

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

**IN THE MATTER OF PROPOSED  
AMENDMENTS TO THE COMMISSION'S  
RULE ON RULEMAKING, 19.15.3 NMAC**

**CASE NO. 15738  
ORDER NO. R-14362-C**

**ORDER OF THE COMMISSION**

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission") on the application of Commission Counsel ("Counsel") to amend its rule on rulemaking, 19.15.3 NMAC. The Commission, having conducted a hearing and deliberated on September 21, 2017, and having considered the testimony, the record, and the arguments of the parties, and being otherwise fully advised, enters the following findings, conclusions, and order.

**THE COMMISSION FINDS THAT:**

1. Counsel submitted a proposal to amend portions of 19.15.3 NMAC to the Commission at a Commission meeting on May 18, 2017. The Commission voted to commence rulemaking to amend 19.15.3 NMAC and issued an Order. Order R-14362. *See* 19.15.3.8 NMAC ("The commission may commence a rulemaking proceeding by issuing an order initiating rulemaking.").
2. The Part proposed for amendment, 19.15.3 NMAC, provides the procedures for the Commission to adopt rules.
3. The Oil and Gas Act ("Act"), NMSA 1978, Section 70-2-7 (1987), authorizes the adoption of rules of procedure for hearings conducted under the Act. The Act requires that a hearing be held before the Commission before a rule can be adopted. NMSA 1978, Section 70-2-12.2 (2015). The 2017 amendments to the State Rules Act, which govern rulemaking procedures, provide that each agency may adopt its own procedural rules. NMSA 1978, Section 14-4-5.8 (2017).
4. The Commission initially scheduled a hearing on the proposed rule changes for July 13, 2017 and then continued the hearing to August 10, 2017 and then to September 21, 2017. Orders R-14362, R-14362-A, and R-14362-B.
5. Notice of the rulemaking was provided as required by NMSA 1978, Section 14-4-5.2 (2017) and 19.15.3.9 NMAC, including publication in the New Mexico Register on August 15, 2017. (Exhibit 3).

6. The Commission conducted a public hearing on the proposed rule changes on September 21, 2017, and allowed an opportunity for all persons to be heard.

7. A pre-hearing statement was filed by Counsel. Proposed modifications to the rule change were filed by Counsel and by the New Mexico Oil and Gas Association ("NMOGA"). No other written comments were submitted.

8. Counsel appeared at the hearing and presented William Brancard as a witness. No other person testified or offered evidence at the hearing.

9. The purposes of the proposed changes to 19.15.3 NMAC include:

(a) Bringing Rule 19.15.3 NMAC into compliance with statutory changes including (i) amendments to the Oil and Gas Act, NMSA 1978, Section 70-2-12.2, that provide for the adoption and filing of rules by the Commission and allow for the appeal of rules, and (ii) amendments to the State Rules Act, Laws 2017 Chapter 137, that provide a uniform process for the adoption of rules by all state agencies.

(b) Clarifying and streamlining certain procedures in 19.15.3 NMAC including the initiation of rulemaking and the filing of pre-hearing statements and making other changes to update and improve the rule.

10. 19.15.3.1 (Issuing Agency): The proposed change to 19.15.3.1 clarifies that the Commission is the agency adopting the rule. The new Section 70-2-12.2 requires that a rule may only be adopted under the Oil and Gas Act after a hearing before the Commission.

11. 19.15.3.3 (Statutory Authority). The proposed amendments to this section provide that, in addition to the general rulemaking authority under the Act, these proposed changes are authorized by a new section in the Act, Section 70-2-12.2, and by the changes to the Rules Act in Chapter 137. Section 10 of Chapter 137 specifically authorizes each agency to adopt its own procedural rules.

12. 19.15.3.7 (Definitions). The proposed changes note that three terms used in this rule have definitions in the Rules Act: "proceeding", "proposed rule", and "rule". The Rules Act now provides that a term which is defined by statute should not be defined in rule. NMSA 1978, Section 14-4-5.7 (2017). Two definitions are proposed to be added. "Party" is defined and used in 19.15.3.12 NMAC to assist with the conduct of the hearing. "Technical testimony" is a term used in the existing rule but not defined. This definition is taken from the rulemaking procedures of the Environmental Improvement Board, 20.1.1.7(R) NMAC, and the Water Quality Control Commission, 20.1.6.7(T) NMAC.

