

This is an amendment to 19.15.14 NMAC, Sections 1201, 1220, 1204, 1205, 1207, 1208, 1209, and 1221 to be effective 06/15/04. The rest of the rule has corrections made to unnecessary capitalization with no substantive changes.

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 docket and shall send the docket to]~~ on the applicable docket for the commission or division hearing at which the matter will be heard, 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C. If the rule proposed to be adopted, amended or rescinded is of statewide application, the hearing shall be conducted before the commission in the first instance unless the division director otherwise directs.

D. 19.15.14.1201 NMAC shall not apply to special pool rules, which may be adopted, amended or rescinded in adjudicatory proceedings subject to the notice provisions of Sections 1204 and 1207 of 19.15.14 NMAC.

[1-1-50...2-1-96; A, 7-15-99; 19.15.14 NMAC - Rn, 19 NMAC 15.N.1201, 8-29-03; A, 06/15/04]

19.15.14.1202 EMERGENCY ORDERS AND RULES:

A. Notwithstanding any other provision of ~~[these rules,]~~ 19.15 NMAC, 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 19.15.14 NMAC, 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; A, 06/15/04]

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 ~~[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.]~~ (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 who has requested in writing to be notified of such hearings.

B. In addition, the division shall give notice of each hearing before the commission 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; A, 06/15/04]

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 or alter 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 statutory 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; A, 06/15/04]

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, 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 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]~~ Subparagraph (a) of Paragraph (1) of Subsection A of 19.15.14.1207 NMAC, of an application for compulsory pooling and the application is unopposed by those owners located, the applicant may file under the following alternate procedure. 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]~~ this procedure does not apply to an application to pool a spacing unit larger in size than provided in [these rules] 19.15.3.104 NMAC 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]~~ item (iv) of Subparagraph (b) of Paragraph (1) of Subsection A of 19.15.14.1207 NMAC;

(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)]~~ 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~~ 19.15.3.104 NMAC or applicable special pool orders, 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)](2) 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~~ 19.15.14.1207 NMAC 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 persons entitled to notice 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] 19.15.14.1207 NMAC 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] 19.15.14.1207 NMAC notice has been given at that correct address as required by [this rule] 19.15.14.1207 NMAC. 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] 19.15.14.1207 NMAC 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, time and place 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; A, 06/15/04]

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 ~~[must]~~ who intend to present evidence at the hearing shall file a pre-hearing statement [three], and serve a copy thereof on opposing counsel of record in the manner provided in Subsection A of 19.15.14.1208 NMAC, at least four days in advance of a scheduled hearing before the division or the commission[-], but in no event later than the Friday preceding the scheduled hearing. 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; A, 06/15/04]

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; A, 06/15/04]

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 19.15.14.1221 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 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; A, 06/15/04]