

New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

Volume XXVIII - Issue 21 - November 14, 2017

COPYRIGHT © 2017
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XXVIII, Issue 21

November 14, 2017

Table of Contents

Notices of Rulemaking and Proposed Rules

Auditor, Office of the State	
Notice of Proposed Rulemaking And Public Hearing.....	1038
Energy, Minerals and Natural Resources Department	
Notice of Public Hearing and Rulemaking.....	1038
Game and Fish, Department of	
State Game Commission Meeting and Rulemaking Notice.....	1039
Human Services Department	
Medical Assistance Division	
Notice of Public Hearing.....	1040
Notice of Rulemaking.....	1041
Medical Board	
Notice of Public Rule Hearing.....	1041
Public Regulation Commission	
Notice of Proposed Rulemaking.....	1042

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

Agriculture, Department of		
21.17.36 NMAC	N/E	Pecan Weevil Interior Quarantine.....1044
Energy, Minerals and Natural Resources Department		
19.15.3 NMAC	A	Rulemaking.....1045
19.15.7 NMAC	A	Forms and Reports.....1050
Public Education Department		
6.29.10 NMAC	R	Science.....1050
6.29.10 NMAC	N	New Mexico STEM-Ready Science Standards.....1050
Workforce Solutions, Department of		
9.1.1 NMAC	R	Administrative Procedures for the Human Rights Bureau/Commission.....1052
11.1.4 NMAC	R	Wage and Hour and Employment of Children.....1052
9.1.1 NMAC	N	Administrative Procedures for the Human Rights Bureau/Commission.....1052
11.1.4 NMAC	N	Wage and Hour and Employment of Children.....1062
11.1.2 NMAC	A	Public Works Minimum Wage Act Policy Manual.....1070

Other Material Related To Administrative Law

Higher Education Department

Notice of Minor, Nonsubstantive Correction.....1076

Human Services Department

Income Support Division

Notice of Public Comment.....1076

The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00.

Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7942; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

AUDITOR, OFFICE OF THE STATE

NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

The Office of the State Auditor is in the process of amending 2.2.2.1 NMAC et seq. ("Audit Rule"). The Audit Rule establishes policies, procedures, rules and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic audits of governmental agencies of the state of New Mexico, and is governed by the Sections 12-6-1 to 12-6-14, NMSA 1978 ("Audit Act"). The amendments to the Audit Rule are proposed pursuant to the Audit Act, Subsection A of Section 12-6-3 NMSA 1978.

Proposed amendments to the rule address the following: modifications to findings requirements to prescribe a format for the summary schedule of prior year findings and adopt federal requirements for corrective action plans; modifications to the auditor rotation rule to remove expired language; modifications to the requirements for referrals; modifications to the requirements for what must be available at the exit conference; modifications to the requirements relating to inventory of assets capitalized under historical thresholds; modifications to the reporting requirements for pension and other post-employment benefit providers and the auditors of those agencies; modifications to clarify requirements relating to indigent care reporting for hospitals; new requirements relating to reporting of asset management costs by investing agencies; new requirements relating to fact-finding inquiries conducted by the Office of the State Auditor's special investigations division; and updates related to new governmental accounting standards.

Copies of the proposed amendments

to the rule are available at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507 and on the Office of the State Auditor website, <http://www.osanm.org>. The Agency will consider adopting the proposed new rule at a public hearing on December 14, 2017, which will take place at 1:30 p.m. at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507. Public comment is allowed at the public hearing on December 14, 2017. Please mail or deliver written comments on the proposed new rule to: Emily Oster, Director of Compliance and Quality Control, at the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507, or by email at Emily.Oster@osa.state.nm.us between November 15, 2017 and December 14, 2017.

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 public hearing, please contact Ms. Oster at least one week prior to the public hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Ms. Oster at 505-476-3800 or Emily.Oster@osa.state.nm.us if a summary or other type of accessible format is needed.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

NOTICE OF PUBLIC HEARING AND RULEMAKING

The New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Energy Conservation and Management Division is commencing a public comment period and will hold a public hearing on proposed rules for the new Geothermal Resources Development permitting

program at 9:15 a.m. on Wednesday, January 3, 2018 in Porter Hall, Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505.

In 2016, the Legislature passed the Geothermal Resources Development Act (GRDA). This Act transferred geothermal energy regulation from the Oil Conservation Division (OCD) to the Energy Conservation and Management Division (ECMD) of EMNRD. Therefore, ECMD needs to promulgate rules so that it can regulate geothermal energy exploration, development, and production. The proposed rules update the rules OCD promulgated in 1983. The passage of the GRDA also repealed the Geothermal Resources Conservation Act. Therefore, this rulemaking proposes to repeal parts of the existing Geothermal Power Rules - Title 19, Chapter 14 NMAC that were adopted pursuant to the now repealed Geothermal Resources Conservation Act.

As authorized by Section 71-9-6 of the Geothermal Resources Development Act, Section 71-9-1 et seq. NMSA 1978, EMNRD is proposing the following new rules governing the exploration, development, and production of geothermal resources:

19.11.1 NMAC, Geothermal Resources Development, General. This part sets forth general provisions including confidentiality of documents and transition provisions and definitions pertaining to the ECMD's authority.

19.11.2 NMAC, Geothermal Resources Development, Permits. This part establishes requirements to obtain a permit prior to commencing exploration, development, and production of geothermal resources and establishes procedures for reviewing applications for geothermal well or facility permits or for the denial of permits.

19.11.3 NMAC, Geothermal Resources Development, Hearings. This part establishes procedures for hearings before the ECMD.

19.11.4 NMAC, Geothermal Resources Development, Construction and Operation. This part establishes construction requirements to ensure the exploration, development and production of geothermal resources is conducted in a manner that safeguards life, health, property, natural resources, environment, and public welfare, and to encourage maximum economic recovery and includes provisions regarding the drilling and plugging and abandoning of wells, construction and closure of pits, and disposal of waste.

EMNRD is also proposing the subsequent repeal of rules, 19.14.110 NMAC, Geothermal Power, Necessity for Hearing; through 19.14.131 NMAC, Geothermal Power, Rehearings, as those parts prescribe hearing procedures before the OCD and Oil Conservation Commission and the OCD no longer administers the permitting of exploration, development, and exploration of geothermal resources.

Copies of the proposed rules and the following technical information: Utah regulation R655, Idaho regulation IDAPA 37.03.04 and Nevada regulation NAC 534A. US Environment Protection Agency guidance document, EPA 816-R-00-008 and study report EPA/816-R-99-014q, and US Environment Protection Agency regulations 40 CFR 124, 141, 144, 145, 146, and 147; that served as a basis for the proposed rule are available from EMNRD, Energy Conservation and Management Division, 1220 S. Saint Francis Drive, Santa Fe, NM 87505; at <http://www.emnrd.state.nm.us/ECMD/RenewableEnergy/geothermal.html>; or by contacting Daren Zigich at darenk.zigich@state.nm.us; telephone (505) 476-3323.

All interested persons may participate in the hearing, and will be given

an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing.

Those wishing to comment on the proposed rules may make oral comments or submit written comments at the hearing or may submit written comments by January 3, 2018 by 5:00 p.m. by mail or e-mail. Please mail written comments to Daren Zigich, EMNRD, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit them by e-mail to darenk.zigich@state.nm.us.

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 Daren Zigich at (505) 476-3323 or the New Mexico Relay Network at 1-800-659-1779 one week prior to the hearing. Public documents can be provided in various accessible formats. Please contact Daren Zigich at (505) 476-3323, if a summary or other type of accessible format is needed.

