

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 14 PROCEDURE

19.15.14.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division, 1220 S. St. Francis Drive, Santa Fe, New Mexico 87505, (505) 476-3440.
[19.15.14.1 NMAC – Rp, 19 NMAC 15.N.1, - -05]

19.15.14.2 SCOPE: All rulemaking hearings before the oil conservation commission or adjudicatory hearings before the oil conservation commission (commission) or oil conservation division (division).
[19.15.14.2 NMAC – Rp, 19 NMAC 15.N.2, - -05]

19.15.14.3 STATUTORY AUTHORITY: NMSA 1978, Sections 70-2-1 through 70-2-38 set forth the Oil and Gas Act, which grants the division jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and grants the commission concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties.
[19.15.14.3 NMAC – Rp, 19 NMAC 15.N.3, - -05]

19.15.14.4 DURATION: Permanent.
[19.15.14.4 NMAC – Rp, 19 NMAC 15.N.4, - -05]

19.15.14.5 EFFECTIVE DATE: _____, 2005 unless a later date is cited at the end of a section.
[19.15.14.5 NMAC – Rp, 19 NMAC 15.N.5, - -05]

19.15.14.6 OBJECTIVE: This Part's objective is to set forth general provisions and definitions pertaining to the division's and the commission's authority pursuant to the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, by encouraging participation in the division's and commission's hearings, making possible effective presentation of the evidence and the parties' and the general public's points of view, allowing all participants a reasonable opportunity to submit data, views and arguments and to assure that division and commission hearings are conducted in a fair and equitable manner.
[19.15.14.6 NMAC - Rp, 19 NMAC 15.N.6, - -05]

19.15.14.7 DEFINITIONS:

A. "Commission clerk" means the oil conservation division employee the division director designates to provide staff support to the commission, and accept filings in rulemaking or adjudicatory cases before the commission.

B. "Division clerk" means the oil conservation division employee the division director designates to accept filings in adjudicatory cases before the division.

[19.15.14.7 NMAC – N, - -05]

19.15.14.1201 RULEMAKING INITIATION:

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

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

EXHIBIT

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B. An applicant shall file one original and five copies of the application for rulemaking with the commission clerk. The applicant shall file the application by delivering the application to the commission clerk in person, by mail or by facsimile, as long as the applicant mails or delivers the signed original and five copies to the commission clerk on the next business day.

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

D. 19.15.14.1201 NMAC shall not apply to special pool rules, which the commission or the division may adopt, amend or rescind in adjudicatory proceedings subject to 19.15.14.1207 and 1210 NMAC's notice provisions.

[19.15.14.1201 NMAC - Rp, 19 NMAC 15.N.1201, - -05]

19.15.14.1202 RULEMAKING NOTICE:

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

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

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

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

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

B. In cases of emergency, the division director may shorten these time limits by written order.

[19.15.14.1202 NMAC - Rp, 19 NMAC 15.N.1202, - -05]

19.15.14.1203 WRITTEN COMMENTS ON RULEMAKING: Any person may submit written comments on a proposed rule change, and those comments shall be made part of the hearing record. Individuals or entities shall provide written comments on the proposed rule change to the commission clerk not later than five days before the scheduled hearing date, unless the division director or the commission extends the time for filing comments. The division director or the commission may extend the time for filing written comments by making an announcement at the hearing, or by posting notice on the division's website. Any person may review written comments on a proposed rule change at the division's Santa Fe office. The division shall post copies of written comments that individuals or entities have filed with the commission clerk on the division's website as soon as practicable after they are filed.

[19.15.14.1203 NMAC - Rp, 19 NMAC 15.N.1203, - -05]

19.15.14.1204 RULEMAKING HEARING PARTICIPATION:

A. Participation by General Public.

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

(2) Any person may also offer exhibits in connection with his testimony, so long as the exhibits are relevant to the proposed rule change and do not unduly repeat the testimony. A person offering exhibits shall file any exhibits prior to the scheduled hearing date or submit them at the hearing. A person offering exhibits shall provide one original plus five copies of each exhibit for the commission, copies for each of those individuals or entities that have filed an intent to present technical testimony or cross-examine witnesses at the hearing and five additional copies for others who may attend the hearing.

(3) Members of the general public who wish to present non-technical testimony should indicate their

intent on a sign-in sheet at the hearing.

B. Technical testimony.

(1) Any person, including the division, who intends to present technical testimony or cross-examine witnesses at the hearing shall, no later than 10 days before the scheduled hearing date, file an original pre-hearing statement plus five copies with the commission clerk. Corporations, partnerships, governmental agencies, political subdivisions, unincorporated associations and other collective entities may appear only through counsel or through a duly authorized officer or member.

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

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

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

(5) No later than four days before the scheduled hearing date, the commission clerk shall deliver a copy of all pre-hearing statements including exhibits to all commissioners.

C. Modifications to proposed rule changes.

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

(2) The notice shall include:

- (a) the text of the recommended modifications to the proposed rule change;
- (b) an explanation of the recommended modification's impact; and
- (c) reasons for adopting the modification.