13. 19.15.3.8 (Rulemaking Initiation). The proposed changes to Subsection A are designed to create one, rather than two, methods for initiating a rulemaking proceeding. Currently any party may initiate a rulemaking by filing an application or the Commission

may initiate a proceeding on its own by issuing an order. The changes would keep the application process. The changes to Subsection C require the Commission to determine, at a public meeting, whether to go forward with the rulemaking application and, if so, whether to issue any procedural orders. Subsection C also codifies the current Commission practice of allowing the Chair (or a hearing officer appointed by the Commission) to decide on procedural matters prior to the hearing.

In Subsection B, and elsewhere in this proposed rule, references to delivery by facsimile are removed. The Rules Act does not mention faxing as a means of communication but does specifically mention mail and electronic mail. The requirement for six copies of the application is also eliminated and replaced by a requirement to provide an electronic copy.

A few changes to this section are designed to use consistent terms throughout the rule, particularly terms defined in the Rules Act, such as "proposed rule".

14. 19.15.3.9 (Rulemaking Notice). The proposed changes to this section involve replacing the Commission's notice requirements with those found in the Rules Act amendments. The new law includes a definition for the term "provide to the public", which outlines who will receive the various notices in the Act. NMSA 1978, Section 14-4-2(E). The Rules Act requires that the agency "provide to the public" and publish in the New Mexico Register a notice of proposed rulemaking at least 30 days before the public hearing. Section 14-4-5.2. The list of notice recipients in 19.15.3.9(A) NMAC comes from the definition of "provide to the public". The only addition is the publication in a newspaper of general circulation which is not required by the Rules Act but is a long-standing requirement of the Commission.

The Rules Act also specifies the content of the public notice and that content is included in Subsection B. Section 14-4-5.2. Most of these elements are part of the Commission's existing notices. New requirements include citation to legal authority for the rule and a citation to any technical information that served as a basis for the proposed rule.

15. 19.15.3.10 (Comments on Rulemaking). The only proposed substantive change to this section is moving the deadline for written comments from five business days before the hearing to the date of the hearing. This change is necessitated by two sections in the new Rules Act: one which requires that notice be published at least 30 days before the hearing and the other which requires the notice provide a public comment period of at least 30 days. NMSA 1978, Sections 14-4-5.2 and 14-4-5.3. Another section requires that the public be given a reasonable opportunity to submit written comments at the hearing. Section 14-4-5.3(B). To reconcile these requirements, it is necessary to allow written comments to be submitted up to and at the hearing.

16. 19.15.3.11 (Rulemaking Hearing Participation). The proposed changes to this section are discretionary. The Rules Act directs each agency to determine "the manner in which parties to the proceeding and members of the public will be able to participate in

public hearings.” Section 14-4-5.3(B). The changes condense the pre-hearing submittals to a pre-hearing statement which can include modifications to the proposed rule. The statement must be 10 business days before the hearing. Based on comments submitted by NMOGA, the Commission provided that the pre-hearing statement must be used by a person wishing solely to cross-examine witnesses at the hearing and rejected the proposed Subsection C on an entry of appearance.

17. 19.15.3.12 (Rulemaking Hearings). The only proposed changes are designed to employ consistent terminology. Subsections D, E, and F have been moved to new sections because they involve actions that occur after the hearing, and the Rules Act has added requirements for each of these actions.

18. 19.15.3.13 (Commission Deliberation and Action). This is a new section, which includes prior material and adds requirements from the Rules Act. Subsections A, B, and C are largely taken from the current 19.15.3.12(E). Subsection C also makes it explicit that the Commission Order will serve the purpose of the “concise explanatory statement” now required by the Rules Act. NMSA 1978, Section 14-4-5.5. Subsection D provides for the termination of a rulemaking in accordance with the Rules Act. Section 14-4-5. The Rules Act now provides for an automatic termination after two years.

19. 19.15.3.14 (Record). The proposed changes comply with the revised Rules Act, which requires each agency to maintain the record, have it available for inspection, and have it available on the Sunshine Portal. Section 14-4-5.4(A). The Rules Act also defines what the record must contain. Section 14-4-5.4(B). Most of the requirements fit with current Commission practice.