GAME AND FISH, DEPARTMENT OF

STATE GAME COMMISSION MEETING AND RULEMAKING NOTICE

The New Mexico State Game Commission ("Commission") has scheduled a regular meeting and rule hearing for Wednesday December 20, 2017, beginning at 9:00 a.m., at Albuquerque Marriott Pyramid North, 5151 San Francisco Rd NE, Albuquerque, New Mexico, to hear and consider action as appropriate on the following: Informational presentation and final action of proposed process for Landowner Certification of Non-Navigable Water;

Notice of Rulemaking

Proposed New Part in Rule

19.31.22 NMAC Landowner Certification of Non-Navigable Water

Synopsis:

The purpose is to add a Part 22, of Chapter 31, of Title 19 NMAC to establish a certification process by which landowners can register their legally-posted property(s) with the department that will identify portions of non-navigable waters that run through privately owned property. This is a result from new language in statute §17-4-6 NMSA which was passed in the 2015 legislative session.

Summary of the proposed new part in rule (19.31.22 NMAC) will include all required headings to include: Issuing Agency, Scope, Statutory Authority, Duration, Effective Date, Objective, Definitions, Certification Requirements, Written Determination and Recommendations by the Director, Notice of Written Determination and Requirements, Meeting Procedures, Judicial review and Final Vote. The new Part in rule will identify language for the Department to establish a formal certification process by which landowners can submit to the Department an application which will recognize certain waters found on private property as non-navigable public waters and therefore trespass is not lawful unless prior written permission is received from the landowner. Full text of the new rule will be available on the Department's website (below).

Interested persons may submit comments on the new rule to dgf-fieldopscomments@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on December 19, 2017 when the final rule will be voted on by the Commission during a public meeting on December 20, 2017. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be

held on December 20, 2017. Full copies of text of the proposed rule amendments, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, P.O. Box 25112, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.commission/proposals-under-consideration/. The agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at 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 the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing changes to the following NMAC policy: **8.281.510 NMAC, Institutional Care-Trust Standards, 8.290.600 NMAC, Home and**

Community-Based Services Waiver-Benefit Description.

Section 9-8-6 NMSA 2016, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: November 14, 2017
Hearing Date: December 15, 2017
Adoption Date: Proposed as March 1, 2018

Technical Citations: 8.281.510 NMAC-Section 5007(a) of the Cures Act amended section 1917(d)(4)(A) of the Act. 8.290.600 NMAC-42 CFR 435.916(C)(iii) periodic renewal of Medicaid eligibility.

The Department is proposing the following rule changes:

8.281.510.11 NMAC

Section 5007(a) of the Cures Act amended section 1917(d)(4)(A) of the Act to add "the individual" (i.e., the trust beneficiary) to the list of people who may establish a special needs trust on the individual's behalf. This means that a trust established on or after December 13, 2016 by an individual with a disability under age 65 for his or her own benefit can qualify as a special needs trust, conferring the same benefits as a special needs trust set up by a parent, grandparent, legal guardian or court. The prior requirement that a third party establish a special needs trust, which is not imposed on the other section 1917(d)(4) trusts, was identified as a barrier to maximizing the independence of people with disabilities. Section 5007(a) of the Cures Act addressed this for special needs trusts established on or after the date of the law's enactment on December 13, 2016. The Department is revising trust rules to add the individual to the list of people who may establish a special needs trust on or after December 13, 2016.

8.290.600.10 NMAC

The Department is updating outdated language by removing the reference

to the MAD 381 form and adding the HSD 100 application. Additional outdated language was deleted regarding case managers completing the application or being a designated representative.

8.290.600.12 NMAC

The Department is extending the 90 day reconsideration period allowed at 42 CFR 435.916(C)(iii) to the Home and Community-Based Services Waiver Medicaid categories of eligibility. The new language allows the Department to reconsider in a timely manner the waiver eligibility of an individual who is terminated for failure to submit the renewal form or necessary information, if the individual subsequently submits the renewal form within 90 days after the date of termination without requiring a new application.

Section 9-8-6 NMSA 2016, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

These proposed rules will be contained in 8.281.500 NMAC and 8.290.600 NMAC. The register and proposed rule language are available on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/register.aspx> and <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at 505-827-6252.

A public hearing to receive testimony on this proposed rule will be held in the Hearing Room 1, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico on December 15, 2017 from 10 a.m. to 11 a.m., Mountain Standard Time (MST).

Interested parties may submit written comments directly to: Human Services Department, Office of the

Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. MST, December 15, 2017.

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 the public hearing, please contact MAD in Santa Fe at 505-827-6252. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD 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.

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE OF RULEMAKING

The Human Services Department (HSD), Medical Assistance Division (MAD), is amending the following rule that is part of the New Mexico Administrative Code (NMAC): 8.200.410.11 NMAC - MEDICAID ELIGIBILITY - GENERAL RECIPIENT RULES - CITIZENSHIP.

The Human Services Department (HSD) has filed an emergency rule at 8.200.410.11 NMAC to prevent the possibility of an unintended change to eligibility for certain New Mexico residents and to protect the public health, safety and welfare. The emergency rules

will reinstate language related to Medicaid citizenship and immigration requirements as described below.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: November 14, 2017

Adoption Date: Proposed as

November 16, 2017

Technical Citations: 42 CFR 435.4, 435.406, 435.956, 8 USC Section 1641, SHO# 10-006

Summary of Revisions:

Language was reinstated at Paragraph (4) of Subsection A of Section 8.200.410.11 NMAC to include non-citizens lawfully admitted for permanent residence or who are permanently residing in the United States under Color of Law (PRUCOL).

Language was reinstated at Subparagraph (l) of Paragraph (1) of Subsection B of Section 8.200.410.11 NMAC to exempt battered non-citizens from the five-year bar.

Language was reinstated at Subparagraph (a) of Paragraph (2) of Subsection B of Section 8.200.410.11 NMAC to clarify that a qualified non-citizen includes a non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act.

Language was reinstated at Subparagraph (i) of Paragraph (2) of Subsection B of Section 8.200.410.11 NMAC to include battered women and non-citizen children of battered parents in the definition of a qualified non-citizen.

Language was reinstated at Subparagraph (a) of Paragraph (3) of Subsection B of Section 8.200.410.11 NMAC to clarify that children under age 21 and pregnant women are considered lawfully present if they are

qualified non-citizens.

The word "aliens" was changed to "non-citizens" at Subparagraph (d) of Paragraph (3) of Subsection B of Section 8.200.410.11 NMAC for consistency throughout the rule.

Language was reinstated at Subparagraph (h) of Paragraph (3) of Subsection B of Section 8.200.410.11 NMAC to clarify that children under age 21 and pregnant women are considered lawfully present if they are non-citizens who are lawfully present in the Commonwealth of the Northern Mariana Islands under 48 USC Section 1806(e)

These regulations will be contained in 8.200.410.11 NMAC of the Medical Assistance Division Program Manual. The register and proposed rule language are available on the HSD website at:

<http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have Internet access, a copy of the register and rule may be requested by contacting MAD at 505-827-6252.

The Department proposes to implement this rule effective November 16, 2017. The change to the rule is temporary. The Department will repromulgate this section of the rule in full within six months of the final effective date and publication in accordance with the New Mexico State Rules Act.

MEDICAL BOARD

NOTICE OF PUBLIC RULE HEARING

The New Mexico Medical Board will convene an Interim Board Meeting on Thursday, December 14, 2017 at 4:00 p.m. and conduct a Public Rule Hearing on Thursday, December 14, 2017 at 4:10 p.m. at New Mexico Board of Nursing located at 6301 Indian School Road, Ste. 710 NE, Albuquerque, NM 87110. The Board will reconvene after the Hearing

to take action on the proposed rule amendments. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.15 NMAC (Physician Assistant: Licensure and Practice Requirements).

A copy of the proposed amended rule is available upon request from the Board office at 2055 South Pacheco Street, Bldg. 400, Santa Fe, NM 87505, by phone (505) 476-7220, or on the Board's website at www.nmmb.state.nm.us.

Persons desiring to present their views on the proposed rule may submit written comments no later than 5:00 p.m., December 8, 2017, to the New Mexico Medical Board, Attn: Sondra Frank, Esq., Executive Director, 2055 South Pacheco Street, Bldg. 400, Santa Fe, NM 87505, and may appear in person at said time and place of hearing.