(3) No later than nine days prior to the scheduled hearing date, the commission clerk shall deliver a copy of any recommended modifications to all commissioners.

[19.15.14.1204 NMAC - Rp, 19 NMAC 15.N.1204, - -05]

19.15.14.1205 RULEMAKING HEARINGS:

A. Conduct of hearings.

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

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

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

(b) the commission may allow any person to make a brief opening statement;

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

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

(e) the commission may allow any person to make a brief closing statement;

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

(g) at the close of the hearing, the commission shall determine whether to keep the record open for written submittals including arguments and proposed statements of reasons supporting the proposed commission

decision. In considering whether the record will remain open, the commission shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision. If the commission keeps the record open, the commission chairman shall announce at the hearing's conclusion the subjects on which the commission will allow submittals and the deadline for filing the submittals; and

(h) if the hearing is not completed on the day that it commences, the commission may, by announcement, continue the hearing as necessary.

B. Testimony and cross-examination.

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

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

(3) Any person who testifies at the hearing is subject to cross-examination on the subject matter of his direct testimony. Any person who presents technical testimony may also be cross-examined on matters related to his background and qualifications. The commission may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

C. Exhibits.

(1) Any person offering an exhibit shall provide one original plus five copies of the exhibit for the commission, copies for each of those individuals or entities that have filed an intent to present technical testimony or cross-examine witnesses at the hearing and five additional copies for others who may attend the hearing.

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

D. Transcript of Proceeding.

(1) A verbatim record shall be made of the hearing.

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

E. Deliberation and decision.

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

(2) If, during the course of deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may consistent with due process requirements, reopen the hearing for additional evidence.

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

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

F. Filing. The division shall file with the State Records Center and Archives and publish any rule the commission adopts, amends or repeals consistent with the State Rules Act.

[19.15.14.1205 NMAC - Rp, 19 NMAC 15.N.1205, - -05]

19.15.14.1206 INITIATING AN ADJUDICATORY HEARING:

A. The division, attorney general, any operator or producer or any other person may file an application with the division for an adjudicatory hearing. The division director, upon receiving a division examiner's recommendation, may dismiss an application for an adjudicatory proceeding upon a showing that the applicant does not have a substantial interest in the subject matter. The person applying for the hearing or an attorney representing that person shall sign the application requesting an adjudicatory hearing. The application shall include:

(1) the applicant's name;

(2) the applicant's address, or the address of the applicant's attorney, including an email address and fax number if available;

(3) the name or general description of the common source or sources of supply or the area the order sought affects;

(4) briefly, the general nature of the order sought;

(5) a proposed legal notice for publication; and

(6) any other matter these rules or a division order require.

B. Applicants for adjudicatory hearings shall file written applications with the division secretary at least 23 days before the application's scheduled hearing date.
[19.15.14.1206 NMAC – N, - -05]

19.15.14.1207 ADJUDICATORY HEARING NOTICE:

A. The division shall publish notice, of any adjudicatory hearing, in the name of the "State of New Mexico", signed by the division director and bearing the commission's seal, stating:

- (1) the adjudicatory hearing's time and place;
- (2) whether the case is set for hearing before the commission or a division examiner;
- (3) the applicant's name and address, or address of the applicant's attorney, including an email address and fax number if available;
- (4) the case name and number;
- (5) a brief description of the hearing's purpose;
- (6) if the application seeks to adopt or amend special pool rules; establish or alter a non-standard unit; permit an unorthodox location or establish or affect any well's or proration unit's allowable, the notice shall specify each pool or common source of supply that the division or commission's granting the application may affect; and
- (7) if the application seeks compulsory pooling or statutory unitization, the notice shall contain a legal description of the spacing unit or geographical area the applicant seeks to pool or unitize.

B. The division shall publish notice of each adjudicatory hearing before the commission or a division examiner at least 10 days before the hearing by:

- (1) posting notice on the division's website;
- (2) delivering notice by ordinary first class United States mail or electronic mail to each person who has requested in writing to be notified of such hearings; and
- (3) if before the commission, publishing notice in a newspaper of general circulation in the counties the application effects, or if the application's effect will be statewide, in a newspaper of general circulation in the state.

[19.15.14.1207 NMAC – Rp, 19 NMAC 15.N.1207, - -05]

19.15.14.1208 PARTIES TO ADJUDICATORY PROCEEDINGS:

A. The parties to an adjudicatory proceeding shall include the applicant; any person to whom statute, rule or order requires notice (not including those persons to whom 19.15.14.1207 requires distribution of hearing notices, who are not otherwise entitled to notice of the particular application), who has entered an appearance in the case; and any person who properly intervenes in the case. A person entitled to notice may enter an appearance at any time by filing a written notice of appearance with the division or the commission clerk, as applicable, or, subject to the provisions in Subsection B below, by oral appearance on the record at the hearing.

