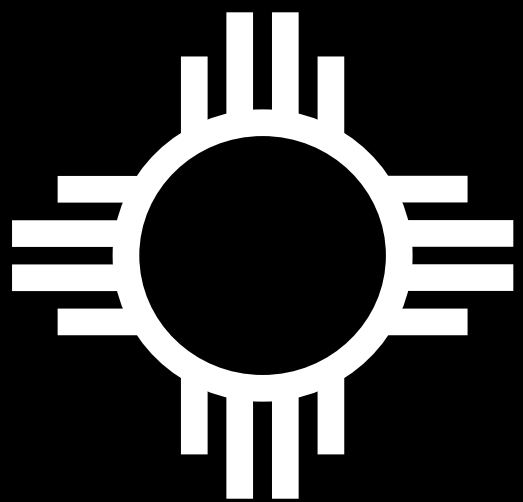


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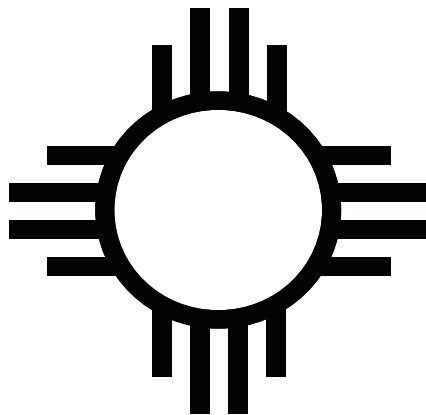


Volume XXII  
Issue Number 7  
April 15, 2011



# **New Mexico Register**

**Volume XXII, Issue Number 7  
April 15, 2011**



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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Administrative Law Division  
Santa Fe, New Mexico  
2011

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# New Mexico Register

Volume XXII, Number 7

April 15, 2011

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.7.3.7, 20.7.3.401, 20.7.3.402, 20.7.3.902 AND 20.7.3.904 NMAC.

The New Mexico Environmental Improvement Board (Board) will hold a public hearing beginning at 9:00 a.m. on July 11, 2011, and continuing thereafter as necessary at the New Mexico State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to July 11, and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/oots/eib.htm> prior to the hearing. The purpose of the hearing is to consider proposed amendments to Liquid Waste Disposal Rules, 20.7.3.7, 20.7.3.401, 20.7.3.402, 20.7.3.902 and 20.7.3.904 NMAC. The New Mexico Environment Department (NMED) is the proponent of the amendments to the rules.

The amendments proposed by NMED to 20.7.3.904 NMAC would remove the certification requirements for on-site liquid waste system installers, other than the requirement that installers hold a valid and appropriate classification of contractors license from the New Mexico Construction Industries Division. The proposed amendments would also remove the classifications of site evaluator, system designer, wastewater reuse irrigator and septage pumper from the certification requirement of 20.7.3.904 NMAC. The proposed amendments to Section 904 would also eliminate the Education Steering Committee. Besides amendments of 20.7.3.904, the Department seeks amendment of 20.7.3.7 NMAC (Definitions), 20.7.3.401 NMAC (Permitting; General requirements), 20.7.3.402 NMAC (Permitting, Conventional Treatment and Disposal Systems), and 20.7.3.902 (Operation and Maintenance Requirements and Inspection Requirements at Time of Transfer) for the purpose of making these sections consistent with the proposed amendments to 20.7.3.904 NMAC.

Please note that formatting and minor technical changes in the regulations other than those proposed by petitioners may be proposed at hearing. In addition, the Board

may make other changes as necessary to accomplish the purpose of providing public health and safety in response to public comments and evidence presented at the hearing.

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board located in the Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. In addition, a copy of the NMED proposed amendments is posted on the NMED website at <http://www.nmenv.state.nm.us/fod/LiquidWaste/>.