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 meeting, please contact Amanda Quintana at 505-476-7230 or AmandaL.Quintana@state.nm.us prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Executive director if a summary or other type of accessible format is needed.

NOTICE OF RULEMAKING

The New Mexico Medical Board may consider the following items of rulemaking at the meeting:

Repeal

16.10.15 NMAC Physician Assistants: Licensure and Practice Requirements

Replacement

16.10.15 NMAC Physician Assistants: Licensure and Practice Requirements

SYNOPSIS:

The proposed repeal of 16.10.15 NMAC is to acknowledge that the rule for physician assistant licensing has been supplanted by the statutory changes made to the Medical Practice Act due to the passage of HB 215 in the 2017 regular legislative session. The New Mexico Medical Board's Statutory Authority is Sections 61-6-6, 61-6-7, 61-6-7.4, 61-6-9, 61-6-10, 61-6-17 and 61-6-19 NMSA 1978.

The proposed repeal and replacement of 16.10.15 NMAC is to add the provision of "collaboration" for physician assistant licensing, meaning the process by which a licensed physician and physician assistant jointly contribute to the health care and medical treatment of patients, provided that each collaborator performs actions that the collaborator is licensed or otherwise authorized to perform; and collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered by the collaborating physician assistant. Section 12: spells out the qualifications for collaborative physician assistant licensure and the licensure process for a collaborative physician assistant.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Regulation Commission (NMPRC or Commission) gives notice of its proposed adoption of amendment to Parts 2, 4 and 7 of Title 18, Chapter 3 of the New Mexico Administrative Code, regulated by the Commission pursuant to the New Mexico Motor Carrier Act, Section 65-2A-1, et. seq., NMSA 1978 (the "Act").

Summary of the full text of

the proposed rule and short explanation of purpose:

The purpose of the proposed rulemaking is to remove "commuter services" from current provisions of Parts 2, 4 and 7 of Title 18, Chapter 3 of the New Mexico Administrative Code, and additionally streamline and simplify the annual report. Copies of the Order Granting Transportation Division's Petition for Issuance of Notice of Proposed Rulemaking and Notice of Proposed Rulemaking containing the full text of the proposed rule, as well as additional information and filing instructions, may be downloaded from the Proposed Rulemaking section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 17-00265-TRP or by calling the Commission's Records Management Bureau at (505) 827-6968.

Written Initial Comments and written Response Comments shall be filed by the deadlines below with the Commission's Records Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the NMPRC Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as follows: Written Initial Comments not later than December 14, 2017, and written Response Comments not later than December 20, 2017. Comments shall refer to Case No. 17-00265-TRP.

A public hearing will be held on December 20, 2017, beginning at 2:00 p.m. at the offices of the Commission located in the 4th Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe. The purpose of the hearing is to **receive oral comments**. Because commenters are afforded the opportunity to submit written comments and written responses to the Commission, **any individual who wants to provide oral comments shall be limited to five minutes to express those comments, subject to the Commission's discretion**. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that

shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

The record of this case will close ten (10) days after the public hearing held on December 20, 2017 (date of record closure is December 30, 2017).

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. If you are an individual with a disability and you require assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Ms. Kathleen Segura at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

Statutory Authority: New Mexico Constitution, Article XI, Sec. 2; Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978 (1998); the New Mexico Motor Carrier Act, Section 65-2A-1, et. seq., NMSA 1978.

**End of Notices of
Rulemaking and
Proposed Rules**

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

DEPARTMENT OF AGRICULTURE

TITLE 21 AGRICULTURE AND RANCHING CHAPTER 17 PEST, DISEASE, AND WEED CONTROL PART 36 PECAN WEEVIL INTERIOR QUARANTINE

21.17.36.1 ISSUING

AGENCY: New Mexico State University, New Mexico Department of Agriculture, MSC, 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007.
[21.17.36.1 NMAC - N/E, 11/20/2017]

21.17.36.2 SCOPE: Part 36 of Chapter 17 applies to all person(s) transporting regulated articles from infested counties in New Mexico to New Mexico pecan weevil-free counties.

[21.17.36.2 NMAC - N/E, 11/20/2017]

21.17.36.3 STATUTORY

AUTHORITY: Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9 NMSA 1978 compilation and the Pecan Act, Chapter 76, Article 16, Sections 1 through 9, NMSA 1978 compilation.

[21.17.36.3 NMAC - N/E, 11/20/2017]

21.17.36.4 DURATION: 180 days

[21.17.36.4 NMAC - N/E, 11/20/2017]

21.17.36.5 EFFECTIVE

DATE: November 20, 2017

[21.17.36.5 NMAC - N/E, 11/20/2017]

21.17.36.6 OBJECTIVE: The objective of Part 36 of Chapter 17 is to establish an interior quarantine to restrict the transportation of pecan weevil from quarantined areas to non-quarantined areas in New Mexico.
[21.17.36.6 NMAC - N/E, 11/20/2017]

21.17.36.7 DEFINITIONS:

A. "Board" means the board of regents of New Mexico state university or any officer whom authority to act in their stead has been or hereafter may be delegated.

B. "Certificate" means a document issued or authorized by the director with specific declarations related to the treatment, handling, transportation, condition or other processes related to regulated articles.

C. "Compliance Agreement" means a document issued or authorized by the director that outlines/identifies specific requirements related to the transportation, treatment, handling or processes related to regulated articles.

D. "Department" means the New Mexico department of agriculture and authorized staff.

E. "Director" means director secretary of New Mexico department of agriculture.

F. "Infested" means reasonable expectation that regulated articles may harbor pecan weevil.

G. "Originating" means produced within or having spent sufficient time in a quarantined area to be believed to be at risk of being infested.

H. "Pecan weevil" means any live developmental stage or synonym of *curculio caryae* (horn) including adult, pupae, larvae, or egg.

I. "Regulated article" means pecan weevil, plant tissue, equipment, trailers, or any

other item capable of or having a reasonable expectation of harboring pecan weevil. Including in-shell pecans; sacks used in harvesting, storage, transporting or storing of in-shell pecans; harvesting equipment; live trees or parts thereof with soil attached; hulls, husks, and fragments of hull.

[21.17.36.7 NMAC - N/E, 11/20/2017]

21.17.36.8 QUARANTINE

AREAS: The following counties are quarantined areas: Eddy, Lea, Curry, and Chaves counties. Additional counties may become quarantined areas by the director issuing an emergency quarantine, amendment of this rule, or the promulgation of a new quarantine rule.

[21.17.36.8 NMAC - N/E, 11/20/2017]

21.17.36.9 RESTRICTIONS

ON REGULATED ARTICLES: To prevent the spread of pecan weevil in New Mexico, the board hereby orders and declares regulated articles cannot be transported out of the quarantined areas, except under the following conditions:

A. Transportation of in-shell pecans, hulls, husks, shell fragments, containers associated with the harvesting, transportation, or storage of in-shell pecans originating in quarantined counties to or through non-quarantined areas in New Mexico will be allowed as follows:

(1)

Accompanied by a certificate of treatment, issued by an authorized representative of the department, for each shipment of regulated articles, certifying treatment under official supervision or agreement prior to transporting out of the quarantined area. Acceptable treatments are prescribed under 21.17.36 NMAC.

The certificate must include contact information for pecan owner, shipment amount, date, treatment method, destination address and name.

(2)

Transported in enclosed trailers or other containers approved by the director and transported directly to a facility/location approved by the director and that is capable of providing the treatment(s) as defined under 21.17.36 NMAC.

(3)

Transportation of regulated articles, using alternative methods, may be approved under a compliance agreement issued by the director.

B. Transportation of regulated articles not identified in Subsection A of 21.17.36.9 NMAC including equipment and supplies, originating in quarantined area, to or through non-quarantined areas in New Mexico will be allowed following inspection and issuance of a certificate that identifies regulated articles as not being infested.