B. A party who has not entered an appearance at least one day prior to the pre-hearing statement filing date provided in Subparagraph 1 of Subsection B of 19.15.14.1211 NMAC shall not be allowed to present technical evidence at the hearing unless the commission chairman or the division examiner, for good cause, otherwise directs.

C. A party shall be entitled to a continuance of any hearing if it did not receive notice of the hearing at least three days prior to the date for filing a timely appearance as these rules provide.

[19.15.14.1208 NMAC - Rp, 19 NMAC 15.N.1208, - -05]

19.15.14.1209 ADJUDICATORY PROCEEDING INTERVENTION:

A. Any person with a substantial interest in a case's subject matter may intervene by filing a written notice of intervention with the division or commission clerk, as applicable, at least one day before the date for filing a pre-hearing statement. Notice of intervention shall include:

- (1) the intervenor's name;
- (2) the intervenor's address, or the address of the intervenor's attorney, including an email address and fax number if available;
- (3) the nature of intervenor's interest in the application; and
- (4) the extent to which the intervenor opposes issuance of the order applicant seeks.

B. The division examiner or commission chairman may, at their discretion, allow late intervenors to participate if the intervenor files a written notice on or after the date provided in Subsection A of 19.15.14.1206 NMAC, or by oral appearance on the record at the hearing.

C. The division examiner or the commission chairman may strike a notice of intervention on a party's motion if the notice fails to show that the intervenor has a substantial interest in the hearing.
[19.15.14.1209 NMAC - Rp, 19 NMAC 15.N.1209, - -05]

19.15.14.1210 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:

A. Applicants for the following adjudicatory hearings before the division or commission shall give notice, in addition to that 19.15.14.1207 NMAC requires, as set forth below:

(1) Compulsory pooling and statutory unitization.

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

(b) When the applicant has given notice as required in Subparagraph (a) of Paragraph (1) of Subsection A of 19.15.14.1207 NMAC, of a compulsory pooling application, the proposed unit is not larger in size than provided in 19.15.3.104 NMAC or applicable special pool orders, and those owners the applicant has located do not oppose the application, the applicant may file under the following alternative procedure. The application shall include the following:

- (i) a statement that the applicant expects no opposition including the reasons why;
- (ii) a map outlining the spacing unit to be pooled, showing the ownership of each separate tract in the proposed unit and the proposed well's location;
- (iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that the applicant has conducted a diligent search of all public records in the county where the well is located and of phone directories, including computer searches;
- (iv) the names of the formations and pools to be pooled;
- (v) a statement as to whether the pooled unit is for gas or oil production or both;
- (vi) written evidence of attempts the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence;
- (vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;
- (viii) the location and proposed depth of the well to be drilled on the pooled units; and
- (ix) a copy of the authorization for expenditure (AFE) the applicant, if appointed operator, will submit to the well's interest owners.

(c) Applicants shall provide with all submittals sworn and notarized statements by those persons who prepared submittals, attesting that the information is correct and complete to the best of their knowledge and belief.

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

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

(2) Unorthodox well locations.

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

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

(b) In the event the proposed unorthodox well's operator is also the operator of an existing, adjoining spacing unit, and ownership is not common between the adjoining spacing unit and the spacing unit containing the proposed unorthodox well, then "affected persons" include all working interest owners in that spacing unit.

(c) If the proposed location is unorthodox by being located closer to the spacing unit's outer

boundary than 19.15.3.104 NMAC or applicable special pool orders permit, the applicant shall notify the affected persons in the adjoining spacing units towards which the unorthodox location encroaches.

(d) If the proposed location is unorthodox by being located in a different quarter-quarter section or quarter section than special pool orders provide, the applicant shall notify all affected persons.

(3) Non-standard proration unit. The applicant shall notify all owners of interests in the mineral estate to be excluded from the proration unit in the quarter-quarter section (for 40-acre pools or formations), the one-half quarter section (for 80-acre pools or formations), the quarter section (for 160-acre pools or formations), the half section (for 320-acre pools or formations) or section (for 640-acre pools or formations) in which the non-standard unit is located and to such other persons as the division requires.

(4) Special pool orders regulating or affecting a specific pool.

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

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

(b) If the application involves other matters, the applicant shall notify:

- (i) all division-designated operators in the pool; and
- (ii) all division-designated operators of wells within the same formation as the pool and within one mile of the pool's outer boundary that have not been assigned to another pool.

(5) Special orders regarding any division-designated potash area. The applicant shall notify all potash lessees, oil and gas operators, oil and gas lessees and unleased mineral interest owners within the designated potash area.

(6) Downhole commingling. The applicant shall notify all owners of interests in the mineral estate in the spacing unit if ownership is not common for all commingled zones within the spacing unit.

(7) Surface disposal of produced water or other fluids. The applicant shall notify any surface owner within one-half mile of the site.

(8) Surface commingling. The applicant shall give notice as 19.15.5.303 NMAC prescribes.

(9) Adjudications not listed above. The applicant shall give notice as the division requires.

