, "such forms  
6   involving exclusively Federal lands or minerals are  
7   not subject to Division review or approval unless  
8   such review or approval is authorized by a written  
9   agreement between the BLM and the Division."

10                  So I think there was pretty extensive  
11   discussion on this and it also tracks similarly to  
12   the discussion we had on fee above.  You know, I  
13   think Mr. Powell discussed how the OCD system tracks  
14   things.  And that if there are any Federal minerals  
15   it is even if it's 1 percent, it's termed Federal  
16   land.

17                  So one, it would be challenging to track,  
18   and also just historically how the OCD and BLM have  
19   worked through things and have not had any problems  
20   nor has the OCD been really a holdup on the process  
21   inside.

22                  Additionally, I think there were concerns  
23   raised about the OCD having privacy to the UIC  
24   program.  Exclusive primacy even on wells exclusively  
25   on federal lands and that that language could create

1 some potential problems being able to administer  
2 that program.

3 I think you know again sort of tracking  
4 what we said above in C, you know, I think there was  
5 not enough testimony in my mind on behalf of NMOGA  
6 as to the jurisdictional pieces and why that  
7 language should be added and the problems that it is  
8 solving, and it would be a pretty extensive policy  
9 change on the OCD side. And again Mr. Brancard, I  
10 think, described the concurrent jurisdictional  
11 pieces well and distinguished how concurrent  
12 jurisdiction on federal land is very different from  
13 you know dealing with a Tribal government who, you  
14 know, that's a different situation than dealing with  
15 the Federal land.

16 So I would propose to not adopt the  
17 changes that NMOGA proposed in, 2, and adopt the  
18 changes that were proposed by the Division for, C2.

19 COMMISSIONER BLOOM: Madam Chair, I  
20 concur.

21 COMMISSIONER AMPOMAH: I do support.

22 MR. MOANDER: On C2 for the sake of  
23 consistency and I'll scroll up. In C1 the  
24 Commission's considering of the phrase, "processed  
25 to completion."

1 I am going to recommend that that same  
2 language be used although slightly modify it in  
3 sub 2, as well.

4 CHAIRWOMAN SANDOVAL: I agree, whatever we  
5 end up ultimately deciding for 1 makes sense to add  
6 to 2.

7 COMMISSIONER AMPOMAH: Also.

8 COMMISSIONER BLOOM: Sorry, go ahead,  
9 Dr. Ampomah.

10 COMMISSIONER AMPOMAH: Yes, so a quick  
11 question is can we ask NMOC to clarify or why they  
12 are using the processes or approves if there's any  
13 understanding behind that?

14 CHAIRWOMAN SANDOVAL: No, at this point we  
15 have closed the record and we cannot ask the parties  
16 for any additional information or testimony.

17 COMMISSIONER AMPOMAH: Thank you.

18 MR. MOANDER: Madam Chair, I'm wondering,  
19 just to keep the language parallel, in the last half  
20 of this sentence we said, "the operator shall file  
21 within ten business days the submittal process to  
22 completion, or approved by the BLM."

23 CHAIRWOMAN SANDOVAL: Yeah, I think we  
24 have to add it twice in that section, Mr. Moander.

25 MR. MOANDER: I knew I saw this.

1 CHAIRWOMAN SANDOVAL: We can do a word  
2 search.

3 COMMISSIONER BLOOM: You might want to put  
4 approved after that just so that it follows, it's  
5 parallel to the beginning of the sentence.

6 CHAIRWOMAN SANDOVAL: It's identical  
7 structure, I like it.

8 COMMISSIONER BLOOM: Yeah.

9 MR. MOANDER: Let me read this again.  
10 Something is wrong here. Oh, okay. That's just in  
11 my head.

12 There's just sometimes certain phrasing  
13 will drive me nuts not because it's wrong, it's just  
14 personal taste, but I think that looks correct.

15 CHAIRWOMAN SANDOVAL: Okay. All right.  
16 Let's look at D. We can circle back to 1 and 2 of  
17 C, maybe at the end, but let's look at D.