[21.17.36.9 NMAC - N/E, 11/20/2017]

21.17.36.10 RECORDS

REQUIREMENTS: Every individual or business that buys or takes possession of in-shell pecans for marketing/resale or processing is required to maintain records related to each individual purchase or transaction. The record must include: contact information of seller, physical location of where nuts were grown, and amount of nuts purchased. Individuals or businesses are required, upon request by the department or authorized agent, to provide access to the records relevant to the transportation or origin of in-shell pecans. Records to be maintained a minimum of four years after the year of harvest.

[21.17.36.10 NMAC - N/E, 11/20/2017]

21.17.36.11 DISPOSITION

OF VIOLATIONS: Any regulated article transported in New Mexico that is in violation of this rule will be subject to immediate quarantine

and treatment or otherwise disposed of as necessary to prevent the spread or establishment of pecan weevil in non-quarantined area in New Mexico. All treatment or disposal will be at the expense of the owners or agents and under the direction of the department. [21.17.36.11 NMAC - N/E, 11/20/2017]

21.17.36.12 TREATMENT OF REGULATED ARTICLES:

Individuals or businesses must be approved by the director prior to receiving in-shell pecans or other regulated articles for treatment. Compliance agreements will be issued to those individuals or business demonstrating the capabilities to provide treatment using one of the following methods:

A. Storage in an approved cold storage chamber at or below zero degrees fahrenheit for a period of seven consecutive days (168 hours) after the entire lot reaches zero degrees fahrenheit; or

B. Immersion in hot water for a period of five minutes after-reaching a temperature of 140 degrees fahrenheit; or

C. Other treatment methods may be approved under a compliance agreement issued by the director.

[21.17.36.12 NMAC - N/E, 11/20/2017]

21.17.36.13 FEES: Certificates, special inspections or other requested services provided by the department will be subject to fees as authorized under Sections 1 through 9 of 21.1.2 NMAC.

[21.17.36.13 NMAC - N/E, 11/20/2017]

21.17.36.14 LIABILITY

DISCLAIMER: The board and the department disclaims liability for any costs incident to inspection or compliance with the provisions of this rule.

[21.17.36.14 NMAC - N/E, 11/20/2017]

21.17.36.15 ADDITIONAL LAWS AND REGULATIONS: All

regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico or the United States department of agriculture now in effect or which may hereafter be promulgated.

[21.17.36.15 NMAC - N/E, 11/20/2017]

HISTORY OF 21.17.36 NMAC: [RESERVED]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

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 11/14/2017.

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, 11/14/2017]

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, 11/14/2017]

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, 11/14/2017]

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, 11/14/2017]

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, 11/14/2017]

19.15.3.10 COMMENTS ON RULEMAKING:

A person may submit written[;] or electronic [or faesimile] 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 faesimile] 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 faesimile] comments on a proposed rule change at the division's Santa Fe office. The division shall post copies of written[;] or electronic [or faesimile] 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 [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~~

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

[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

[so 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, 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]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

This is an amendment to 19.15.7 NMAC, amending Section 24, effective 11/14/2017.

19.15.7.24 OPERATOR'S MONTHLY REPORT (Form C-115):

A. An operator shall file a form C-115 for each non-plugged well completion for which the division has approved a form C-104 and for each secondary or other enhanced recovery project or pressure maintenance project injection well or other injection well within the state, setting forth complete information and data indicated on the forms in the order, format and style the director prescribes. The operator shall estimate oil production from wells producing into common storage as accurately as possible on the basis of periodic tests.

B. An operator shall file the reports 19.15.7.24 NMAC requires using the division's web-based online application on or before the 15th day of the second month following the month of production, or if such day falls on a weekend or holiday, the first workday following the 15th. An operator may apply to the division for exemption from the electronic filing requirement based upon a demonstration that such requirement would operate as an economic or other hardship.

C. If an operator fails to file a form C-115 that the division accepts, the division shall, within ~~[60]~~ 30 days of the appropriate filing date, notify the operator by electronic mail or letter of its intent to ~~[revoke]~~ cancel the operator's authorization to transport or inject if the operator does not file an acceptable and complete form C-115. The notice shall inform the operator of the right to request a hearing pursuant to 19.15.4.8 NMAC. If the operator does not either file an acceptable and complete form C-115 or request a hearing on the proposed cancellation within ~~[+20]~~ 60 days of the original due date of the form C-115, the division may cancel the operator's authority to transport from or inject into all wells it operates.
[19.15.7.24 NMAC - Rp, 19.15.13.1115 NMAC, 12/1/2008; A, 11/14/2017]

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved, at its 10/16/2017 hearing, to repeal its rule 6.29.10 NMAC, Science (filed 6/30/2009) and replace it with 6.29.10 NMAC, New Mexico STEM-Ready Science Standards, (adopted on 10/26/2017) and effective 7/1/2018.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 29 STANDARDS FOR EXCELLENCE PART 10 NEW MEXICO STEM-READY SCIENCE STANDARDS

6.29.10.1 ISSUING AGENCY: Public Education Department, hereinafter the department.

[6.29.10.1 NMAC - Rp, 6.29.10.1 NMAC, 07/01/2018]

6.29.10.2 SCOPE: All public schools, state educational institutions and educational programs conducted in state institutions other than New Mexico military institute.
[6.29.10.2 NMAC - Rp, 6.29.10.2 NMAC, 07/01/2018]

6.29.10.3 STATUTORY AUTHORITY:

A. Section 22-2-2 NMSA 1978 grants the authority and responsibility for the assessment and evaluation of public schools, state-supported educational institutions and educational programs conducted in state institutions other than New Mexico military institute.

B. Section 22-2-2 NMSA 1978 directs the department to set graduation expectations and hold schools accountable. Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.

[6.29.10.3 NMAC - Rp, 6.29.10.3 NMAC, 07/01/2018]

6.29.10.4 DURATION:
Permanent.

[6.29.10.4 NMAC - Rp, 6.29.10.4 NMAC, 07/01/2018]

6.29.10.5 EFFECTIVE DATE: July 1, 2018, unless a later date is cited at the end of a section.
[6.29.10.5 NMAC - Rp, 6.29.10.5 NMAC, 07/01/2018]

6.29.10.6 OBJECTIVE: The department-approved New Mexico STEM-ready science standards represent the required knowledge and skills in this field. They are mandated for grades K-12.
[6.29.10.6 NMAC - Rp, 6.29.10.6 NMAC, 07/01/2018]

6.29.10.7 DEFINITIONS:
[RESERVED]

6.29.10.8 CONTENT STANDARDS WITH BENCHMARKS AND PERFORMANCE STANDARDS FOR SCIENCE, GRADES K-12:
All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute are bound by the New Mexico STEM-ready science standards. These standards are available at www.ped.state.nm.us.

A. The following standards shall be utilized for elementary, middle, and high school in conjunction with the next generation science standards for states, by states incorporated by reference in 6.29.10 NMAC.

(1)

Elementary:

(a)

1-SS-1 NM: Obtain information about how men and women of all ethnic and social backgrounds in New Mexico have worked together to advance science and technology.

(b)

5-SS-1 NM: Communicate information gathered from books, reliable media, or outside sources, that

describes how a variety of scientists and engineers across New Mexico have improved existing technologies, developed new ones, or improved society through applications of science.

(2) Middle and

high school:

(a)

MS-ESS3-3 NM: Describe the advantages and disadvantages associated with technologies related to local industries and energy production.

(b)

HS-LS2-7 NM: Using a local issue in your solution design, describe and analyze the advantages and disadvantages of human activities that support the local population such as reclamation projects, building dams, and habitat restoration.

(c)

HS-SS-1 NM: Obtain and communicate information about the role of New Mexico in nuclear science and 21st century innovations including how the national laboratories have contributed to theoretical, experimental, and applied science; have illustrated the interdependence of science, engineering, and technology; and have used systems involving hardware, software, production, simulation, and information flow.

(d)

HS-SS-2 NM: Construct an argument using claims, scientific evidence, and reasoning that helps decision makers with a New Mexico challenge or opportunity as it relates to science.

B. The next generation

science standards for states, by states by the NGSS lead states and any amendments made thereto are incorporated in this rule by reference.