B. Type and content of notice. The applicant shall send any notice 19.15.14.1207 NMAC requires by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the application's scheduled hearing date and shall include a copy of the application; the hearing's date, time and place and the means by which protests may be made. When an applicant has been unable to locate all persons entitled to notice after exercising reasonable diligence, the applicant shall provide notice by publication, and submit proof of publication at the hearing. Such proof shall consist of a copy of a legal advertisement in a newspaper of general circulation in the county or counties in which the property is located, or if the application's effect is statewide, in a newspaper of general circulation in this state, together with the newspaper's affidavit of publication.

C. At the hearing, the applicant shall make a record, either by testimony or affidavit that the applicant or its authorized representative has signed, that:

(1) the applicant has complied with notice provisions of 19.15.14.1207 NMAC;

(2) the applicant has conducted a good-faith diligent effort to find the correct addresses of all persons entitled to notice; and

(3) the applicant has given notice at that correct address as 19.15.14.1207 NMAC requires. In addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof.

D. Evidence of failure to provide notice as 19.15.14.1207 NMAC requires may, upon proper showing, be considered cause for reopening the case.

E. In the case of an administrative application where the required notice was sent and a timely filed protest was made, the division shall notify the applicant and the protesting party in writing that the case has been set for hearing and the hearing's date, time and place. No further notice is required.

[19.15.14.1210 NMAC - Rp, 19 NMAC 15.N.1210, - -05]

19.15.14.1211 PLEADINGS, COPIES, PRE-HEARING STATEMENTS, EXHIBITS AND MOTIONS FOR CONTINUANCE:

A. Pleadings. Applicants shall file the original and one copy of pleadings and correspondence in

cases pending before a division examiner with the division clerk and one original and five copies of pleadings and correspondence in cases pending before the commission with the commission clerk. For cases pending before the commission, the commission clerk shall disseminate copies of pleadings and correspondence to the commission members. The party filing the pleading or correspondence shall at the same time serve a copy of the pleading or correspondence upon each party who has entered an appearance in the case on or prior to the working day immediately preceding the day when the party files the pleading or correspondence with the division or the commission clerk, as applicable. Parties shall accomplish service by hand delivery or transmission by facsimile or electronic mail to any party who has entered an appearance or the party's attorney of record. Service upon a party who has not filed a pleading containing a facsimile number or email address may be made by ordinary first class mail. Interested parties shall be deemed to have made an appearance when they have either sent a letter regarding the case to the division or commission clerk or made an in person appearance at any hearing before the commission or before a division examiner. A written appearance, however, shall not be complete until the appearing party has provided notice to other parties of record. Any initial pleading or written entry of appearance a party other than the applicant files shall include the party's address or the address of the party's attorney and an email and facsimile number if available.

B. Pre-hearing Statements.

(1) Any party to an adjudicatory proceeding who intends to present evidence at the hearing shall file a pre-hearing statement, and serve copies on other parties or their counsel of record in the manner Subsection A of 19.15.14.1211 NMAC provides, at least four days in advance of a scheduled hearing before the division or the commission, but in no event later than 5:00 p.m. Mountain Time, on the Friday preceding the scheduled hearing date. The statement shall include:

- (a) the names of the party and the party's attorney;
- (b) a concise statement of the case;
- (c) the names of all witnesses the party will call to testify at the hearing, and in the case of expert witnesses, their fields of expertise;
- (d) the approximate time the party will need to present its case; and
- (e) identification of any procedural matters that are to be resolved prior to the hearing.

(2) Any party other than the applicant shall include in its pre-hearing statement a statement of the extent, if any, to which the party opposes the issuance of the order the applicant seeks and the reasons for such opposition. In cases to be heard by the commission, each party shall include copies of all exhibits that it proposes to offer in evidence at the hearing with the pre-hearing statement. The commission may exclude witnesses the party did not identify in the pre-hearing statement, or exhibits the party did not file and serve with the pre-hearing statement, unless the party offers such evidence solely for rebuttal or makes a satisfactory showing of good cause for failure to disclose the witness or exhibit.

(3) A pre-hearing statement filed by a corporation or other entity not represented by counsel shall identify the person who will conduct the party's presentation at the hearing and include a sworn and notarized statement attesting that the corporation's or entity's governing body or chief executive officer authorizes the person to represent the corporation or entity in the matter.

(4) For cases pending before the commission, the commission clerk shall disseminate copies of pre-hearing statements and exhibits to the commission members.

C. Motions for continuance. Parties shall file and serve motions for continuance no later than 48 hours prior to the time the hearing is set to begin, unless the reasons for requesting a continuance arise after the deadline, in which case the party shall file the motion as expeditiously as possible after becoming aware of the need for a continuance.

[19.15.14.1211 NMAC - Rp, 19 NMAC 15.N.1211, - -05]

19.15.14.1212 CONDUCT OF ADJUDICATORY HEARINGS:

A. Testimony. Hearings before the commission or a division examiner shall be conducted without rigid formality. The division or commission shall take or have someone take a transcript of testimony and preserve the transcript as a part of the division's permanent records. Any person testifying shall do so under oath. The division examiner or commission shall designate whether or not an interested party's un-sworn comments and observations are relevant and, if relevant, include the comments and observations in the record.

