

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 3 RULEMAKING

19.15.3.1 ISSUING AGENCY: Oil Conservation Commission.
[19.15.3.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/2008; A, 11/14/2017]

19.15.3.2 SCOPE: 19.15.3 NMAC applies to persons or entities engaged in rulemaking proceedings before the commission.
[19.15.3.2 NMAC - Rp, 19.15.14.2 NMAC, 12/1/2008]

19.15.3.3 STATUTORY AUTHORITY: 19.15.3 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. 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, 11/14/2017]

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

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

19.15.3.6 OBJECTIVE: To establish procedures for commission rulemaking proceedings.
[19.15.3.6 NMAC - Rp, 19.15.14.6 NMAC, 12/1/2008]

19.15.3.7 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, 11/14/2017]

19.15.3.8 RULEMAKING INITIATION:

A. 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 specifically identify the rule the applicant proposes to adopt, amend or repeal. The application shall include the following:

(1) a brief summary of the proposed rule’s intended effect;

(2) 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 if

available; and

(5) a proposed legal notice for publication, which meets the requirements of Subsection B of

19.15.3.9 NMAC.

B. An applicant shall file the application for rulemaking with the commission clerk. The applicant shall file the application by delivering the application to the commission clerk in person 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. 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, 11/14/2017]

19.15.3.9 RULEMAKING NOTICE:

A. 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. 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, 11/14/2017]

19.15.3.10 COMMENTS ON RULEMAKING: A person may submit written or electronic comments on a proposed rule change, and those comments shall be made part of the hearing record. A person shall provide written comments on the proposed rule change to the commission clerk not later than the date of the scheduled hearing, 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 comments by making an announcement at the hearing, or by posting notice on the division's website. A person may review written or electronic comments on a proposed rule change at the division's Santa Fe office. The division shall post copies of written or electronic 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, 11/14/2017]

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 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 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 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.

[19.15.3.11 NMAC - Rp, 19.15.14.1204 NMAC, 12/1/2008; A, 11/14/2017]

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 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 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 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 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 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 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.

[19.15.3.12 NMAC - Rp, 19.15.14.1205 NMAC, 12/1/2008, A, 11/14/2017]

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, 11/14/2017]

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, 11/14/2017]

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, 11/14/2017]

HISTORY of 19.15.3 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, 1201 - 1205) (filed 09/16/2005) were replaced by 19.15.3 NMAC, Rulemaking, effective 12/1/2008.