

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

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Oil Conservation Division

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION,
THROUGH THE ENGINEERING BUREAU CHIEF, FOR ADOPTION OF
AMENDMENTS TO RULES 1201, 1202, 1204, 1205, 1207 THROUGH 1209, AND
1221**

CASE NO. 13/87

APPLICATION FOR RULE AMENDMENTS

1. Rule 1201 [19.15.14.1201 NMAC] establishes procedures for notice applicable to rulemaking proceedings conducted by the Oil Conservation Commission or the Oil Conservation Division. There are certain ambiguities in the notice provisions of existing Rule 1201, and in the co-ordination of the provisions of this rule with the requirements of NMSA 1978 Section 14-4-7.1, as amended [regarding publication in the New Mexico register] and NMSA 1978 Section 10-15-1, as amended [Open Meetings Act]. To resolve these ambiguities the Division proposes to amend Rule 1201 (a) to eliminate the requirement for publication in multiple counties where a proposed rule change is of statewide application, and to require instead publication in a newspaper of general circulation in this state, and on the Division's website; (b) to prescribe the manner of dissemination of the hearing docket containing notice of the proposed rulemaking to interested persons; (c) to prescribe the time when official notice must be published in the New Mexico register; and (d) to enact other specific provisions concerning rulemaking hearings.

2. Rule 1202 [19.15.14.1202 NMAC], tracking the provisions of NMSA 1978 Section 70-2-23, as amended, authorizes the Division to issue emergency orders, without

hearing, which may remain in force for not more than fifteen (15) days. However, Rule 1203 [19.15.14.1203 NMAC] requires filing of an application for a hearing twenty-three (23) days in advance of the hearing, and Rule 1207 [19.15.14.1207 NMAC] provides that notice of any hearing must be given at least twenty (20) days prior to the hearing. There is no express provision for shortening these time requirements in case of emergency. The Division accordingly proposes amendment of Rule 1202 to provide expressly that the times for application for hearing and notice of hearing may be reduced in case of emergency.

3. Rule 1204 [19.15.14.1204 NMAC] requires notice of hearings before division examiners, as well as notice of hearings before the Commission, to be published in a newspaper of general circulation in each affected county. Because of the large number of hearings conducted before Division examiners, this requirement has become a financial burden on the Division disproportionate to the benefit afforded to the public by newspaper publication of such notices. Accordingly, the Division proposes to amend Rule 1204 to provide for public notice of Division examiner hearings by posting on the Division's website and by dissemination to interested persons who have requested notification, in lieu of newspaper publication.

4. Rule 1205 [19.15.14.1205 NMAC] prescribes the contents of public notices of hearing of specific applications. The present rule provides that the notice must identify the common source of supply that may be affected in all cases unless the application will affect the entire state. The requirement is necessary in some cases to alert persons who may be affected by the application, but is not relevant in other types of cases, and may result in erroneous notices being inadvertently given. Accordingly, the Division proposes

amendment of Rule 1205 to specify contents of the notice of public notices for particular types of cases.

5. Rule 1207 [19.15.14.1207 NMAC] specifies the persons to whom personal notice of hearings must be given, the manner and time of giving such notice, and the contents of such notice. Amendments to other provisions of the Division's rules enacted subsequent to the adoption of existing Rule 1207, or proposed for enactment in this application, create conflicts with provisions of existing Rule 1207. Accordingly, the Division proposes to amend Rule 1207: (a) to delete the requirement, in compulsory pooling cases submitted under the abbreviated procedure provided in this rule, for geologic or engineering testimony, in conformity with new Rule 35 [19.15.1.35 NMAC]; (b) to incorporate by reference the specific notice provisions for surface commingling applications set forth in new Rule 303 [19.15.5.303 NMAC]; and (c) to require the applicant to give notice by publication to parties whose whereabouts are unknown, because such notice will no longer be given by the Division if amendments to Rule 1205 proposed herein are adopted.

6. Rule 1207 provides for an abbreviated procedure for presenting compulsory pooling applications. Under the present rule, this abbreviated procedure is only available if the whereabouts of one of more parties to be pooled are unknown. The abbreviated procedure is equally appropriate in cases where no opposition is reasonably to be expected regardless of whether there are any unlocated parties. Accordingly, the Division proposes to amend Rule 1207 to extend the applicability of the abbreviated procedure to all compulsory pooling cases in which no opposition is reasonably expected.

7. Rule 1208 [19.15.14.1208 NMAC] provides for the filing and service of pre-hearing statements three (3) days prior to any hearing. Experience indicates that this provision does not afford sufficient time for the examiners and opposing counsel to prepare adequately for hearings. Accordingly the Division proposes to amend Rule 1208 to require pre-hearing statements to be filed four (4) days prior to the hearing.

8. Rule 1209 [19.15.14.1209 NMAC] provides for notice of continuance of hearings before the Commission or Division hearing examiners by announcement at the scheduled hearing, in lieu of re-publication in accordance with Rule 1204. Rule 1209 as presently worded might be construed to require preparation of a record in each continued case of the announcement of the continuance in such case. The preparation of such a record is unnecessary. The Commission, by Order No. R-11964, adopted on May 15, 2003, amended Rule 1209 to delete language that might be construed to require such a record. However, notice of the proposed adoption of that amendment was not published in the New Mexico Register as required by NMSA 1978 Section 14-4-7.1, as amended. Accordingly, the Division proposes that the Commission reconsider and re-adopt this amendment to Rule 1209.