B. Pre-filed testimony. The division director may order the parties to file prepared written testimony in advance of the hearing for cases pending before the commission. The witness shall be present at the hearing and shall adopt, under oath, the prepared written testimony, subject to cross-examination and motions to strike unless the

witness' presence at hearing is waived upon notice to other parties and without their objection. The parties shall number pages of the prepared written testimony, which shall contain line numbers on the left-hand side.

C. **Appearances pro se or through counsel.** Parties may appear and participate in hearings either pro se (on their own behalf) or through counsel. Corporations, partnerships, governmental entities, political subdivisions, unincorporated associations and other collective entities may appear only through counsel or through a duly authorized officer or member. Participation in adjudicatory hearings shall be limited to parties, as defined in 19.15.14.1212 NMAC, except that a representative of a federal, state, or tribal governmental agency or political subdivision may make a statement on the agency's or political subdivision's behalf. The commission or division examiner shall have the discretion to allow any other person present at the hearing to make a relevant statement, but not to present evidence or cross-examine witnesses. Any person making a statement at an adjudicatory hearing shall be subject to cross-examination by the parties or their attorneys.

[19.15.14.1212 NMAC - Rp, 19 NMAC 15.N.1213, - -05]

19.15.14.1213 CONTINUANCE OF AN ADJUDICATORY HEARING: Any adjudicatory hearing before the commission or a division examiner held after due notice may be continued by the person presiding at such hearing to a specified time and place without the necessity of notice of the same being again served or published.

[19.15.14.1213 NMAC - Rp, 19 NMAC 15.N.1212, - -05]

19.15.14.1214 POWER TO REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE; PRE-HEARING PROCEDURE FOR ADJUDICATORY HEARINGS:

A. **Subpoenas.** The commission or its members and the division director or the division director's authorized representative have statutory power to subpoena witnesses and to require the production of books, papers, and records in any proceeding before the commission or division. The division director or the division director's authorized representative will issue a subpoena for attendance at a hearing upon a party's written request. The division director or the division director's authorized representative shall, upon a party's request, issue a subpoena for production of books, papers or other tangible things in advance of the hearing. The director or the division examiner assigned to hear the case have discretion to consider pre-hearing motions, such as motions for protection or quashing of subpoenas, prior to the hearing pursuant to Subsection C of 19.15.14.1214 NMAC or to reserve such matters for consideration at a hearing on the merits. The commission and division director or the director's authorized representative shall issue subpoenas for witness depositions in advance of the hearing only in extraordinary circumstances for good cause shown.

B. **Pre-hearing conferences.** The division examiner or the division director may hold a pre-hearing conference prior to the hearing on the merits in cases pending before the division or the commission, respectively, either upon a party's request or upon the division director or a division examiner giving notice. The pre-hearing conference's purpose shall be to narrow issues, eliminate or resolve other preliminary matters and encourage settlement. The division director or examiner may issue a pre-hearing order following the pre-hearing conference. The division director or division examiner shall either provide or ensure that written or oral notice of a pre-hearing conference is given to the applicant and to all other parties who, at the time such conference is scheduled, have filed appearances in the case.

C. **Hearings on motions.** The director or any division examiner may rule on motions that are necessary or appropriate for disposition prior to a hearing on the merits. If the case is pending before the commission, the division director shall rule on any such motion; provided that the division director may refer any such motion for hearing by a division examiner specifically designated for the purpose, who, if the case is a de novo application, shall not have participated in the case prior to the filing of the application for de novo hearing. Prior to ruling on any motion, the division director or division examiner shall give written or oral notice to each party who has filed an appearance in the case and who may have an interest in the motion's disposition (except a party who has indicated that it does not oppose the motion), and shall allow interested parties an opportunity, reasonable under the circumstances, to respond to the motion. The division director or division examiner may conduct a hearing on any motion, following written or oral notice to all interested parties, either at a pre-hearing conference or otherwise. If the commission or division examiner receives oral testimony at any motion hearing, the commission or division examiner shall ensure that a record is made of the testimony as at other hearings.

[19.15.14.1214 NMAC - Rp, 19 NMAC 15.N.1214, - -05]

19.15.14.1215 RULES OF EVIDENCE AND EXHIBITS FOR ADJUDICATORY HEARINGS:

A. **Presentation of evidence.** Subject to other provisions of 19.15.1214 NMAC, the commission or

division examiner shall afford full opportunity to all interested parties at an adjudicatory hearing before the commission or division examiner to present evidence and to cross-examine witnesses. The rules of evidence applicable in a trial before a court without a jury shall not control, but division examiners and the commission may use such rules as guidance in conducting adjudicatory hearings. The commission or division examiner may take administrative notice of the authenticity of documents copied from the division's files.