Written comments regarding the proposed revisions may be addressed to Ms. Felicia Orth Medina at the above address, and should reference docket number EIB 11-03(R).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so on or before 5:00 pm on June 24, 2011. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rules; and,
- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on June 24, and should reference the name

of the regulation, the date of the hearing, and docket number EIB 11-03 (R). Notices of intent to present technical testimony should be submitted to:

Felicia Orth, Acting Administrator  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2153  
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by June 24, 2011. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

### NEW MEXICO GAME COMMISSION

#### STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Thursday, May 5, 2011, beginning at 9:00 a.m., at University of New Mexico, (UNM) Continuing Education Conference Center - Room C, 1634 University Blvd., NE, (just North of Indian School Road), Albuquerque, NM 87131, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Organizational Structure of State Game Commission; Overview of Commission, Department, Laws and Rules; Designate Reasonable Public Notice for 2011 Commission Meetings; Presentation of the Fiscal Year 2010 Financial Statements and Audit Report; Commission Approval to Dispose of Fixed Assets; Legislative Session Update; Delisting Desert Bighorn Sheep; Revocations; State Land Office Easement for Hunting, Fishing, and Trapping; Private Land Antelope System Update; Update on the Trapping Ban (19.32.2, NMAC) and New Mexico State University Trap Evaluation; General Public Comments (comments limited to 3 Minutes); and Closed Executive Session.

The following rules are available for public comment and discussion by the Commission:

\* Open the 2011-2012 Waterfowl/Migratory Game Bird Rule, 19.31.6, NMAC.

A copy of the agenda and any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Sonya Quintana at (505) 476-8027. Please contact Ms. Quintana at least 3 working days before the meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms upon request.

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

### NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on May 16, 2011 at 10:00 a.m. in the ASD conference room, Plaza San Miguel, 729 St. Michael's Drive, Santa Fe.

The subject of the hearing is: Personal Care Option (PCO) Services. The Human Services Department (HSD), Medical Assistance Division (MAD or Medicaid), is proposing amendments to regulations 8.315.4 NMAC, *Personal Care Option Services*. The following is a summary of the proposed changes:

\* Changing the reference of the Income Support Division (ISD) 379 Medical Assessment form to a MAD form.

\* Adding a requirement for a current history & physical (H&P) at each level of care (LOC) determination or annual redetermination. Current is defined as having been completed within twelve (12) months of the assessment date;

\* Allowing an existing Nursing Facility (NF) LOC determination from another NF requiring LOC program to transfer to PCO LOC eligibility for any new PCO applicant (i.e. current NF LOC from a Home and Community-Based Services

(HCBS) waiver or institutional care facility Medicaid);

\* Clarifying covered services by consolidating ten (10) PCO services into six (6) main categories: (1) Hygiene/Grooming; (2) Individual Bowel and Bladder; (3) Meal Preparation and Assistance; (4) Eating; (5) Household and Support Services; and (6) Supportive Mobility Assistance.

\* Physician prescribed skin care is built into the Hygiene/Grooming task.

\* Instrumental Activities of Daily Living (IADLs) were combined into one category called, Household and Support Services. All the household cleaning, laundry, shopping, feeding service animals and errands were combined into this PCO service. In addition, cleaning and minor maintenance of assistive devices (i.e. wheelchair and medical equipment) is built into this category.

\* Mobility assistance is built into each of the six (6) PCO tasks. A new category was added called Special Mobility Assistance. This task provides for physical or verbal prompting and cueing limited to individuals without assistive device(s) that require additional mobility assistance, not covered with other PCO services including:

\* Ambulation - moving around inside or outside the residence or consumer's living area;

\* Transferring - moving to/from one location/position to another;

\* Repositioning - turning or moving an individual to another position who is bed bound to prevent skin breakdown.

\* In response to the consolidation of PCO tasks, the MAD 055 PCO Service Guide was amended.

\* Clarifying that a prior authorization (PA) must be sent to the PCO agency and that the authorization cannot extend beyond the LOC authorization period.

\* Clarifying that a PCO consumer who disagrees with the authorized number of hours may utilize the CoLTS MCO grievance and appeal process when enrolled in CoLTS and the State's fair hearing process pursuant to 8.352.2 NMAC, *Recipient Hearings, consecutively or concurrently*. In addition, an MCO may consider authorizing additional time based on the consumer's medical and clinical need(s) **and related to the consumer's risk of institutionalization**.

\* Aligning State regulations with federal Code of Federal Regulations, 42 CFR 438.420 Continuation of benefits, while the MCO appeal and the State fair hearing are pending. This includes clarification of the assessments and authorization of service periods.

\* Clarifying that the consumer may be responsible for repayment of the cost of the services furnished while a State fair hearing was pending, to the extent that the services were furnished solely because of

this requirement for continuation during the State fair hearing process. The State for FFS or the MCO for CoLTS may recover these costs from the member per federal regulation.

