

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 4 ADJUDICATION

19.15.4.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.4.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/2008; A, 6/26/2018]

19.15.4.2 SCOPE: 19.15.4 NMAC applies to persons engaged in adjudicatory proceedings before the division or the commission.
[19.15.4.2 NMAC -Rp, 19.15.14.2 NMAC, 12/1/2008]

19.15.4.3 STATUTORY AUTHORITY: 19.15.4 NMAC is adopted pursuant to the Oil and Gas Act, 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 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]

19.15.4.4 DURATION: Permanent.
[19.15.4.4 NMAC - Rp, 19.15.14.4 NMAC, 12/1/2008]

19.15.4.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.4.5 NMAC - Rp, 19.15.14.5 NMAC, 12/1/2008]

19.15.4.6 OBJECTIVE: To establish procedures for adjudicatory hearings before the division or commission.
[19.15.4.6 NMAC - Rp, 19.15.14.6 NMAC, 12/1/2008]

19.15.4.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.4.8 INITIATING AN ADJUDICATORY HEARING:

A. The division, attorney general, an operator or producer or other person with standing may file an application with the division for an adjudicatory hearing. The 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. 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 e-mail 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 division rules or a division order requires.

B. Applicants for adjudicatory hearings shall file written applications with the division clerk at least 30 days before the application's scheduled hearing date.

[19.15.4.8 NMAC - Rp, 19.15.14.1206 NMAC, 12/1/2008]

19.15.4.9 ADJUDICATORY HEARING NOTICE:

A. The division shall publish notice of an adjudicatory hearing in the name of the "State of New Mexico", signed by the 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 e-

mail address and fax number if available;

- (4) a case name and number;
- (5) a brief description of the hearing's purpose;
- (6) a reasonable identification of the adjudication's subject matter that alerts persons who

may be affected if the division grants the application;

(7) if the application seeks to adopt, revoke or amend special pool orders; establish or alter a non-standard unit; permit an unorthodox location or establish or affect a 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

(8) 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 20 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 affects, or if the application's effect will be statewide, in a newspaper of general circulation in the state.

[19.15.4.9 NMAC - Rp, 19.15.14.1207 NMAC, 12/1/2008]

19.15.4.10 PARTIES TO ADJUDICATORY PROCEEDINGS:

A. The parties to an adjudicatory proceeding shall include:

- (1) the applicant;
- (2) a person to whom statute, rule or order requires notice (not including those persons to

whom 19.15.4.9 NMAC 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

- (3) a person who properly intervenes in the case.

B. 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 C of 19.15.4.10 NMAC, by oral appearance on the record at the hearing.

C. A party who has not entered an appearance at least one business day prior to the pre-hearing statement filing date provided in Paragraph (1) of Subsection B of 19.15.4.13 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.

D. A party shall be entitled to a continuance of any hearing if it did not receive notice of the hearing at least three business days prior to the date for filing a timely appearance as 19.15.4 NMAC provides.

[19.15.4.10 NMAC - Rp, 19.15.14.1208 NMAC, 12/1/2008]

19.15.4.11 ADJUDICATORY PROCEEDING INTERVENTION:

A. A person with standing with respect to the case's subject matter may intervene by filing a written notice of intervention with the division or commission clerk, as applicable, at least one business 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 e-mail

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 19.15.4.8 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 intervenor fails to show that the intervenor has standing, unless the intervenor shows that intervenor's participation will contribute substantially to the prevention of waste, protection of correlative rights or protection of public health or the environment.

[19.15.4.11 NMAC - Rp, 19.15.14.1209 NMAC, 12/1/2008]

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 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, 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.

(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 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.

(b) If the proposed well location is unorthodox by 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 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 for 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.

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 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]

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

A. Pleadings. Applicants shall file two sets of pleadings and correspondence in cases pending before a division examiner with the division clerk and six sets 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 business day immediately preceding the date 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 a party who has entered an appearance or, if the party is represented, the party's attorney of record. Service upon a party who has not filed a pleading containing a facsimile number or e-mail address may be made by ordinary first class mail. 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 a 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. An 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 e-mail and facsimile number if available.

B. Pre-hearing statements.

(1) A 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, for parties that are represented, their attorneys in the manner Subsection A of 19.15.4.13 NMAC provides, at least four business 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 Thursday 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 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) A party other than the applicant shall include in its pre-hearing statement a statement of the extent to which the party supports or opposes the issuance of the order the applicant seeks and the reasons for such support or opposition. In cases to be heard by the commission, each party shall include copies of 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 an attorney 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 present 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 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.

[19.15.4.13 NMAC - Rp, 19.15.14.1211 NMAC, 12/1/2008]

19.15.4.14 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. A 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 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 an attorney. Parties may appear and participate in hearings either pro se (on their own behalf) or through an attorney. Corporations, partnerships, governmental entities, political subdivisions, unincorporated associations and other collective entities may appear only through an attorney or through a duly authorized officer or member. Participation in adjudicatory hearings shall be limited to parties, as defined in 19.15.4.10 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 other persons present at the hearing to make a relevant statement, but not to present evidence or cross-examine witnesses. A person making a statement at an adjudicatory hearing shall be subject to cross-examination by the parties or their attorneys.
[19.15.4.14 NMAC - Rp, 19.15.14.1212 NMAC, 12/1/2008]

19.15.4.15 CONTINUANCE OF AN ADJUDICATORY HEARING: A division examiner or the commission chair may continue an adjudicatory hearing before a division examiner or the commission held after due notice to a specified time and place without the necessity of notice of the same being served or published.
[19.15.4.15 NMAC - Rp, 19.15.14.1213 NMAC, 12/1/2008]

19.15.4.16 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 director or the director's authorized representative have statutory power to subpoena witnesses and to require the production of books, papers, records, other tangible things or electronic data in a proceeding before the commission or division. The director or the director's authorized representative shall issue a subpoena for attendance at a hearing upon a party's written request. The director or the director's authorized representative shall, upon a party's request, issue a subpoena for production of books, papers, records, other tangible things or electronic data in advance of the hearing. The director or the division examiner assigned to hear the case may consider pre-hearing motions, such as motions for protection or quashing of subpoenas, prior to the hearing pursuant to Subsection C of 19.15.4.16 NMAC or to reserve such matters for consideration at a hearing on the merits. The commission and 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 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 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 director or examiner may issue a pre-hearing order following the pre-hearing conference. The 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 other parties who, at the time such conference is scheduled, have filed appearances in the case.