[6.29.10.8 NMAC - Rp, 6.29.10.8 NMAC, 07/01/2018]

6.29.10.9 - 6.29.10.10:
[RESERVED]

HISTORY OF 6.29.10 NMAC:
Pre-NMAC HISTORY: The material in this part is derived from that previously filed with the State Records Center:

SDE 74-17, (Certificate No. 74-17), Minimum Educational Standards for New Mexico Schools, filed April 16, 1975.

SDE 76-9, (Certificate No. 76-9), Minimum Education Standards for New Mexico Schools, filed July 7, 1976.

SDE 78-9, Minimum Education Standards for New Mexico Schools, filed August 17, 1978.

SBE 80-4, Educational Standards for New Mexico Schools, filed September 10, 1980.

SBE 81-4, Educational Standards for New Mexico Schools, filed July 27, 1981.

SBE 82-4, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed November 16, 1982.

SBE Regulation No. 83-1, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed June 24, 1983.

SBE Regulation 84-7, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed August 27, 1984.

SBE Regulation 85-4, Educational Standards for New Mexico Schools, Basic, Special Education, and Vocational Programs, filed October 21, 1985.

SBE Regulation No. 86-7, Educational Standards for New Mexico Schools, filed September 2, 1986.

SBE Regulation No. 87-8, Educational Standards for New Mexico Schools, filed February 2, 1988.

SBE Regulation No. 88-9, Educational Standards for New Mexico Schools, filed October 28, 1988.

SBE Regulation No. 89-8, Educational Standards for New Mexico Schools, filed November 22, 1989.

SBE Regulation No. 90-2, Educational Standards for New Mexico Schools, filed September 7, 1990.

SBE Regulation No. 92-1, Standards for Excellence, filed January 3, 1992.

History of Repealed Material:

6.30.2 NMAC, Standards for Excellence, filed November 2, 2000 - Repealed effective June 30, 2009.
6.29.10 NMAC, Science, filed June 30, 2009 - Repealed effective July 1, 2018.

NMAC History:

6 NMAC 3.2, Standards for Excellence, filed October 17, 1996.
6.30.2 NMAC, Standards for Excellence, November 2, 2000, replaced by 6.29.1 NMAC, General Provisions; 6.29.2 NMAC, Arts Education; 6.29.3 NMAC, Career and Technical Education; 6.29.4 NMAC, English Language Arts; 6.29.5 NMAC, English Language Development; 6.29.6 NMAC, Health Education; 6.29.7 NMAC, Mathematics; 6.29.8 NMAC, Modern, Classical and Native Languages; 6.29.9 NMAC, Physical Education; 6.29.10 NMAC, Science; 6.29.11 NMAC, Social Studies; effective June 30, 2009. 6.29.10 NMAC - Science, filed June 30, 2009 was repealed and replaced by 6.29.10 NMAC - New Mexico STEM-Ready Science Standards, effective July 1, 2018.

**WORKFORCE
SOLUTIONS,
DEPARTMENT OF**

At its public hearing on October 18, 2017, the Department of Workforce Solutions repealed its rule 9.1.1 NMAC entitled Administrative Procedures for the Human Rights Bureau/Commission and replaced it with 9.1.1 NMAC entitled Administrative Procedures for the Human Rights Bureau/Commission, adopted November 1, 2017 and effective November 14, 2017.

At its public hearing on October 18, 2017, the Department of Workforce Solutions repealed its rule 11.1.4 NMAC entitled Wage and Hour and Employment of Children and replaced it with 11.1.4 NMAC entitled Wage and Hour and Employment of Children, adopted November 1, 2017 and effective November 14, 2017.

**WORKFORCE
SOLUTIONS,
DEPARTMENT OF**

**TITLE 9 HUMAN RIGHTS
CHAPTER 1 HUMAN RIGHTS
GENERAL PROVISIONS
PART 1 ADMINISTRATIVE
PROCEDURES FOR THE
HUMAN RIGHTS
BUREAU/COMMISSION**

9.1.1.1 ISSUING

AGENCY: New Mexico Department of Workforce Solutions, Labor Relations Division, Human Rights Bureau
[9.1.1.1 NMAC - Rp, 9.1.1.1 NMAC, 11/14/2017]

9.1.1.2 SCOPE:

A. These rules apply to the general public and contain specific limitations from applicability, as noted.

B. Application of rules of civil procedure: In the absence of a specific provision governing an action in the Human Rights Act or in these rules, the human rights bureau and the human rights commission may look for guidance to the New Mexico Rules of Civil Procedure for the District Courts, Rules 1-001 to 1-102 NMRA 1998 and as may be revised.
[9.1.1.2 NMAC - Rp, 9.1.1.2 NMAC, 11/14/2017]

9.1.1.3 STATUTORY

AUTHORITY: These rules and regulations are adopted by the secretary of the New Mexico department of workforce solutions to carry out the provisions of the Human Rights Act, Sections 28-1-1 to 28-1-7, 28-1-9 to 28-1-14 NMSA 1978 and 28-23-1 to 28-23-6 NMSA 1978, as amended, or as such provisions may be amended by law.
[9.1.1.3 NMAC - Rp, 9.1.1.3 NMAC, 11/14/2017]

9.1.1.4 DURATION:

Permanent.
[9.1.1.4 NMAC - Rp, 9.1.1.4 NMAC, 11/14/2017]

9.1.1.5 EFFECTIVE

DATE: November 14, 2017 unless a later date is cited at the end of a section.
[9.1.1.5 NMAC - Rp, 9.1.1.5 NMAC, 11/14/2017]

9.1.1.6 OBJECTIVE:

These rules and regulations govern procedure for discrimination complaints with the human rights bureau, and the subsequent investigation and administrative hearing process.
[9.1.1.6 NMAC - Rp, 9.1.1.6 NMAC, 11/14/2017]

9.1.1.7 DEFINITIONS:

As used in these rules incorporates the definitions of 28-1-2 NMSA 1978 and:

A. “act” means the Human Rights Act, Sections 28-1-1 to 28-1-7, 28-1-9 to 28-1-14 and 28-23-1 to 28-23-6 NMSA 1978, and all subsequent amendments and provisions;

B. “applicant for employment” means a person applying or attempting to apply for a position as an employee;

C. “bureau” means the human rights bureau of the labor relations division of the New Mexico department of workforce solutions.

D. “chairperson” and “vice chairperson”:
(1)

“chairperson” means a member of the commission designated by the governor to serve as chair.

(2) “vice chairperson” means a member of the commission designated by the commission to preside in the absence or incapacity of the chairperson.

E. “commission” means the New Mexico human rights commission;

F. “commissioner” means one of the members appointed by the governor to serve on the New Mexico human rights commission;

G. “complainant” means any person who claims to be aggrieved by an unlawful discriminatory practice and who has filed a complaint with the human rights bureau within 300 days after

the alleged unlawful discriminatory act was committed;

H. “complaint” and “commission complaint”:

(1)

“complaint” means a charge of discrimination signed by the complainant on an HRD charge of discrimination form, on an equal employment opportunity commission (EEOC) form 5 or on such other form as may be deemed acceptable to the human rights division;

(2)

“commission complaint” means a written complaint issued by the commission on behalf of the complainant against the respondent, setting forth the alleged discriminatory practice, the section of the act alleged to have been violated and the relief requested by complainant; the commission complaint is based upon the complaint filed by complainant with the division.

I. “determination” means a formal decision made by the division director, relating to a complaint filed with the human rights bureau of the labor relations division of the New Mexico department of workforce solutions;

J. “disabled person” means any person who has a physical or mental disability as defined in these rules as “physical or mental disability” and “physical or mental handicap” as used in Subsection M of Section 28-1-2 NMSA 1978, as amended;

K. “division” means the labor relations division of the New Mexico department of workforce solutions;

L. “good cause” means a substantial reason. The bureau may consider any relevant factors to determine if good cause exists.