20. 19.15.3.15 (Filing and Appeal). This section has been expanded to include requirements from both the Rules Act and the Oil and Gas Act. Subsection A seeks to resolve 2 different deadlines in the Rules Act and the Oil and Gas Act. The Oil and Gas Act does not allow the rule to be filed with the Records Center until 20 days after the Commission has issued an order or after the commission has refused a rehearing application. NMSA 1978, §70-2-12.2 (B). This allows the rehearing period under Section 70-2-25 to be completed. The Rules Act, however, requires the rule to be filed within 15 days after the adoption of the rule. Section 14-4-5(D). Subsection B follows the process in the Oil and Gas Act and states that the end of the 20-day rehearing period or the action of the Commission on a rehearing request constitutes the “adoption of the rule” for the purposes of the Rules Act. The rule must then be filed within 15 days. The Commission Order, which serves as the “concise explanatory statement” under the Rules Act, must also be filed with the Records Center. 2017 N.M. Laws, Ch. 137, § 2(A).

Subsection B provides for additional public notice upon filing of the rule. Section 14-4-5(D). The Commission will post or send a notice which include the rule and the order, or information on how to obtain the rule and the order. Newspaper publication is not required. The Records Center will handle publication in the New Mexico Register, and must do so within 90 days after the rule is adopted. *Id.*

Subsection C deals with the authority now given to the Records Center to make "minor, nonsubstantive corrections in spelling, grammar and format in filed rules". Section 14-4-3(D). If such changes are made, the Records Center must notify the agency and the Commission must provide public notice of the changes.

Subsection D provides for the appeal of rule changes, which is set forth in the Act, Section 70-2-12.2(C). The appeal goes directly to the Court of Appeals.

21. The Commission reviewed the proposed changes and made changes to 19.15.3.1, 19.15.3.7, 19.15.3.10, 19.15.3.11, and 19.15.3.14 NMAC.

22. The Commission finds that the proposed changes, as amended by the Commission, will implement the legislative changes to the Oil and Gas Act and the State Rules Act, and will clarify and improve the Commission's rule on rulemaking, 19.15.3 NMAC.

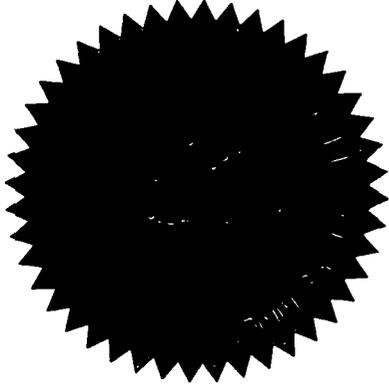
**THE COMMISSION CONCLUDES THAT:**

1. The Commission has jurisdiction, under the Oil and Gas Act, over the parties and the subject matter of this case.
2. Proper public notice has been given.
3. The Commission has the legal authority to enact the proposed rule changes.
4. The Commission concludes that there is substantial evidence in the record to support the proposed rule changes, as amended by the Commission, that these rule changes are reasonable and further the goals of the Oil and Gas Act.

**IT IS THEREFORE ORDERED THAT:** The proposed changes to 19.15.3 NMAC, as filed with the Commission by Counsel (Exhibit 5) and as amended by the Commission at the hearing, are hereby approved by the Commission. The adoption of the rule changes will be final upon the later of the action of the Commission on a rehearing application filed pursuant to NMSA 1978, Section 70-2-25, or 20 days from the date of this Order if no rehearing application is filed. The rule change shall not be filed with the State Records Center until the adoption is final and then must be filed within 15 days after the adoption. If no rehearing is required by the Commission, this Order shall serve as the "concise explanatory statement" required by NMSA 1978, Section 14-4-5.5 (2017).

DONE at Santa Fe, New Mexico, on October 4, 2017.

**STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION**



  
**ROBERT BALCH, Member**

  
**ED MARTIN, Member**

  
**DAVID R. CATANACH, Chair**

SEAL

This is an amendment to 19.15.3 NMAC, amending Sections 1, 3, and 7 through 12, and adding new Sections 13 through 15, effective //2017.

