

# NMAC

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Issuing agency name and address:

Oil Conservation Commission 1220 S. St. Francis Dr., Santa Fe, NM 87505

Agency DFA code:

521

Contact person's name:

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Type of rule action:

New ☐ Amendment ☒ Repeal ☐ Emergency ☐ Renumber ☐

(ALD Use Only)  
Most Recent Filing Date:

Title number:

19

Title name:

Natural Resources and Wildlife

Chapter number:

15

Chapter name:

Oil and Gas

Part number:

4

Part name:

Adjudication

Amendment Description (If filing an Amendment):

Amending three sections.

Amendment's NMAC Citation (If filing an Amendment):

Amending Sections 1, 3, and 12 of 19.15.4 NMAC.

Are there any materials incorporated by reference?

Yes ☐ No ☒

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received?

Yes ☐ No ☐ Public domain ☐

### Concise Explanatory Statement for rulemaking adoption:

Specific statutory or other authority authorizing rulemaking:

Sections 70-2-6, 70-2-11, 70-2-12(B) and 70-2-12.2 NMSA 1978

Notice date(s):

2/27/2018

Rule Hearing date(s):

4/17/2018-4/20/2018

Rule Adoption date:

6/11/2018

Rule Effective date:

6/26/2018

### Findings required for rulemaking adoption.

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

See attached 42 page document titled Oil Conservation Commission Order No. R-14689, Order of the Commission.

Continued on next page

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**Findings required for rulemaking adoption  
(continued)**

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**Issuing authority (If delegated, authority letter must be on file with ALD):**

**Name:**

Heather Riley

Check if authority has been delegated

☐

**Title:**

Oil Conservation Commission Chair

**Signature: (BLACK Ink only)**

Heather Riley

**Date signed:**

6/12/18

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This is an amendment to 19.15.4 NMAC, amending Sections 1, 3 and 12, effective 6/26/2018.

**19.15.4.1 ISSUING AGENCY:** ~~[Energy, Minerals and Natural Resources Department, Oil Conservation Division]~~ Oil Conservation Commission.

[19.15.4.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/2008; A, 6/26/2018]

**19.15.4.3 STATUTORY AUTHORITY:** 19.15.4 NMAC is adopted pursuant to the Oil and Gas Act, ~~[NMSA 1978,]~~ Section 70-2-6 NMSA 1978, which grants the oil conservation division and the oil conservation commission jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and ~~[NMSA 1978,]~~ Section 70-2-7 NMSA 1978, which provides that the division shall prescribe by rule its hearing procedures.

[19.15.4.3 NMAC - Rp, 19.15.14.3 NMAC, 12/1/2008; A, 6/26/2018]

**19.15.4.12 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:**

A. Applications for the following adjudicatory hearings before the division or commission, in addition to that 19.15.14.9 NMAC requires, as follows:

(1) **Compulsory pooling and statutory unitization.**

(a) The applicant shall give notice to ~~[an]~~ each 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). An applicant seeking compulsory pooling of a standard horizontal spacing unit need not give notice to affected persons in adjoining spacing units or tracts unless the division so directs.

(b) When the applicant has given notice as required in Subsection A of 19.15.4.9 NMAC, of a compulsory pooling application, ~~[the proposed unit is not larger in size than provided in 19.15.15 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 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 unopposed pooling applications for hearing. If the division finds the application complete, the information submitted with the application shall constitute the record in the case, and the division shall issue an order based on the record.

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

(2) **Unorthodox well locations.**

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(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, a 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, a mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant 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 working interest owners in that spacing unit.]

(e) (a) If the proposed well location is unorthodox by being located closer to the spacing unit's outer boundary than 19.15.15 NMAC, 19.15.16 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] each adjoining spacing unit in the same pool or formation located closer to the unorthodox well location than the minimum distance prescribed by the applicable rule or order. If an adjoining tract is not included in a spacing unit in the same pool or formation in which the well may be completed, then for such tract the applicant shall notify affected persons in the same pool or formation in any adjoining quarter-quarter section (if the proposed well will be completed in a pool where the standard spacing unit is 40 acres), or any adjoining quarter section (if the proposed well will be completed in a pool where the standard spacing unit is greater than 40 acres), that is located closer to the unorthodox well location than the minimum setback distance prescribed by the applicable rule or order.

(d) (b) If the proposed well location is unorthodox by [being located in] being in a different quarter-quarter section or quarter section than Subsection B of 19.15.15.10 NMAC or special pool orders provide, the applicant shall notify affected persons in all spacing units or tracts in the same pool or formation that adjoin the proposed well's spacing unit.

(3) **Non-standard proration unit.** The applicant shall notify all owners of [interest] interests in the mineral estate, including mineral interest owners and royalty owners, 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. This requirement shall not apply to applications for non-standard horizontal spacing units pursuant to Paragraph (5) of Subsection B of 19.15.16.15 NMAC.

(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) division-designated operators in the pool; and
- (ii) 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) division-designated operators in the pool; and
- (ii) 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 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 owners of interests in the mineral estate in the spacing unit if ownership is not common for commingled zones within the spacing unit.

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

(8) **Surface commingling.** The applicant shall give notice as Subsection C of 19.15.12.10 NMAC prescribes.

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

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**B. Type and content of notice.** The applicant shall send a notice 19.15.4.9 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~~ how protests may be made. When an applicant has been unable to locate 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 that was published at least 10 business days before the hearing 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 the applicant has:

- (1) complied with notice provisions of 19.15.4.9 NMAC;
- (2) conducted a good-faith diligent effort to find the correct addresses of persons entitled to notice; and
- (3) given notice at that correct address as 19.15.4.9 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 19.15.4.9 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.  
[19.15.4.12 NMAC - Rp, 19.15.14.1210 NMAC, 12/1/2008; A, 6/26/2018]