C. Hearings on motions. The director or a 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 director shall rule on a motion; provided that the director may refer a 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 a motion, the 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 director or division examiner may conduct a hearing on a motion, following written or oral notice to interested parties, either at a pre-hearing conference or otherwise. If the commission or division receives oral testimony at a hearing, the commission or division examiner shall ensure that a record is made of the testimony as at other hearings.
[19.15.4.16 NMAC - Rp, 19.15.14.1214 NMAC, 12/1/2008]

19.15.4.17 RULES OF EVIDENCE AND EXHIBITS FOR ADJUDICATORY HEARINGS:

A. Presentation of evidence. Subject to other provisions of 19.15.4.16 NMAC, the commission or division examiner shall afford full opportunity to the 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 admit relevant evidence,

unless it is immaterial, repetitious or otherwise unreliable. 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 a previous hearing at a commission hearing shall include copies of the record for each commissioner.

[19.15.4.17 NMAC - Rp, 19.15.14.1215 NMAC, 12/1/2008]

19.15.4.18 DIVISION EXAMINER'S QUALIFICATIONS, APPOINTMENT AND REFERRAL OF

CASES: The director shall appoint as division examiners division staff who are licensed attorneys, or who have experience in hydrogeology, hydrology, geology, petroleum engineering, environmental engineering or a related field and a college degree in geology, engineering, hydrology or related field. Nothing in 19.15.4.18 NMAC shall prevent a commission member from serving as a division examiner. The director may refer a matter or proceeding to a division examiner for hearing in accordance with 19.15.4 NMAC.

[19.15.4.18 NMAC - Rp, 19.15.14.1216 NMAC, 12/1/2008]

19.15.4.19 DIVISION EXAMINER'S POWER AND AUTHORITY: The division examiner to whom the director refers a matter under 19.15.4 NMAC shall have full authority to hold hearings on such matter in accordance with 19.15.4 NMAC, subject only to such limitations as the director may order in a particular case. The division examiner shall have the power to perform all acts and take all measures necessary and proper for the hearing's efficient and orderly conduct, 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 the record of the proceedings to the director as provided in 19.15.4.21 NMAC.

[19.15.4.19 NMAC - Rp, 19.15.14.1217 NMAC, 12/1/2008]

19.15.4.20 ADJUDICATORY HEARINGS THAT SHALL BE HELD BEFORE THE COMMISSION:

Notwithstanding other provisions of 19.15.4 NMAC, the hearing on a matter shall be held before the commission if:

A. it is a hearing pursuant to Section 70-2-13 NMSA 1978; or

B. the director directs the commission to hear the matter.

[19.15.4.20 NMAC - Rp, 19.15.14.1218 NMAC, 12/1/2008]

19.15.4.21 REPORT AND RECOMMENDATIONS FROM DIVISION EXAMINER'S HEARING:

Upon conclusion of a 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 director with the certified record of the hearing.

[19.15.14.1219 NMAC - Rp, 19.15.14.1219 NMAC, 12/1/2008]

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

[19.15.4.22 NMAC - Rp, 19.15.14.1220 NMAC, 12/1/2008]

19.15.4.23 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 a 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. A 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 the other parties who appeared in the case, as Subsection A of 19.15.4.10 NMAC provides. The party shall attach a proposed stay order to the motion. The director may grant a stay pursuant to a motion for stay or upon the director's own initiative, after according 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 an affected party. A director's order staying a commission order shall be effective only until the commission acts on the motion for stay.

[19.15.4.23 NMAC - Rp, 19.15.14.1221 NMAC, 12/1/2008]

19.15.4.24 COPIES OF COMMISSION AND DIVISION ORDERS: Within 10 business days after the division or commission issues an order in an adjudicatory case, including an 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 19.15.4.24 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 division or commission clerk or by entering an appearance on the record at a hearing.

[19.15.4.24 NMAC - Rp, 19.15.14.1222 NMAC, 12/1/2008]

19.15.4.25 REHEARINGS: Within 20 days after entry of a commission order a party of record whom the order adversely affects may file with the commission clerk an application for rehearing on a matter the order determined, setting forth the respect in which the party believes the order is erroneous. The commission shall grant or refuse the application in whole or in part within 10 business 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.

[19.15.14.25 NMAC - Rp, 19.15.14.1223 NMAC, 12/1/2008]

19.15.4.26 EX PARTE COMMUNICATIONS:

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

B. The prohibition in Subsection A of 19.15.4.26 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 Subsection A of 19.15.4.26 NMAC, 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 a case's management.

[19.15.4.26 NMAC - Rp, 19.15.14.1224 NMAC, 12/1/2008]

HISTORY of 19.15.4 NMAC:

History of Repealed Material: 19.15.14 NMAC, Procedure (filed 09/16/2005) repealed 12/1/2008.

NMAC History:

Those applicable portions of 19.15.14 NMAC, Procedure (Sections 1-6, 1206 - 1224) (filed 09/16/2005) were replaced by 19.15.4 NMAC, Adjudication, effective 12/1/2008.