18 So, D basically just says that all forms  
19 for basically lands that filed exclusively for lands  
20 and minerals owned by Native American Nations,  
21 Tribe, Pueblo, or individual allottees should still  
22 be filed with the Division but the approval portion  
23 of that has been removed and Mr. Brancard discussed  
24 that at the beginning as to, you know, historically,  
25 that had been there but, you know, for some time the

1 Division has not functioned in that manner but when  
2 outreach and Tribal consultation was done with the  
3 Tribes, they still did require that OCD continue to  
4 be a repository of information and collect the  
5 information online.

6 And so the language to continue to submit  
7 them to the OCD was retained and is reflected in D,  
8 but to the approval pieces have been removed.

9 Are there any questions or concerns with,  
10 D?

11 COMMISSIONER BLOOM: No, Madam Chair.

12 COMMISSIONER AMPOMAH: No, Madam Chair.

13 CHAIRWOMAN SANDOVAL: All right.

14 Let's look at E.

15 This one is just for other reports, you  
16 know, the operator shall file the applicable State  
17 forms with the Division. Again, just continuing to  
18 align the remainder of the rule.

19 Any questions or edits to, E?

20 COMMISSIONER BLOOM: No, Madam Chair.

21 COMMISSIONER AMPOMAH: No, Madam Chair.

22 CHAIRWOMAN SANDOVAL: Okay.

23 What, okay so let's address a chunk of  
24 this.

25 Is there a motion to adopt as written by

1 the Division, 19.15.7.9A and B, D, and E?

2 COMMISSIONER BLOOM: Madam Chair, I so  
3 move.

4 COMMISSIONER AMPOMAH: Madam Chair, I  
5 second.

6 CHAIRWOMAN SANDOVAL: Would you do a roll  
7 call vote, Mr. Moander?

8 MR. MOANDER: Of course, Madam Chair.  
9 Dr. Ampomah?

10 COMMISSIONER AMPOMAH: Approved.

11 MR. MOANDER: Commissioner Bloom?

12 COMMISSIONER BLOOM: Aprove.

13 MR. MOANDER: Madam Chair?

14 CHAIRWOMAN SANDOVAL: Approved.

15 MR. MOANDER: The motion carries.

16 (Motion carries unanimously.)

17 CHAIRWOMAN SANDOVAL: Okay.

18 Why don't we come back to C at the end.

19 All right, let's see.

20 The next piece of this was proposal to,  
21 Repeal 19.15.7.11.

22 MR. MOANDER: Madam Chair, can I have just  
23 a second to put some notes in?

24 CHAIRWOMAN SANDOVAL: Yeah.

25 MR. MOANDER: Thank you.



1 CHAIRWOMAN SANDOVAL: Yeah.

2 MR. MOANDER: Okay. I think we are where  
3 we need to be.

4 CHAIRWOMAN SANDOVAL: All right.

5 The next proposal was repeal 19.15.7.11  
6 and 19.15.7.37.

7 Basically the new language in 19.15.7.9  
8 covers what these sections were intended to  
9 previously cover and has been restructured as was  
10 discussed above as to why just to continue to  
11 modernize the rules and streamline them. And  
12 provide clarity.

13 Are there any questions or edits to repeal  
14 of 19.15.7.11 and 37 being replaced with the new  
15 Section 9?

16 COMMISSIONER BLOOM: No, Madam Chair, no  
17 questions or concerns.

18 COMMISSIONER AMPOMAH: No, Madam Chair.

19 CHAIRWOMAN SANDOVAL: Okay.

20 Is there a motion to repeal 19.15.7.11 and  
21 19.15.7.37?

22 COMMISSIONER BLOOM: Madam Chair, I so  
23 move.

24 COMMISSIONER AMPOMAH: I second, Madam  
25 Chair.

1 CHAIRWOMAN SANDOVAL: Would you do roll  
2 vote please, Mr. Moander?

3 MR. MOANDER: Absolutely, Madame Chair.  
4 Dr. Ampomah?

5 COMMISSIONER AMPOMAH: Approved.

6 MR. MOANDER: Commissioner Bloom?

7 COMMISSIONER BLOOM: Approved.

8 MR. MOANDER: Madam Chair?

9 CHAIRWOMAN SANDOVAL: Approved.

10 MR. MOANDER: The motion carries.

11 (Motion carries unanimously.)