M. “hearing clerk” means the person designated by the commission to maintain the official record of the proceedings;

N. “hearing officer” means the person conducting a hearing of a matter brought before the commission; a hearing officer may be:

(1) a member

of the commission designated by the chairperson to act as the hearing officer; or

(2) a hearing

officer employed by the human rights bureau of the New Mexico department of workforce solutions.

O. “labor organization” means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment;

P. “major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, as provided in Subsection N of Section 28-1-2 NMSA 1978, as amended, or as currently defined by regulations governing interpretation of the Americans with Disabilities Act of 1990, as amended;

Q. “person” means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions;

R. “physical or mental handicap” or “physical or mental disability” means a physical or mental impairment that substantially limits one or more of an individual’s major life activities.

(1) An

individual is also considered to be physically or mentally disabled, if he or she:

(a)

has a record of a physical or mental disability; or

(b)

is regarded as having a physical or mental disability.

(2) “Has a

record of such a disability” means has a history or recorded classification of having a mental or physical impairment that substantially limits one or more major life activities.

(3) “Is

regarded as having a disability”

means:

(a)

having a physical or mental impairment that does not substantially limit major life activities, but being treated by a respondent as having such a limitation;

(b)

having a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or

(c)

having none of the impairments described above, but being treated by a respondent as having such an impairment.

S. “physical or mental impairment” is defined to include, but is not limited to, any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; endocrine; or any mental or psychological disorder, such as development disability, organic brain syndrome, emotional or mental illness and specific learning disabilities;

T. “probable cause” and “no probable cause”:

(1) “probable

cause” means that the allegations in the complaint are supported by evidence providing reasonable grounds to believe an unlawful discriminatory practice occurred, pursuant to the act.

(2) “no

probable cause” means that the allegations in the complaint are not supported by evidence providing reasonable grounds to believe an unlawful discriminatory practice occurred, pursuant to the act.

U. “protected groups” for complaint purposes are all of the groups identified by the bases provided in Section 28-1-7 NMSA 1978, as amended;

V. “qualified disabled person with respect to employment”

means a disabled person who, with reasonable accommodation, can perform the essential functions of the job in question and shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in employment under any program or activity;

W. “qualified disabled person with respect to housing, accommodation, credit and acquisition or maintenance of particular real property” means a disabled person whose disability does not limit that person’s ability to fulfill the obligations of occupancy, tenancy, ownership or credit responsibilities;

X. “reasonable accommodation” means, for employment purposes, such modifications or adaptations of the work environment or job responsibilities of a disabled person as are necessary to enable him or her to perform the essential functions of the job in question and which do not impose an undue hardship on the employer;

Y. “respondent” means the person, company, union, association, organization, agency or any other enterprise named in a complaint as having allegedly engaged in an unlawful discriminatory practice;

Z. “serious medical condition” means a serious health-related impairment other than a disability, which substantially limits one or more of an individual’s major life activities, as “major life activities” is defined within these rules, and which is verifiable by medical diagnosis.

(1) An individual is also considered to have a serious medical condition, if he or she:

(a) has a record of a serious health-related impairment; or
(b) is regarded as having a serious health-related impairment.

(2) “Has a record of serious health-related impairment” means has a history

or recorded classification of having a serious medical condition that substantially limits one or more major life activities.

(3) “Is regarded as having a serious health-related impairment” means:

(a) having a serious medical condition that does not substantially limit major life activities, but being treated by a respondent as having such a limitation;

(b) having a serious medical condition that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or

(c) having none of the impairments described above, but being treated by a respondent as having such an impairment.

(4) The term “serious medical condition” is intended to apply to a serious health-related impairment that requires protection against discrimination due to the severity and duration of the impairment or due to having a record of such impairment.

AA. “sex discrimination” is defined to include, but is not limited to, the following:

(1) “Sexual harassment” means any unwanted or repeated physical or verbal act that is sexual, including sexual advances, sexual conduct, verbal or nonverbal sexual suggestions, sexual ridicule or sexual innuendoes in order to:

(a) affect employment status relating to matters of compensation or the terms and conditions of employment;

(b) obtain credit;

(c) obtain housing, continue housing agreements; or

(d) be denied access to or limit public accommodations;

(2) “Pregnancy, childbirth, or related medical condition,” women affected by pregnancy, childbirth or related

medical conditions shall be treated the same as other persons who are temporarily disabled for all employment-related purposes, including receipt of benefits under fringe benefit programs; further, women affected by pregnancy, childbirth or related medical conditions shall be treated the same as other persons who are temporarily disabled in the areas of credit, housing and public accommodations.

BB. “unlawful discriminatory practices” means those unlawful practices and acts specified in Section 28-1-7 NMSA 1978, as amended.

[9.1.1.7 NMAC - Rp, 9.1.1.7 NMAC, 11/14/2017]

9.1.1.8 FILING A COMPLAINT:

A. Persons who may file a complaint:

(1) Any person claiming to be aggrieved by an unlawful discriminatory practice may by himself or herself, or through his or her legally authorized representative, make and sign a complaint and file said complaint with the bureau.

(2) Any member of the commission who has reason to believe that an unlawful discriminatory practice has occurred may make, sign and file a written complaint with the bureau, on behalf of a complainant. The complaint must state the facts which gave the member of the commission reason to believe that an unlawful discriminatory practice has occurred.

B. Time limit for filing: All complaints shall be filed with the bureau within 300 days after the last alleged act of unlawful discrimination was committed.

C. Form of complaint:

(1) The complaint of any person claiming to be aggrieved or the complaint of a commissioner who has reason to believe an unlawful discriminatory practice has occurred shall be in writing on a human rights bureau discrimination complaint form, on an EEOC form 5 or on such other

form as the human rights bureau may deem acceptable. The complainant may be assisted by the staff of the human rights bureau in preparing his or her complaint, unless the complainant is represented by legal counsel, in which case complainant's counsel will be required to prepare and file the complaint on behalf of the complainant.

(2) A relief requested form shall be completed and signed by the complainant and made part of the investigative file.

D. Contents of the written complaint: Each complaint shall contain:

(1) the name and current address of the complainant;

(2) the name and address of the respondent;

(3) a statement describing the occurrence of an unlawful discriminatory practice, by which complainant alleges he or she was aggrieved. This description is to include:

(a) a statement of the general nature of complainant's claim; and

(b) an identification of the particular provision of the statute or of these regulations upon which the complainant bases his claim; and

(c) the time, place and nature of the occurrence alleged to be an unlawful discriminatory practice;

(4) the factual basis or grounds supporting complainant's allegation that he or she was aggrieved by an unlawful discriminatory practice; and

(5) the signature of the complainant and the date of signing.

E. Manner of filing the complaint:

(1) The complaint shall be deemed filed as of the date it is received at the bureau office. For the purpose of complying with the filing time limit of 300 days, as provided in Subsection A of Section 28-1-10 NMSA 1978, as amended, a complaint which is

first filed with any duly authorized civil rights agency holding a work sharing agreement or memorandum of understanding with the bureau shall be deemed to have been filed with the bureau as of the date on which the complaint was first filed with any of these agencies.

(2) When the complaint is received at the bureau office, the person accepting the complaint shall stamp the complaint with the date it is received. An electronically delivered copy of the complaint will be stamped and accepted as filed.

F. Jurisdiction:

(1) At the time of filing, the bureau shall determine initially whether the allegations in the complaint sufficiently state a claim under the act in order to proceed with the investigation. During the investigation, the bureau may also determine, based upon the facts established, whether the bureau has jurisdiction of the complaint.

(2) If at the time of filing or at any subsequent time it is determined that there is a lack of jurisdiction, the complaint shall be dismissed. The complainant shall be promptly notified of the dismissal by certified mail. The respondent shall be notified of the dismissal by regular mail.

(3) When a disability or serious medical condition is alleged in the complaint, the complainant must offer evidence of the disability or serious medical condition during the course of the investigation. Evidence documenting a disability or serious medical condition may be provided by the written certification of a physician or other appropriate medical authority unless the existence of the disability or serious medical condition is not a matter in dispute.