Interested persons may submit written comments no later than 5:00 p.m., May 16, 2011, to Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Copies of the Human Services Register and their proposed rules are available for review on our Website at [www.hsd.state.nm.us/mad/registers/2011](http://www.hsd.state.nm.us/mad/registers/2011) or by sending a self-addressed stamped envelope to Medical Assistance Division, Long Term Services and Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

## NEW MEXICO BOARD OF PODIATRY

### LEGAL NOTICE

#### Public Rule Hearing and Regular Board Meeting

Notice is hereby given that the New Mexico Board of Podiatry will hold a Rule Hearing and Regular Board Meeting on **May 26, 2011**. Following the Rule Hearing, the New Mexico Board of Podiatry will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Podiatry Rule Hearing will begin at 1:00 p.m. and the Regular Board Meeting will convene following the Rule Hearing. Portions of the regular meeting may be closed to the public while the Board is in Executive Session *Pursuant to §10-15-*



*1.H of the Open Meetings Act.*

The meetings will be held at the Regulation and Licensing Department, **5200 Oakland Avenue NE, Albuquerque, NM 87113 in the main Conference Room.**

The purpose of the Rule Hearing is to consider adoption of proposed amendments, repeals and additions to the following Board Rules and Regulations in Title 16, Chapter 21 NMAC: Part 1 General Provisions, Part 3 License by Exam, Part 4 License by Reciprocity, Part 5 Temporary License and Emergency License, Part 7 License Expiration and Renewal, Part 8 Continuing Education, Part 11 Disciplinary Proceedings, Part 12 Management of Medical Records.

Copies of the proposed rule changes may be obtained by contacting the board office in writing at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87505, call (505) 476-4955, or from the board's website: [www.RLD.state.nm.us/podiatry](http://www.RLD.state.nm.us/podiatry) after **April 15, 2011**. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board office in writing no later than **May 20, 2011**. Persons wishing to present their comments at the hearing will need (9) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4955 at least two weeks prior to the meeting or as soon as possible.

Amanda Roybal, Administrator  
P.O.Box 25101 - Santa Fe, New Mexico  
87504

## NEW MEXICO SECRETARY OF STATE

Secretary of State Public Rules Hearing

The Secretary of State's Office will convene a Public Rules Hearing in Santa Fe, New Mexico on May 12, 2011. The hearing will be held beginning at 8:30 a.m. in Santa Fe, with the specific site location to be determined

The purpose of the Rule Hearing is to consider adopting Secretary of State Rule 1.10.34 NMAC related to voting machine storage by counties.

Persons desiring to present their views on the proposed changes may appear in person at said time and place or may submit written comments no later than 5:00 p.m. May 10, 2011, to the Secretary of State, Elections Bureau, 325 Don Gaspar, Santa Fe, New Mexico, 87503, attention, Bobbi Shearer. A copy of the proposed rule is available on request from the Secretary of State's office at the address listed above, by phone (505) 827-3600, or on the Internet at [www.sos.state.nm.us](http://www.sos.state.nm.us).

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact the Secretary of State's office, 505-827-3600, or at 325 Don Gaspar, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Secretary of State's office if a summary or other type of accessible format is needed.

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### End of Notices and Proposed Rules Section

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## Adopted Rules

### NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.369 NMAC, ERRDS, Commission of Public Records, adding Section 29 effective 05/02/2011.

#### 1.18.369.29 REGRANT PROGRAM FILES:

A. Program: archival services

B. Maintenance system: chronological by fiscal year

C. Description: records documenting the application for and issuance of grant funds to eligible applicants through the regrant program in support of records preservation projects. The New Mexico historical records advisory board, an adjunct board to the commission of public records, receives funds from the New Mexico legislature and the national historic publications and records commission to fund its historical records grant program for improving preservation of and access to New Mexico's historical records. Files may include completed application form (i.e., name of applicant, address, project type, budget amounts for project, summary statement, project work plan, project summary budget, budget worksheet, proposals, scope of work, etc.), copy of 501(c) 3 certification, resumes, department of finance and administration certification, governor's guidelines certification, substitute W-9 form, contract, grant agreement, interim reports, invoices, financial reporting form, final report, correspondence, etc.