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

[19.15.3.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/2008; A, //2017]

**19.15.3.3 STATUTORY AUTHORITY:** 19.15.3 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. The 2017 amendments are authorized by Section 70-2-12.2 NMSA 1978 (2016), which provides for the appeal of commission rules and Laws 2017, Chapter 137, which provides for uniform rulemaking procedures.

[19.15.3.3 NMAC - Rp, 19.15.14.3 NMAC, 12/1/2008; A, //2017]

**19.15.3.7 DEFINITIONS:** ~~[[RESERVED] [See 19.15.2.7 NMAC for definitions.]]~~ See Section 14-4-2 NMSA 1978 (2017) for the definitions of "proceeding", "proposed rule" and "rule". As used in 19.15.3 NMAC:

A. "Party" means the applicant or any person filing a pre-hearing statement.

B. "Technical testimony" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments or statements of policy or position concerning matters at issue in the hearing.

[19.15.3.7 NMAC - N, 12/1/2008; A, //2017]

**19.15.3.8 RULEMAKING INITIATION:**

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

- (1) a brief summary of the proposed [rule change's] rule's intended effect;
- (2) [a proposed draft of the new rule or amendment] a draft of the proposed rule;
- (3) the applicant's name;
- (4) the applicant's address, or the address of its attorney, including an e-mail address [and fax number] if available; and

(5) a proposed legal notice for publication, which meets the requirements of Subsection B of 19.15.3.9 NMAC [~~; and~~

~~(6) any other matter a commission order requires].~~

B. An applicant shall file [~~six sets of~~] the application for rulemaking with the commission clerk. The applicant shall file the application by delivering the application to the commission clerk in person [~~, by mail or by facsimile, as long as the applicant mails or delivers six sets of the application to the commission clerk on the next business day~~] or by mail and shall also send an electronic copy of the application to the commission clerk.

C. Upon receiving an application for rule change the commission clerk shall file the application, and shall deliver a copy to all commissioners within 10 business days of the application's receipt. [~~Unless the commission chairman or another commissioner indicates, within 10 business days following the commission clerk's delivery of the rule change application, that a hearing is not necessary or appropriate, the chairman shall schedule a hearing on the rule change application. If a commissioner indicates to the chairman, or if the chairman concludes, that a hearing is not necessary or appropriate because the application is repetitive or frivolous or for any other lawful reason, the commission] shall determine within 60 days of the application's filing whether to hear the application, and if the commission decides to hear the application, the chairman shall schedule a hearing on the rule change application.] The commission shall determine, at a public meeting at least 15 days and no later than within 60 days of the application's filing, whether to hold a public hearing on the proposed rule. If the commission decides to hold a public hearing on the proposed rule, the commission may set the date for the hearing and may issue orders specifying procedures for the conduct of the hearing in addition to the procedures in 19.15.3 NMAC, including naming a hearing officer, providing additional public notice and providing for a pre-hearing conference. Prior to the hearing, the chair or other hearing officer appointed by the commission shall have the authority to schedule or continue a hearing, hold a pre-hearing conference and rule on any non-dispositive motions.~~

D. 19.15.3.8 NMAC shall not apply to special pool orders, which the commission or the division may adopt, amend or rescind in adjudicatory proceedings subject to 19.15.4.9 NMAC and 19.15.4.12 NMAC's notice provisions.

[19.15.3.8 NMAC - Rp, 19.15.14.1201 NMAC, 12/1/2008; A, / /2017]

#### 19.15.3.9 RULEMAKING NOTICE:

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

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

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

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

~~\_\_\_\_\_ (4) \_\_\_\_\_ by posting on the division's website not less than 20 days prior to the scheduled hearing date.]~~ The commission shall distribute a notice of a proposed rulemaking no later than 30 days before the hearing on the rule change by:

- \_\_\_\_\_ (1) \_\_\_\_\_ posting the notice on the division website;
- \_\_\_\_\_ (2) \_\_\_\_\_ posting the notice on the sunshine portal;
- \_\_\_\_\_ (3) \_\_\_\_\_ making the notice available in the division's district offices;
- \_\_\_\_\_ (4) \_\_\_\_\_ sending the notice by mail or electronic mail to persons who have made a written request for notice from the commission of announcements addressing the subject of the rulemaking proceeding and who have provided a mail or an electronic mail address to the commission;
- \_\_\_\_\_ (5) \_\_\_\_\_ providing the notice to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees; and
- \_\_\_\_\_ (6) \_\_\_\_\_ publishing the notice in the New Mexico register and in a newspaper of general circulation in the state.