12 CHAIRWOMAN SANDOVAL: All right.

13 Last section where there were changes is  
14 in 19.15.7.16A.

15 So the first set of changes were to remove  
16 the words district office if appropriate again to  
17 align with the structural changes that were  
18 described by Mr. Powell and Mr. Brancard as well as  
19 the edits in 19.15.2 that were just made. As well  
20 as to add the language or suspend injection  
21 authority as appropriate.

22 I believe it was Mr. Powell who described  
23 that there was currently a gap here because the  
24 language right now says, "The Division shall  
25 withhold the allowable for the well which only

1 applies to production wells."

2 So there needed to be same type of action  
3 for injection wells which would be suspension of  
4 injection authority. So it basically closes a gap  
5 or a loophole that was previously in that section.

6 Are there any edits or questions on the  
7 changes to, 16A?

8 COMMISSIONER BLOOM: No, Madam Chair.

9 COMMISSIONER AMPOMAH: No, Madam Chair.

10 CHAIRWOMAN SANDOVAL: Is there a motion to  
11 adopt the changes as proposed by the Division to  
12 19.15.7.16A?

13 COMMISSIONER BLOOM: Madam Chair, I so  
14 move.

15 COMMISSIONER AMPOMAH: Madam Chair, I  
16 second.

17 CHAIRWOMAN SANDOVAL: Would you do a roll  
18 call vote please, Mr. Moander?

19 MR. MOANDER: Absolutely, Madam Chair.  
20 Dr. Ampomah?

21 COMMISSIONER AMPOMAH: Approved.

22 MR. MOANDER: Commissioner Bloom?

23 COMMISSIONER BLOOM: Approved.

24 MR. MOANDER: Madam Chair?

25 CHAIRWOMAN SANDOVAL: Approved.

1 MR. MOANDER: The motion carries.

2 (Motion carries unanimously.)

3 CHAIRWOMAN SANDOVAL: Thank you. All  
4 right.

5 All right. So let's jump back up. You  
6 know, Mr. Moander, I also see in, Section C --

7 MR. MOANDER: (Audio cut out) Chair. And  
8 one of the things --

9 CHAIRWOMAN SANDOVAL: The last line in C.

10 MR. MOANDER: Let me take one quick look  
11 here.

12 CHAIRWOMAN SANDOVAL: I just did a word  
13 search and I think that's it.

14 MR. MOANDER: It looks like it. Looks  
15 like we might have to revisit at the end of the  
16 first sentence.

17 CHAIRWOMAN SANDOVAL: Okay.

18 COMMISSIONER BLOOM: Do we want to, Madam  
19 Chair, potentially vote the motion and vote on these  
20 previous fixes and then go down to D?

21 CHAIRWOMAN SANDOVAL: Yeah, we can do  
22 that. I mean let's just circle back.

23 Are we good with that language process to  
24 completion?

25 I can't think of a better way to say it.

1                   COMMISSIONER BLOOM: That works for me,  
2     Madam Chair.

3                   COMMISSIONER AMPOMAH: And, Madam Chair,  
4     would you want us to bring it to completion process  
5     to completion first before the approval to be  
6     consistent with that?

7                   CHAIRWOMAN SANDOVAL: I guess we have it  
8     both ways. We have process to completion and then of  
9     first.

10                  MR. MOANDER: If the Commission would like  
11     me to do it, I could go back upon doing these edits  
12     and if you grant me authority to unify standardize  
13     the sequence of these two terms, so you can vote on  
14     that in a minute here if you want me to just take  
15     that and get that done.