#### D. Retention:

(1) Funded projects: seven years from the end of fiscal year in which grant is closed

(2) Non-funded projects: three years from the end of the fiscal year in which application submitted

#### E. Confidentiality:

Portions of file may be confidential pursuant, but not limited to 5 USC, Section 552a (i.e., social security number) and Section 7-1-8 NMSA 1978, Confidentiality of Returns and Other Information.

[1.18.369.29 NMAC - N, 5/2/2011]

### NEW MEXICO COMMISSION OF PUBLIC RECORDS

March 29, 2011

Leo R. Lucero, Agency Analysis Bureau Chief

NM Commission of Public Records  
1205 Camino Carlos Rey  
Santa Fe, New Mexico 87505

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rule:

\* 1.18.924 NMAC ERRDS, Public Education Department

A review of this rule shows that its impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo  
State Records Administrator

SJ/lrl

### NEW MEXICO COMMISSION OF PUBLIC RECORDS

#### SYNOPSIS

#### 1.18.924 NMAC ERRDS, Public Education Department

**1. Subject matter:** 1.18.924 NMAC, Executive Records Retention and Disposition Schedule for the Public Education Department. This is an amendment to 1.18.924 NMAC, ERRDS, Public Education Department repealing Sections 354 through 360, 601 and 602, amending Sections 7, 8, 9, 351, 352, 353 and adding Sections 361 and 362. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Center and Archives (New Mexico Commission of Public Records), and approved by the State Records Administrator, the Cabinet Secretary of the Public Education Department, and legal counsel for the Public

Education Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Public Education Department. Persons and entities normally subject to the rules and regulations of the Public Education Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Public Education Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Public Education Department. Any person or entity outside the covered geographical area that conducts business with or through the Public Education Department may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** May 2, 2011.

#### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.924 NMAC ERRDS, Public Education Department.

\_\_\_\_\_  
Tania Maestas Date  
Assistant Attorney General

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS**

This is an amendment to 1.19.4 NMAC, LGRRDS, Board of County Commissioners, County Managers, adding Sections 250 and 251, effective 05/02/2011.

**1.19.4.250 TEEN COURT CASE FILES:**

**A. Program:** teen court  
**B. Maintenance system:** local government preference

**C. Description:** records documenting juvenile participation in and compliance with teen court program. The teen court program is a first time offender and traffic violation program that provides for an alternative sentencing of teens by their peers. Portions of this record are input to the *teen court database*, 1.19.4.251 NMAC. Files may include copy of teen court referral, parental consent form, copy of incident report from juvenile probation officer or school, uniform citation, appointment form containing information regarding drug test results; evaluations; court dates, agreement to perform service, jury instruction and verdict, letter of warning, return referral notification, program completion notification, addendum to agreement to perform service, agreement for release of information, etc.

**D. Retention:** three years from date case closed

**E. Confidentiality:** Portions of file are confidential pursuant, but not limited to Section 32A-2-32 NMSA 1978 (i.e., diagnostic evaluations, psychiatric reports, medical reports, social studies reports, pre-parole reports and supervision histories, etc.), 5 USC, Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., health information). [1.19.4.250 NMAC - N, 5-2-11]

**1.19.4.251 TEEN COURT DATABASE:**

**A. Program:** teen court  
**B. Maintenance system:** numerical by primary key

**C. Description:** database maintains information concerning juvenile participation and compliance with teen court program. Data may include juvenile information (i.e., name, date of birth, address, referral entity, reason for referral, etc.), jury instruction and verdict, completion date, etc.

**D. Data retention:** three years from date case closed

**E. Confidentiality:** Portions of file are confidential pursuant, but not limited to Section 32A-2-32 NMSA 1978 (i.e., diagnostic evaluations, psychiatric reports, medical reports, social studies reports, pre-parole reports and supervision

histories, etc.), 5 USC, Section 552a (i.e., social security number) and Section 14-6-1 NMSA 1978 (i.e., health information).

**F. Input:** documents used as input for the *teen court database*, 1.19.4.251 NMAC are filed in the *teen court case file*, 1.19.4.250 NMAC.

**G. Output:** Because the *teen court database* is a data-based system, ad hoc and regularly scheduled reports may be generated upon request or demand. When produced these reports are forwarded to the requesting entity.

[1.19.4.251 NMAC - N, 5-2-11]

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**End of Adopted Rules Section**

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## Submittal Deadlines and Publication Dates 2011

<b>Volume XXII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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Issue Number 4	February 15	February 28
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Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 18	April 29
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