**B.** ~~[In cases of emergency, the commission chairman may shorten these time limits by written order.]~~ Content. The notice shall include:

- \_\_\_\_\_ (1) \_\_\_\_\_ a summary of the full text of the proposed rule;
- \_\_\_\_\_ (2) \_\_\_\_\_ a short explanation of the purpose of the proposed rule;
- \_\_\_\_\_ (3) \_\_\_\_\_ a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;
- \_\_\_\_\_ (4) \_\_\_\_\_ information on how a copy of the full text of the proposed rule may be obtained, including an internet link to the full text;
- \_\_\_\_\_ (5) \_\_\_\_\_ information on how a person may comment on the proposed rule, where comments will be received and when comments are due;
- \_\_\_\_\_ (6) \_\_\_\_\_ information on where and when a public rule hearing will be held and how a person may participate in the hearing; and
- \_\_\_\_\_ (7) \_\_\_\_\_ a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

[19.15.3.9 NMAC - Rp, 19.15.14.1202, 12/1/2008; A, / /2017]

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

[19.15.3.10 NMAC - Rp, 19.15.14.1203 NMAC, 12/1/2008; A, / /2017]

**19.15.3.11 RULEMAKING HEARING PARTICIPATION:**

**A. Non-technical testimony.**

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

(2) A person may also offer exhibits [~~in connection~~] with the testimony, so long as the exhibits are relevant to the proposed rule change and do not unduly repeat the testimony. A person offering exhibits shall file exhibits prior to the scheduled hearing date or submit them at the hearing.

(3) Members of the [~~general~~] public who wish to present non-technical testimony should indicate their intent on a sign-in sheet at the hearing.

**B. Technical testimony.**

(1) A person, including the division, who intends to present technical testimony or cross-examine witnesses at the hearing or to submit modifications to a proposed rule shall, no later than [~~five~~] 10 business days before the scheduled hearing date, file six sets of a pre-hearing statement with the commission clerk. Corporations, partnerships, governmental agencies, political subdivisions, unincorporated associations and other collective entities shall appear only through an attorney or through a duly authorized officer or member.

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

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

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

~~[ C. Modifications to proposed rule changes.~~

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

~~(2) The notice shall include:~~

~~(a) the text of the recommended modifications to the proposed rule change;~~

~~(b) an explanation of the recommended modification's impact; and~~

~~(e) reasons for adopting the modification.]~~

[19.15.3.11 NMAC - Rp, 19.15.14.1204 NMAC, 12/1/2008; A, / /2017]

**19.15.3.12 RULEMAKING HEARINGS:**

**A. Conduct of hearings.**

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

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

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

(b) the commission may allow ~~[persons]~~ parties to make a brief opening statement;

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

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

(e) the commission may allow ~~[persons]~~ parties to make a brief closing statement;

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

(g) at the close of the hearing, the commission shall determine whether to keep the record open for written submittals including arguments and proposed statements of reasons supporting the proposed commission decision; in considering whether the record will remain open, the commission shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision; if the commission keeps the record open, the commission chairman shall announce at the hearing's conclusion the subjects on which the commission will allow submittals and the deadline for filing the submittals; and

(h) if the hearing is not completed on the day that it commences, the commission may, by announcement, continue the hearing as necessary without further notice.

**B. Testimony and cross-examination.**

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

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

(3) A person who testifies at the hearing is subject to cross-examination by ~~[a person who has filed a pre-hearing statement]~~ the commissioners, commission counsel or a party on the subject matter of the person's direct testimony. A person who presents technical testimony may also be

cross-examined on matters related to the person's background and qualifications. The commission may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

**C. Exhibits.**

(1) A person offering an exhibit shall provide six sets of the exhibit for the commission, copies for each ~~[of those individuals or entities that have filed an intent to present technical testimony or cross-examine witnesses at the hearing]~~ party and five additional copies for others who may attend the hearing.