B. Parties introducing exhibits at hearings before the commission or a division examiner shall provide a complete set of exhibits for the court reporter, each commissioner or division examiner and other parties of record.

C. A party requesting incorporation of records from previous division examiner hearings at a commission hearing shall include copies of the record for all commissioners.

[19.15.14.1215 NMAC - Rp, 19 NMAC 15.N.1215, - -05]

19.15.14.1216 DIVISION EXAMINERS' QUALIFICATIONS, APPOINTMENT AND REFERRAL OF

CASES: The division director shall appoint as division examiners division staff who have at least two years of experience in hydrogeology, hydrology, geology, petroleum engineering, environmental engineering or a related field and a college degree in geology, engineering, hydrology or related field or is a licensed lawyer. Nothing in this section shall prevent any commission member from serving as a division examiner. The division director may refer any matter or proceeding to a division examiner for hearing in accordance with these rules.

[19.15.14.1216 NMAC - Rp, 19 NMAC 15.N.1216, - -05]

19.15.14.1217 DIVISION EXAMINER'S POWER AND AUTHORITY: The division examiner to whom the division director refers any matter under these rules shall have full authority to hold hearings on such matter in accordance with these rules, subject only to such limitations as the division director may order in a particular case. The division examiner shall have the power to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including administering oaths to witnesses, receiving testimony and exhibits offered in evidence and ruling upon such objections as may be interposed. The division examiner shall cause a complete record of the proceedings to be made and transcribed and shall certify same to the director as hereinafter provided.

[19.15.14.1217 NMAC - Rp, 19 NMAC 15.N.1217, - -05]

19.15.14.1218 ADJUDICATORY HEARINGS THAT SHALL BE HELD BEFORE THE COMMISSION:

Notwithstanding any other provisions of these rules, the hearing on any matter shall be held before the commission if:

- A. it is a hearing pursuant to NMSA 1978, Section 70-2-13; or
- B. the division director directs the commission to hear the matter.

[19.15.14.1218 NMAC - Rp, 19 NMAC 15.N.1218, - -05]

19.15.14.1219 REPORT AND RECOMMENDATIONS FROM DIVISION EXAMINER'S HEARING

Upon the conclusion of any hearing before a division examiner, the division examiner shall promptly consider the proceedings in such hearing, and based upon the hearing's record prepare a written report with recommendations for the division's disposition of the matter or proceeding. The division examiner shall draft a proposed order and submit it to the division director with the certified record of the hearing.

[19.15.14.1219 NMAC - Rp, 19 NMAC 15.N.1219, - -05]

19.15.14.1220 DISPOSITION OF CASES HEARD BY DIVISION EXAMINER: After receipt of the division examiner's report, the division director shall enter the division's order, which the director may have modified from the division examiner's proposed order, disposing of the matter.

[19.15.14.1220 NMAC - Rp, 19 NMAC 15.N.1220, - -05]

19.15.14.1221 HEARING BEFORE COMMISSION AND STAYS OF DIVISION ORDERS:

A. De novo applications. When the division enters an order pursuant to a hearing that a division examiner held, a party of record whom the order adversely affects has the right to have the matter heard de novo before the commission, provided that within 30 days from the date the division issues the order the party files a written application for de novo hearing with the commission clerk. If any party files an application for a de novo hearing, the commission chairman shall set the matter or proceeding for hearing before the commission.

- B. Stays of division or commission orders. Any party requesting a stay of a division or commission

order shall file a motion with the commission clerk and serve copies of the motion upon all other parties who appeared in the case, as Subsection A of 19.15.14.1208 NMAC provides. The party shall attach a proposed stay order to the motion. The division director may grant a stay pursuant to a motion for stay or upon his own initiative, after according all parties who have appeared in the case notice and an opportunity to respond, if the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to any affected party. Any division director's order staying a commission order shall be effective only until the commission acts on the motion for stay.

[19.15.14.1221 NMAC - Rp, 19 NMAC 15.N.1221, - -05]

19.15.14.1222 COPIES OF COMMISSION AND DIVISION ORDERS Within 10 days after the division or commission issues an order in an adjudicatory case, including any order granting or refusing rehearing or order following rehearing, the division or commission clerk shall mail a copy of such order to each party or its attorney of record. For purposes of 19.15.14.1222 NMAC only, the parties to a case are the applicant and each person who has entered an appearance in the case, in person or by attorney, either by filing a protest, pleading or notice of appearance with the commission clerk or by entering an appearance on the record at a hearing.

[19.15.14.1222 NMAC - Rp, 19 NMAC 15.N.1222, - -05]

19.15.14.1223 REHEARINGS: Within 20 days after entry of any commission order any party of record whom the order adversely affects may file with the commission clerk an application for rehearing on any matter the order determined, setting forth the respect in which the party believes the order is erroneous. The commission shall grant or refuse any such application in whole or in part within 10 days after the party files it, and the commission's failure to act on the application within such period shall be deemed a refusal and a final disposition of such application. In the event the commission grants the rehearing, the commission may enter a new order after rehearing as the circumstances may require.