16                  CHAIRWOMAN SANDOVAL: Okay.

17                  COMMISSIONER BLOOM: And, Madam Chair,  
18     Mr. Moander, one thing that -- another thing along  
19     those lines perhaps and, Madam Chair, I can pose  
20     these questions to you as well. I know sometimes  
21     when rules are submitted or language is submitted to  
22     the State that there's common capitalization, I  
23     don't love it, for example, when a Division's name  
24     is titles all spelled out in lower case you have  
25     like, you know, OCD is like all in lower case, but,

1 you know, here throughout this document we have  
2 Native American with the small N and I just did a  
3 Google search and there's some consensus out there  
4 that a small N Native American is somebody that was  
5 born in the U.S. and Native American capital N it is  
6 refers to a member of a Tribe in the U.S.

7 But I don't know if this, you know, if we  
8 would want to the update that or just all get  
9 reduced to lower case like we see when things go out  
10 for publication?

11 CHAIRWOMAN SANDOVAL: I think we --

12 MR. MOANDER: Go ahead, Madam Chair.

13 CHAIRWOMAN SANDOVAL: We try to capitalize  
14 it and then if the record center changes it, then  
15 they have to change it but at least we would have  
16 tried to correct it.

17 Mr. Moander, do you have a thought in that  
18 area?

19 MR. MOANDER: You know, this is not  
20 something that I put a lot of thought into. I don't  
21 have a problem. I mean if there's an issue when we  
22 submit it, I will know about it in advance and it  
23 may not change, you'll just have to be made as a  
24 scribner's change because it has no impact on  
25 substance. So I kind of leave it to you guys, I

1 don't actually know the answer to that question.

2 But we will be told if it's a problem and if at all  
3 it will would be changed.

4 CHAIRWOMAN SANDOVAL: Okay.

5 So if we can we make a motion to give you  
6 the authority to capitalize, Native?

7 COMMISSIONER BLOOM: Sure.

8 CHAIRWOMAN SANDOVAL: Okay.

9 MR. MOANDER: And why don't we put in that  
10 same motion you giving me authority to make  
11 consistent the phrase process to completion or  
12 approve I will just go through and make sure that's  
13 consistent through the document.

14 CHAIRWOMAN SANDOVAL: Okay.

15 HEARING OFFICER ORTH: Madam Chair, if I  
16 might, this is Felicia.

17 CHAIRWOMAN SANDOVAL: Yes.

18 HEARING OFFICER ORTH: Typically as the  
19 Boards or Commissions are wrapping up their  
20 deliberations they authorize staff to make whatever  
21 known substantive edits are necessary to be accepted  
22 by the State Rules Center and the State Records  
23 Center. So I guess I would just ask whatever  
24 authority you're giving to Mr. Moander, also be  
25 extended to whatever staff or actually putting the

1 rule into its final format for acceptance.

2 MR. MOANDER: And I agree with the Hearing  
3 Officer's commentary Madam Chair.

4 CHAIRWOMAN SANDOVAL: Okay.

5 Okay. So let's take this back in pieces  
6 so going back to, 19.15.7.9C.

7 Is there a motion to adopt the language as  
8 proposed by the Division with the exception of  
9 adding to completion after the word processed in  
10 every instance in Section C and C1, and C2?

11 COMMISSIONER BLOOM: Madam Chair, I so  
12 move.

13 COMMISSIONER AMPOMAH: Madam Chair, I  
14 second.

15 CHAIRWOMAN SANDOVAL: Would you do a roll  
16 call vote, please, Mr. Moander?

17 MR. MOANDER: Happily, Madam Chair.  
18 Dr. Ampomah?

19 COMMISSIONER AMPOMAH: Approved.

20 MR. MOANDER: Commissioner Bloom?

21 COMMISSIONER BLOOM: Approve.

22 MR. MOANDER: Madam Chair?

23 CHAIRWOMAN SANDOVAL: Approved.

24 Okay. We had previously approved,  
25 Section D under 19.15.7.9, but since then I have



1 found that we need to make a small change to ensure  
2 consistency with the remainder of the changes in the  
3 rule.

4 And so we should where again it says  
5 "processed," add the words "to completion,"  
6 following that language.

7 So is there a motion to readopt,  
8 19.15.7.9D, with the additional language to make it  
9 consistent with 19.15.7.9C?