G. Notice to respondent: Upon the filing of a complaint, the bureau shall, within 10 days, furnish the respondent with a copy thereof by certified mail.

H. Withdrawal or dismissal of the complaint and requests to reopen the case.

(1) The complainant may withdraw the complaint at any time by signing a letter requesting dismissal of the complaint or a withdrawal form provided by the bureau and submitting it to the bureau.

(2) In the event that the complainant cannot be contacted for a 30 day period at his or her last known address or forwarding address, or in the event that the complainant refuses to cooperate with the bureau, the director shall dismiss the complaint without prejudice and administratively close the case.

(3) Requests for reopening a case will be made to the bureau based on the specific situation. The complainant must establish good cause to reopen the case. The director shall consider all circumstances relative to the request and determine whether the request is jurisdictional and timely made and whether good cause has been shown establishing reasonable grounds for reopening the case. The complainant and the respondent will be notified in writing, when the director decides whether the case will be reopened.

(4) In the event of a withdrawal or closure of a complaint, the bureau shall promptly notify the respondent of such action by mail, provided that the respondent has been notified of the complaint.

I. Request for director's order of nondetermination:

(1) Immediately after the bureau's receipt of a complainant's complaint, a complainant who seeks to remove the complaint from the bureau and pursue the complaint in district court may request and shall receive from the director an order of nondetermination.

(2) The director's order of nondetermination may be appealed to the district court, pursuant to the provisions of Section 28-1-13 NMSA 1978, or as these provisions may otherwise be amended. The director's order of nondetermination shall be deemed a final order of the commission for purposes of appeal, pursuant to Section 28-1-13 NMSA 1978.

[9.1.1.8 NMAC - Rp, 9.1.1.8 NMAC, 11/14/2017]

9.1.1.9 INVESTIGATIONS AND ALTERNATIVE DISPUTE RESOLUTION (ADR):

A. Investigative procedure:

(1) The respondent will be required to respond and submit documents within 30 days from the date of the inquiry from the bureau with the investigator's request for information. The deadline may be extended by the investigator for up to 10 days. Any requests for additional time beyond that must be made in writing to the bureau detailing the reason for the request, and may be granted for good cause.

(2) The complainant will be required to provide a rebuttal to the respondent's response by the deadline provided with the investigator's request for rebuttal. The deadline may be extended by the investigator up to 20 days. Any requests for additional time beyond that must be made in writing to the bureau detailing the reason for the request, and may be granted for good cause. The complainant may file an amendment to the complaint at any time prior to the rebuttal request. After the rebuttal has been requested, the complainant will be required to file a new complaint if the complainant wishes to make additional allegations not included within the original complaint.

B. The bureau's authority to investigate a complaint is not limited to the procedure outlined in Subsection A of this section.

C. Prior to an investigation, the director will invite the parties to engage in mediation discussions. Should an agreement resolving the complaint be reached through mediation, the terms shall be reduced to writing in a settlement agreement and will be signed by the parties. If a settlement agreement is signed, no determination will be issued by the director. The bureau shall dismiss the complaint upon receipt of the fully-executed

settlement agreement.

D. Failure of the respondent or the complainant to abide by a fully-executed settlement agreement will require the aggrieved party to seek enforcement of the agreement in court.

[9.1.1.9 NMAC - Rp, 9.1.1.9 NMAC, 11/14/2017]

9.1.1.10 DIRECTOR'S DETERMINATION OF PROBABLE CAUSE OR NO PROBABLE CAUSE:

A. After an investigation is completed, the director will issue a determination of probable or no probable cause.

B. If the director determines that no probable cause exists, the director shall dismiss the complaint and notify the parties of the dismissal. The complainant will be notified by certified mail, and the respondent will be notified by regular mail. Upon dismissing the complaint, the director will advise the complainant of his or her right to appeal the determination in district court within 90 days after receipt of the determination.

C. If the director determines that probable cause exists, both parties will be notified of the determination by certified mail. The director will attempt to conciliate the matter. If conciliation attempts fail, the director shall have a commission complaint issued, setting the matter for hearing before the commission; provided that the complainant has not requested a waiver of right to hearing pursuant to Subsection J of Section 28-1-10 NMSA 1978.

[9.1.1.10 NMAC - Rp, 9.1.1.10 NMAC, 11/14/2017]

9.1.1.11 WAIVER OF COMPLAINANT'S RIGHT TO HEARING:

A. Within 60 days of service of the director's determination of probable cause, the complainant may make a written request to the director for a waiver of complainant's right to a commission hearing and seek a trial de novo in district court, pursuant to Subsection J of Section

28-1-10 NMSA 1978, as amended.

B. The director shall approve a waiver request which is timely made and shall serve notice of the waiver upon the complainant and the respondent. The director's issuance of a waiver notice shall be deemed a final order of the commission for the purpose of appeal, pursuant to Section 28-1-13 NMSA 1978, as amended.

C. Within 90 days from the date of service of the waiver notice, the complainant may request a trial de novo, pursuant to Section 28-1-13 NMSA 1978, as amended.

[9.1.1.11 NMAC - Rp, 9.1.1.11 NMAC, 11/14/2017]

9.1.1.12 CONCILIATION PROCESS BEFORE AND AFTER ISSUANCE OF COMMISSION COMPLAINT:

A. Conciliation process prior to issuance of commission complaint:

(1) The director will attempt to achieve a satisfactory adjustment of the complaint by means of conciliation with the complainant and the respondent.

(2) If conciliation attempts are successful, the parties shall prepare and sign a written settlement agreement. When the complainant and the respondent have executed a written settlement agreement by signing it, they shall provide the director with written notification that a settlement agreement between the parties has been executed.

(3) If a settlement agreement is reached between the complainant and the respondent through bureau mediation, the executed settlement agreement shall be forwarded to the director and will serve as the parties' written notification to the director of the executed settlement agreement.

(4) Once the director has received the parties' written notification that a settlement agreement has been executed, the complaint will be dismissed and the case will be administratively closed.

The parties will be provided with notice by mail of the dismissal of the complaint and the administrative closure of the case.

(5) Failure by the respondent or the complainant to abide by a fully-executed settlement agreement will require the aggrieved party to seek enforcement of the agreement in court.

B. Conciliation
process after issuance of commission complaint:

(1) If a settlement agreement is reached between the complainant and the respondent through the conciliation process, the complainant will be required to submit a motion to dismiss pursuant to this rule.

(2) The motion to dismiss will be deliberated and decided upon at a commission review panel.

(3) The parties will be notified by regular mail of the date, time, and location of the review panel at which the motion will be considered. The parties are not required to attend the review panel in person.

(4) Following its delivery, the commission will issue an order on the matter and notify the parties pursuant to Subsection E of Section 28-1-11 NMSA 1978. [9.1.1.12 NMAC - Rp, 9.1.1.11 NMAC, 11/14/2017]

9.1.1.13 HEARING PREPARATION:

A. Time limits:

(1) Unless the complaint has already been dismissed or a satisfactory adjustment of the complaint has been reached, a commission complaint will be issued on behalf of the complainant within one year of the complainant's filing of a complaint with the bureau, as provided in Subsection G of Section 28-1-10 NMSA 1978 of the New Mexico Human Rights Act, or as such time limit may be otherwise amended by law.

(2) A hearing date will be set not more than 15 days or less than 10 days after service of

the commission complaint, pursuant to Subsection F of Section 28-1-10 NMSA 1978 of the New Mexico Human Rights Act, or as such provision may be otherwise amended by law.

B. Case preparation for commission hearing:

(1) **Case presentation:** Each party is responsible for preparing its case for presentation to the commission at hearing. Each party may represent himself or herself at hearing or may be represented by an attorney or another qualified representative.

(2) **Evidence:**
(a) Each party, either in person or through its attorney or other representative, may present evidence in support of its case at hearing, by calling witnesses to testify and introducing exhibits. Each party, either in person or through its attorney or other representative, may examine and cross-examine witnesses.