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

~~[~~ **D. Transcript of proceeding.**

~~(1) The commission shall make a verbatim record of the hearing.~~

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

~~E. Deliberation and decision.~~

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

~~(2) If, during the course of deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.3.9 NMAC.~~

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

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

~~F. Filing. The division shall file with the state records center and archives and publish any rule the commission adopts, amends or repeals consistent with the State Rules Act.]~~

[19.15.3.12 NMAC - Rp, 19.15.14.1205 NMAC, 12/1/2008, A, / /2017]

**19.15.3.13 COMMISSION DELIBERATION AND ACTION:**

**A. Deliberation.** If a quorum of the commission attended the hearing, and if the hearing agenda indicates that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and decide in open session on the proposed rule change. The commission may otherwise deliberate and act in open session at any commission meeting where such deliberation and possible action is listed on the meeting agenda.

**B.** If, during deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.3.9 NMAC.

C. Order. The commission shall issue a written order adopting or refusing to adopt the proposed rule change, or adopting the proposed rule change in part, and shall include in the order the reasons for the action taken. The commission's order shall serve as the "concise explanatory statement" required by Section 14-4-5.5 NMSA 1978 (2017).

D. Termination. The commission may terminate a rulemaking at any time by a motion approved at a commission meeting. The commission shall publish a notice of termination in the New Mexico register and provide notice of the termination in the manner provided in 19.15.3.9 NMAC. If the commission does not act within two years after publication of a proposed rule change in the New Mexico register, the rulemaking is automatically terminated unless the commission approves a motion to extend the rulemaking and files a statement of good cause in the record. The commission shall also provide for additional public notice, comment and public hearing.

[19.15.3.13 NMAC - N, //2017]

**19.15.3.14 RECORD:**

A. The commission shall maintain a record for each rulemaking proceeding. The record shall be available for public inspection at the commission's Santa Fe office and a copy shall be provided to the sunshine portal.

B. The record shall contain:

(1) a copy of all publications in the New Mexico register relating to the proposed rule;

(2) a copy of any technical information that was relied upon in formulating the final rule;

(3) any official transcript of the public hearing or, if not transcribed, any audio recording or verbatim transcript of the hearing;

(4) a copy of all comments and other material received by the commission during the public comment period and at the public hearing;

(5) a copy of the full text of the initial proposed rule and the full text of the final adopted rule and the order adopted by the commission; and

(6) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.

[19.15.3.14 NMAC - N, //2017]

**19.15.3.15 FILING AND APPEAL:**

A. Filing. Any rule adopted under 19.15.3 NMAC, along with the commission order, shall be filed in accordance with the State Rules Act. No rule shall be filed until the latter of 20 days after the commission has entered an order or has refused a rehearing application pursuant to Section 70-2-25 NMSA 1978. The end of the 20-day rehearing period, if no rehearing is requested, or the action of the commission on a rehearing application shall constitute the "adoption of the rule" for the purposes of Subsection D of Section 14-4-5 NMSA 1978 (2017). The rule shall be filed with the state records administrator within 15 days after the adoption of the rule.

**B. Notice.** Upon filing of the rule, the commission shall provide notice of the adoption of the rule to the public. The notice, which shall include the final rule and order or information on how to obtain a copy of the final rule and order, shall be:

- (1) posted on the division's website;
- (2) posted on the sunshine portal;
- (3) made available in the division's district offices;
- (4) sent by mail or electronic mail to persons who have made a written request for notice from the commission of announcements addressing the subject of the rulemaking proceeding and who have provided a mail or electronic mail address to the commission;
- (5) sent by mail or electronic mail to persons who have participated in the rulemaking and who have provided a mail or electronic mail address to the commission; and
- (6) delivered to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees.

**C. Corrections.** If the state records administrator provides the commission with a record of corrections to the filed rule, as provided in Section 14-4-3 NMSA 1978 (2017), the commission shall within 30 days provide notice of the correction in the same manner as the notice in Subsection A of 19.15.3.9 NMAC.

**D. Appeal.** Pursuant to Section 70-2-12.2 NMSA 1978, any party of record to the proceeding before the commission or any person adversely affected by a rule adopted under the Oil and Gas Act may appeal to the court of appeals within 30 days after filing of the rule under the State Rules Act.

[19.15.3.15 NMAC - N, //2017]

New Mexico Register / Volume XXVIII, Issue 15 / August 15, 2017

**NOTICE OF PROPOSED RULEMAKING**

The New Mexico Oil Conservation Commission (Commission) hereby gives notice of the following proposed rulemaking.