[19.15.14.1223 NMAC - Rp, 19 NMAC 15.N.1223, - -05]

19.15.14.1224 EX PARTE COMMUNICATIONS:

A. In an adjudicatory proceeding, except for filed pleadings, at no time after a party files an application for hearing shall any party, interested participant or his representative advocate the issues the application involves to any commissioner or the division examiner appointed to hear the case unless all other parties of record to the proceedings have an opportunity to be present.

B. The prohibition in Subsection A of 19.15.14.1224 NMAC, above, does not apply to those applications that the applicant believes are unopposed. However, in the event that a party files an objection in a case previously believed to be unopposed, the prohibition in A, above, is immediately applicable.

C. This provision does not prohibit communications between the division's attorney or other division staff and the director that are essential to management of a case.

[19.15.14.1224 NMAC - N, - -05]

19.15.14.1225 EMERGENCY ORDERS AND RULES:

A. Notwithstanding any other provision of 19.15.14 NMAC, in the event the division or commission finds an emergency exists that requires adoption of a rule or issuance of an order without a hearing, such emergency rule or order shall have the same validity as if the division or commission has held a hearing before the division or commission after due notice. Such emergency rule or order shall remain in force no longer than 15 days from its effective date.

B. Notwithstanding any other provision of 19.15.14 NMAC, if the division or commission finds an emergency exists, the division or commission may conduct a hearing on any application within less than 23 days after party files the application, and the division director may set the notice period at his discretion.

[19.15.14.1225 NMAC - N, - -05]

19.15.14.1226 COMPUTATION OF TIME: In computing a period of time this part prescribes, the day from which the period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which state agencies observe a legal holiday. In such case, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

[19.15.14.1226 NMAC - N, - -05]

HISTORY OF 19.15.14 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives:

- Rule 1201, Necessity for Hearing, 1-11-82;
- Rule 1201, Necessity for Hearing, 2-5-91;
- Rule 1202, Emergency Orders, 1-11-82;
- Rule 1202, Emergency Orders, 2-5-91;
- Rule 1203, Method of Initiating a Hearing, 1-11-82;
- Rule 1203, Method of Initiating a Hearing, 2-5-91;
- Rule 1204, Method of Giving Legal Notice for Hearing, 1-11-82;
- Rule 1204, Method of Giving Legal Notice for Hearing, 11-5-85;
- Rule 1204, Method of Giving Legal Notice for Hearing, 2-5-91;
- Rule 1204, Publication of Notice for Hearing, 4-12-91;
- Rule 1205, Contents of Notice of Hearing, 1-11-82;
- Rule 1205, Contents of Notice of Hearing, 11-5-85;
- Rule 1205, Contents of Notice of Hearing, 2-5-91;
- Rule 1206, Personal Service of Notice, 1-11-82;
- Rule 1206, Preparation of Notices, 11-5-85;
- Rule 1206, Personal Service of Notice, 2-5-91;
- Rule 1207, Preparation of Notices, 1-11-82;
- Rule 1207, Additional Notice Requirements, 11-5-85;
- Rule 1207, Additional Notice Requirements, 3-27-87;
- Rule 1207, Additional Notice Requirements, 1-6-88;
- Rule 1207, Additional Notice Requirements, 2-5-91;
- Rule 1208, Filing Pleadings, 1-11-82;
- Rule 1208, Filing Pleadings, 2-5-91;
- Rule 1209, Continuance of Hearing Without New Service, 1-11-82;
- Rule 1209, Continuance of Hearing Without New Service, 2-5-91;
- Rule 1210, Conduct of Hearings, 1-11-82;
- Rule 1210, Conduct of Hearings, 2-5-91;
- Rule 1211, Power to Require Attendance of Witnesses and Production of Evidence, 1-11-82;
- Rule 1211, Power to Require Attendance of Witnesses and Production of Evidence, 2-5-91;
- Rule 1212, Rules of Evidence, 1-11-82;
- Rule 1212, Rules of Evidence, 2-5-91;
- Rule 1213, Examiners' Qualifications and Appointment, 1-11-82;
- Rule 1213, Examiners' Qualifications and Appointment, 2-5-91;
- Rule 1214, Referral of Cases to Examiners, 1-11-82;
- Rule 1214, Referral of Cases to Examiners, 2-5-91;
- Rule 1215, Examiner's Power of Authority, 1-11-82;
- Rule 1215, Examiner's Power of Authority, 2-5-91;
- Rule 1216, Hearings Which Must be Held Before the Commission, 1-11-82;
- Rule 1216, Hearings Which Must be Held Before the Commission, 2-5-91;
- Rule 1217, Examiner's Manner of Conducting Hearing, 1-11-82;
- Rule 1217, Examiner's Manner of Conducting Hearing, 2-5-91;
- Rule 1218, Report and Recommendations, Examiner's Hearings, 1-11-82;
- Rule 1218, Report and Recommendations, Examiner's Hearings, 2-5-91;
- Rule 1219, Disposition of Cases Heard by Examiners, 1-11-82;
- Rule 1219, Disposition of Cases Heard by Examiners, 2-5-91;
- Rule 1220, De Novo Hearing Before Commission, 1-11-82;
- Rule 1220, De Novo Hearing Before Commission, 12-30-86;
- Rule 1220, De Novo Hearing Before Commission, 2-5-91;
- Rule 1221, Notice of Commission and Division Orders, 1-11-82;
- Rule 1221, Notice of Commission and Division Orders, 2-5-91;
- Rule 1222, Rehearings, 1-11-82;

Rule 1222, Rehearings, 2-5-91.