9. Rule 1221 prescribes the persons to whom the Division is to deliver copies of orders adopted by the Division or the Commission. The present rule is vague in certain respects. Accordingly, the Division proposes to amend Rule 1221 to more specifically define the category of persons to whom such copies are to be delivered.

10. A copy of the proposed amendments to Rules 1201, 1202, 1204, 1205, 1207, 1208, 1209 and 1221 is attached hereto as Exhibit A.

WHEREFORE, the Engineering Bureau Chief of the Division hereby applies to the Commission to enter an order:

A. Adopting amended Rules 1201, 1202, 1204, 1205, 1207, 1208, 1209 and 1221, as set forth in Exhibit A hereto.

B. Granting such other and further relief as the Commission deems appropriate.

RESPECTFULLY SUBMITTED,



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19.15.14.1201 RULEMAKING PROCEEDINGS:

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

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

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

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

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

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

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

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

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

19.15.14.1202 EMERGENCY ORDERS AND RULES:

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

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

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

19.15.14.1204 PUBLICATION OF NOTICE OF HEARING:

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

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

19.15.14.1205 CONTENTS OF NOTICE OF HEARING:

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

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

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

19.15.14.1207 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:

A. Applicants for the following adjudicatory hearings before the division or commission shall give notice, in addition to that required by 19.15.14.1204 NMAC, of the filing of the application and of the date, time and place of the hearing, as set forth below:

(1) Compulsory Pooling and Statutory Unitization:

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

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

(i) a statement that no opposition ~~for hearing~~ is expected and why;

(ii) a map outlining the spacing unit(s) to be pooled, showing the nature and percentage of the ownership interests and location of the proposed well;

(iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that a diligent search has been conducted of all public records in the county where the well is located and of phone directories, including computer searches;

(iv) the names of the formations and pools to be pooled (Note: the division cannot pool a spacing unit larger in size than provided in these rules or applicable special pool orders);

(v) a statement as to whether the pooled unit is for gas and/or oil production (see note under iv, above);

(vi) written evidence of attempts made to gain voluntary agreement including but not limited to copies of relevant correspondence;

~~(vii)~~—geological map(s) of the formation(s) to be tested and a geological and engineering assessment of the risk involved in the drilling of the well and a proposed risk penalty to be assessed against any working interest owner who does not pay its share of estimated well costs;

~~(viii)~~(vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;

~~(ix)~~(viii) the location and proposed depth of the well to be drilled on the pooled units; and

~~(x)~~(ix) a copy of the authorization for expenditure (AFE) to be submitted to the interest owners in the well.

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

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

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

(2) Unorthodox Well Locations:

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

(i) the division-designated operator;

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

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

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

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

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

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

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

(i) all division-designated operators in the pool; and

(ii) all owners of interests in the mineral estate in existing spacing units with producing wells.

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

(i) all division-designated operators in the pool; and

(ii) all division-designated operators of wells within the same formation as the pool and within one (1) mile of the outer boundary of the pool which have not been assigned to another pool.

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

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

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

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

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

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

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

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

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

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

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

E. In the case of an administrative application where the required notice was sent and a

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

19.15.14.1208 PLEADINGS: COPIES: AND PRE-HEARING STATEMENTS

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

B. Parties to an adjudicatory proceeding who intend to present evidence at the hearing must shall file a pre-hearing statement, and serve a copy thereof on opposing counsel of record in the manner provided in subsection A of this section, at least four-three days in advance of a scheduled hearing before the division or the commission. The statement must include: the names of the parties and their attorneys; a concise statement of the case; the names of all witnesses the party will call to testify at the hearing; the approximate time the party will need to present its case; and identification of any procedural matters that are to be resolved prior to the hearing.

[9-15-55...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1208, 8-29-03]

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

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

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

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

NOTICE OF RULE MAKING

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing concerning amendment of the following procedural provisions: 19.15.14.1201 NMAC (Rulemaking Proceedings); 19.15.14.1202 NMAC (Emergency Orders and Rules); 19.15.14.1204 NMAC (Publication of Notice of Hearing); 19.15.14.1205 NMAC (Contents of Notice of Hearing); 19.15.14.1207 NMAC (Notice Requirements for Specific Adjudications); 19.15.14.1208 NMAC (Pleadings: Copies); 19.15.14.1209 NMAC (Continuance of Hearing Without New Service); and 19.15.14.1221 NMAC (Copies of Commission and Division Orders). The hearing will be conducted in Porter Hall, 1220 South St. Francis Drive, Santa Fe, New Mexico. The hearing will commence at 9:00 A.M. on October 16, 2003. These changes will have state-wide application. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Division Administrator Florene Davidson at 505-476-3458 or through the New Mexico Relay Network (1-800-659-1779) immediately. Copies of the text of the proposed rule and amendments are available from Ms. Davidson at 505-476-3458 or from the Division's Internet web site at <http://www.emnrd.state.nm.us/ocd/whatsnew.htm> Written comments, amendments and substitutions may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at 476-3462.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 22nd day of September, 2003.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

Lori Wrotenbery, Director

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