***Case No. 15738. In the Matter of Proposed Amendments to the Commission's Rule on Rulemaking, 19.15.3 NMAC.***

The Commission proposes to amend its rule governing the procedures for rulemaking proceedings, 19.15.3 NMAC. The proposed rule change includes amendments to the sections on rulemaking initiation, notice, hearing participation and hearings, and adds sections on deliberation and action, the record and filing and appeal.

The purposes of the proposed rule changes are to comply with recent statutory changes involving rulemaking requirements. The proposed rule change is also intended to update and clarify 19.15.3 NMAC including the requirements for the initiation of rulemaking and for the filing of pre-hearing statements. The statutory authorizations include a new section of the Oil and Gas Act, NMSA 1978, Section 70-2-12.2, on adoption of rules and appeals, and the changes to the State Rules Act in Chapter 137 of Laws 2017. NMSA 1978, Section 70-2-11(A), authorizes the adoption of rules to carry out the purposes of the Oil and Gas Act. ***Case No. 15802. Application of the New Mexico Oil Conservation Division for Amendment of Section 19.15.7.24 NMAC Changing the Time for Division Notification and Enforcement After an Operator's Failure to file an Acceptable Monthly Production Report (Form C-115).***

The proposed amendment will reduce the time after an operator fails to file an acceptable monthly production report (form C-115) within which the Oil Conservation Division ("the division") must notify the operator of its intent to revoke the operator's authorization to transport from 60 days to 30 days, and to reduce the time within which the operator may file an acceptable form or request a hearing on the proposed revocation from 120 days to 60 days, after the original due date of the form C-115.

The purpose of the proposed amendment is to secure more expeditious filing of operators' production reports. This amendment is authorized by NMSA 1978, Section 70-2-11(A), which authorizes the adoption of rules to carry out the purposes of the Oil and Gas Act (NMSA 1978, Sections 70-2-1 through 70-2-38, as amended); and by NMSA 1978, Section 70-2-12(A), which authorizes the collection of data and to provide for the keeping of records and the making of reports.

No technical information served as a basis for the proposed rules.

**Public Hearing and Comment.** The Commission will hold a public hearing on each of the proposed rules at the Commission meeting which will commence at 9:00 A.M. on **September 21, 2017**, in Porter Hall, 1<sup>st</sup> Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

The proposed rule amendments are available from Commission Clerk, Florene Davidson at (505) 476-3458 or can be viewed on the Hearings page and Rules page at the Oil Conservation Division's website at <http://www.emnrd.state.nm.us/ocd>. Persons **recommending modifications** to the proposed rule amendments must file a notice of recommended modifications with Ms. Davidson no later than 5:00 P.M. on Thursday, September 7, 2017. The notice must include the text of the recommended modifications of the proposed rule amendments, an explanation of the recommended modification's impact, and reasons for adopting the modification. Persons intending to provide **written comments** on the proposed rule changes must submit their written comments no later than 5:00 P.M. on Friday, September 15, 2017 to Ms. Davidson.

Persons intending to offer technical testimony at the hearing must file six copies of a **Pre-hearing Statement** conforming to the requirements of 19.15.3.11 NMAC, and six copies of all exhibits the person will offer as evidence at the hearing, no later than 5:00 P.M. on Thursday, September 14, 2017. Any person may present non-technical testimony at the hearing.

Proposed modifications and written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505, faxed to Ms. Davidson at (505) 476-3462, or e-mailed to Ms. Davidson at [florene.davidson@state.nm.us](mailto:florene.davidson@state.nm.us). Pre-hearing Statements must be hand-delivered or mailed to Ms. Davidson at the above address.

If you are an individual with a disability who needs 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 Ms. Davidson at (505) 476-3458 or through the New Mexico Relay Network at 1-800-659-1779 by **September 11, 2017**. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A party who plans on using projection equipment at a hearing must contact Ms. Davidson seven (7) business days prior to the hearing requesting the use of the

projection equipment. Wireless internet is available; however, the party must provide its own laptop computer.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 27<sup>th</sup> day of July 2017.

**STATE OF NEW MEXICO**  
**OIL CONSERVATION DIVISION**  
**David R. Catanach**  
**Director, Oil Conservation Division**  
**SEAL**