History of Repealed Material:

Rule 1206, Personal Service of Notice, Repealed 4-12-91.

19 NMAC 15.N, Procedure (filed 1-18-96) repealed - -05.

Other History: Rule 1201, Necessity for Hearing, filed 2-5-91; Rule 1202, Emergency Orders, filed 2-5-91; Rule 1203, Method of Initiating a Hearing, filed 2-5-91; Rule 1204, Publication of Notice for Hearing, filed 4-12-91; Rule 1205, Contents of Notice of Hearing, filed 2-5-91; Rule 1207, Additional Notice Requirements, filed 2-5-91; Rule 1208, Filing Pleadings, filed 2-5-91; Rule 1209, Continuance of Hearing Without New Service, filed 2-5-91; Rule 1210, Conduct of Hearings, filed 2-5-91; Rule 1211, Power to Require Attendance of Witnesses and Production of Evidence, filed 2-5-91; Rule 1212, Rules of Evidence, filed 2-5-91; Rule 1213, Examiners' Qualifications and Appointment, filed 2-5-91; Rule 1214, Referral of Cases to Examiners, filed 2-5-91; Rule 1215, Examiner's Power of Authority, filed 2-5-91; Rule 1216, Hearings Which Must be Held Before the Commission, filed 2-5-91; Rule 1217, Examiner's Manner of Conducting Hearing, filed 2-5-91; Rule 1218, Report and Recommendations, Examiner's Hearings, filed 2-5-91; Rule 1219, Disposition of Cases Heard by Examiners, filed 2-5-91; Rule 1220, De Novo Hearing Before Commission, filed 2-5-91; Rule 1221, Notice of Commission and Division Orders, filed 2-5-91; Rule 1222, Rehearings, filed 2-5-91 were all renumbered, reformatted and replaced by 19 NMAC 15.N, Procedure, effective 2-1-96.

19 NMAC 15.N, Procedure, filed 1-18-96 was renumbered, reformatted and replaced by 19.15.14 NMAC, Procedure, effective 8-29-03.

EXISTING RULE

PROPOSED RULE

	<u>EXISTING RULE</u>		<u>PROPOSED RULE</u>	
	Rulemaking	Adjudicatory	Rulemaking	Adjudicatory
Initiate hearing	any person	any person	any person	Requires standing
Technical testimony	all parties	all parties	any person	Standing Appearance @ 6 days Intervene to be a party
Cross-examine	all parties	all parties	not specified	Be a party
Published Notice	20 days	not specified	20 days	10 days
Pre-hearing submittal	none	PH stmt @ 4 days List witnesses	PH stmt @ 5 days List witnesses All exhibits Modifications @ 10 days	PH stmt @ Thursday (Thurs = 5 days) List witnesses All exhibits

Three-week calendar of events within 10-day notice period of an adjudatory hearing.

N = notice published.

A = appearance filed.

PH = Pre-hearing statement, witnesses, exhibits filed.

H = Hearing date.

SUN	MON	TUE	WED	THU	FRI	SAT
			N Notice	10	9	
	8	7	A Appear 6	PH Statemt 5	4	
	3	2	1	H Hearing		

Numbers indicate days prior to the hearing, per Rule 1226.

19.15.14.1209

ADJUDICATORY PROCEEDING INTERVENTION

A. [the same]

B. [new proposed language] Where an intervenor's standing is disputed, the division examiner or commission chairman may, at their discretion, permit the intervention if they find that the participation of the intervenor is substantially in the public interest, or that it poses no undue prejudice to the other parties.

C. [formerly B] The division examiner or commission chairman may, at their discretion, allow late intervenors to participate if the intervenor files a written notice on or after the date provided in Subsection A of 19.15.14.1206 NMAC, or by oral appearance on the record at the hearing.

19.15.14.1206

INITIATING AN ADJUDICATORY HEARING

- A. The division, attorney general, any operator or producer or any other person may file an application with the division for an adjudicatory hearing. The division director, upon receiving a division examiner's recommendation, may dismiss an application for an adjudicatory proceeding upon a showing that the applicant does not have standing in the subject matter, AND THAT THE APPLICATION IS NOT SUBSTANTIALLY IN THE PUBLIC INTEREST. The person applying for the hearing or an attorney representing that person shall sign the application requesting an adjudicatory hearing. . . . [rest of the section stays the same]

SUGGESTED NEW LANGUAGE IN ALL CAPS