10 COMMISSIONER BLOOM: Madam Chair, I so  
11 move.

12 COMMISSIONER AMPOMAH: Madam Chair, I  
13 second.

14 CHAIRWOMAN SANDOVAL: Would you do a roll  
15 call vote, please?

16 MR. MOANDER: Yes, Madam Chair.

17 Dr. Ampomah.

18 COMMISSIONER AMPOMAH: Approved.

19 MR. MOANDER: Commissioner Bloom?

20 COMMISSIONER BLOOM: Approve.

21 MR. MOANDER: Madam Chair?

22 CHAIRWOMAN SANDOVAL: Approved.

23 MR. MOANDER: The motion carries.

24 (Motion carries unanimously.)

25 CHAIRWOMAN SANDOVAL: Okay.

1                   Now is there a motion to give Mr. Moander  
2 the authority?

3                   MR. MOANDER: Madam Chair, why don't we  
4 follow the Hearing Officer's recommendation and  
5 wait. I know I interrupted you, so we want to make  
6 sure we include the support staff too just so we got  
7 that motion thoroughly done.

8                   CHAIRWOMAN SANDOVAL: Okay.

9                   So is there a motion to give Mr. Moander  
10 and any associated Division or EMNRD staff to make  
11 consistent the language approved or processed to  
12 completion in the document to ensure that the  
13 structure of that is similar throughout the  
14 document, as well as change the capitalization  
15 throughout the document of Native American,  
16 capitalizing Native throughout the document, as well  
17 as, make any edits that are necessary to be accepted  
18 by the Record Center?

19                   COMMISSIONER BLOOM: Madam Chair, I so  
20 move.

21                   COMMISSIONER AMPOMAH: Madam Chair, I do  
22 second.

23                   CHAIRWOMAN SANDOVAL: Could you do a roll  
24 call, please, Mr. Moander?

25                   MR. MOANDER: Yes, Madam Chair.

1 Dr. Ampomah?

2 COMMISSIONER AMPOMAH: Approved.

3 MR. MOANDER: Commissioner Bloom?

4 COMMISSIONER BLOOM: Approve.

5 MR. MOANDER: Madam Chair?

6 CHAIRWOMAN SANDOVAL: Approved.

7 MR. MOANDER: The motion carries.

8 (Motion carries unanimously.)

9 MR. MOANDER: Madam Chair, could I just  
10 have a minute to make sure, I'm going to go through  
11 and ensure I've got a vote for everything we needed  
12 done.

13 CHAIRWOMAN SANDOVAL: Yep.

14 MR. MOANDER: I'm satisfied that we got  
15 everything covered that need to be covered.

16 CHAIRWOMAN SANDOVAL: All right, great.  
17 With that I guess, Mr. Moander, would you put  
18 together in order for the Commission to vote on at  
19 the July 14th?

20 MR. MOANDER: Yes, Madam Chair, I am happy  
21 to do that and thank you for accommodating both  
22 myself and the court reporter on getting this done.  
23 I don't think between she and I were both going to  
24 make this happen by next Thursday.

25 CHAIRWOMAN SANDOVAL: Yeah, the July 14th

1 date seems most appropriate. All right.

2 Well, with that, Mr. Moander, do you have  
3 any pending litigation for admission?

4 MR. MOANDER: I think that it's the same  
5 case that we've been talking about for six months.  
6 Nothing I have been notified of nothing, nothing  
7 changed so we're still waiting on the Court of  
8 Appeals to give us a final ruling.

9 CHAIRWOMAN SANDOVAL: Okay.

10 Is there any other business before the  
11 Commission?

12 With that our next regularly scheduled  
13 meeting is on June 9th, which is next Thursday.

14 And we will adjourn for the day.

15 It is 1:13 pm. on June 3rd, 2022.

16 Thank you, everybody. And have a great  
17 afternoon and weekend.

18 MR. TREMAINE: Thank you all, appreciate  
19 it.

20 (Meeting adjourned at 1:13 p.m.)

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REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: June 3, 2022

/s/ Edwina Castillo

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