(b) Any materials or information contained in the bureau investigative files are not before the commission or the hearing officer at hearing, unless a party has obtained these materials before the time of hearing and seeks to introduce them as evidence at the hearing. Once a commission complaint is issued and the matter is set for hearing, the materials generally before the commission or the hearing officer are the commission complaint and the notice of hearing.

(c) A party's preparation for hearing should include, but is not limited to: determining what evidence a party intends to present at hearing; identifying the witnesses whom a party wishes to call at hearing; verifying the witnesses' availability to appear at hearing; determining whether subpoenas will be needed to secure the witnesses' appearance at hearing, requesting issuance of subpoenas and subpoenas duces tecum, if needed; arranging for service of subpoenas; identifying materials to be introduced as exhibits through witness testimony; obtaining

the materials to be introduced as exhibits; and preparing exhibits for presentation at hearing.

C. Exhibit requirements:

(1) **Marking**
to identify exhibits: Each party shall have its exhibits marked for identification before the hearing. Complainant's exhibits shall be marked with numbers, for example: EXHIBIT 1, EXHIBIT 2, etc. Respondent's exhibits shall be marked with alphabetical letters, for example: EXHIBIT A, EXHIBIT B, etc. Identification of an exhibit is to be placed on the lower right corner of the first page of each exhibit, if there is space available. If space is not available on the lower right corner, identification should be placed on the first page of the exhibit, at the top or bottom of the page where space is available. The identification number or letter of an exhibit shall remain the same, whether the exhibit is accepted or rejected. Separate documents, photographs, papers and other written or printed instruments shall each be given a separate exhibit number or exhibit letter. An exhibit consisting of more than one page shall be fastened, and each page shall be numbered.

(2) **Number of copies:** Exhibits are to be provided only at the hearing and not provided to the commission prior to the hearing. The original and six copies of each exhibit shall be provided at the commission hearing when the matter is to be heard by a three-member panel of commissioners. The original is filed with the hearing clerk, and four copies are retained by the commission for commission purposes. The two remaining copies include one copy for the opposing party and one copy for the witness testifying. When the matter is to be heard by a single hearing officer, the original and three copies of each exhibit shall be provided at the hearing.

(3) **Large exhibits:** The use of large charts and diagrams, models and other bulky items for illustrative purposes is permitted. The introduction of such large items in evidence is

discouraged. Exhibits offered in evidence should be limited to 8.5 x 11 inches, or capable of being folded and placed in 8.5 x 11 inch envelopes, unless otherwise necessary for adequate presentation of evidence.

D. Witness identification:

(1) Request for identity of witnesses: Prior to the hearing any party is entitled to obtain and may request from another party witness information, to the extent that it is known, unless a protective order is issued to protect such information from disclosure. The following information may be requested:

(a) the names and addresses of witnesses whom a party anticipates may be called to testify at the hearing;

(b) the relationship, if any, of each witness to the party intending to call the witness; and

(c) a brief description of the general subject matter about which the witness is anticipated to testify.

(2) The witness information specified above need not be provided as to any officer, employee or agent of the party from whom the witness information is requested, unless the party responding to the request intends to call the officer, employee or agent to testify at the hearing.

(3) Response to request for identity of witnesses: A party's request for the identity of witnesses shall be answered within 10 days of service, unless otherwise ordered by the commission or the hearing officer, upon a motion for a protective order and a showing of good cause.

(4) Protective order: Upon a motion for a protective order and upon a showing of good cause, the commission or the hearing officer may grant a motion for a protective order and issue an order to protect such witness information from disclosure. If the motion for a protective order is denied, the requested information shall be disclosed.

E. Subpoenas and subpoenas duces tecum:

(1) The commission may issue subpoenas commanding the appearance and testimony of witnesses at the hearing. The commission may also issue subpoenas duces tecum commanding the appearance of witnesses and their production of certain specific documents or other items at the hearing.

(2) The commission may issue subpoenas and subpoenas duces tecum upon the request of a party to the proceeding.

(3) Service of the subpoenas and subpoenas duces tecum shall be made by the requesting party, in the same manner as prescribed by law for civil actions in the district courts of the state of New Mexico.

(4) The cost of service and witness and mileage fees for all hearings shall be borne by the party at whose request the subpoenas and the subpoenas duces tecum are issued. The fees paid, therefore, shall be the same as those paid by the district courts of the state of New Mexico.

(5) Requests for subpoenas or subpoenas duces tecum will be submitted to the commission through the hearing clerk no later than seven working days prior to the hearing date. Requests must be made in writing and must include the name and last known address for each person for whom a subpoena is requested. Requests for subpoenas duces tecum must include a separate list of documents for attachment to the subpoena.

F. Filing, service and form of documents submitted by parties:

(1) Filing of documents: Except as otherwise provided, a party shall file the originals of all documents served in the proceeding with the hearing clerk at the human rights bureau. A party shall also serve copies thereof upon all other parties. Service shall be attested by a certificate of service, indicating the date of service, the

means of service, who was served and by whom service was made.

(2) Service of documents: Except as otherwise provided, all documents shall be served in person or by mail. If service is by mail, three days shall be added to time allowed by these rules for filing of a responsive document.

(3) Form of motions, responses and other documents submitted to the commission: Unless otherwise provided by these rules or by order of the commission or hearing officer, all documents, except exhibits, shall comply with the following requirements:

(a) documents shall be prepared on 8.5 x 11 inch white paper;

(b) the first page of each document shall contain a centered heading, a caption beginning at the left margin which designates the parties and the case number, and a descriptive title identifying the nature and purpose of the document, as follows:

BEFORE THE HUMAN RIGHTS
COMMISSION
OF THE STATE OF NEW MEXICO
(Name of Complainant),
Complainant,
v.

HRD No. _____
(Name of Respondent),
Respondent,
[DESCRIPTIVE TITLE OF THE
DOCUMENT]

G. Motions:

(1) General matters: All motions, except those made orally during the hearing, shall be in writing, shall state the grounds for the motion, and shall specify the relief sought. The commission or the hearing officer may direct that an oral motion made at hearing shall be made in writing, stating the grounds for the motion and specifying the relief sought. If the motion relies upon facts which are not in the hearing records, each motion shall be accompanied by an affidavit, certificate or other evidence relied upon. Motions shall be filed and served, as provided in these rules for the filing and service of

documents.

(2) Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was sought and granted. With an unopposed motion, the moving party shall also submit a proposed order, approved by all parties, for the commission's or the hearing officer's consideration.

(3) Opposed motions: Any opposed motion shall state that concurrence was sought and denied, or shall state why concurrence was not sought. An opposed motion may be accompanied by a memorandum brief in support of the motion.

(4) Response to motions: Any party upon whom an opposed motion is served shall have 10 days after service of the motion to file a response unless the commission or the hearing officer directs otherwise. A non-moving party who fails to file a response within that period or within any extension of time granted by the commission or hearing officer shall be deemed to have waived any objection to the granting of that motion.

(5) Decisions: All motions shall be decided by the commission or the hearing officer without a hearing, unless the commission or the hearing officer orders otherwise. Any party may submit a written request for a commission order granting a hearing on a motion.

H. Issuance of documents by the commission or the hearing officer: All documents issued by the commission or the hearing officer shall be filed with the hearing clerk. As soon as is practicable or otherwise provided by law, the hearing clerk shall serve copies of the documents upon all the parties in person or by first-class mail.

I. Statement of intent to present evidence at hearing:

(1) Filing requirement: No later than five days prior to the hearing, each party shall file with the hearing clerk an original and four copies of the party's statement of intent to present evidence

at the hearing. Each party shall also serve a copy of this statement on all parties of record.

(2) Content of statement: The statement of intent to present evidence shall include:

(a) the name of the party filing the statement;

(b) a witness list, including the name of each witness who will testify at hearing and an estimate of the length of time required for the direct testimony of each witness named; and

(c) a list of the exhibits, if any, to be offered into evidence at the hearing.

(3) Modifications to witness list or exhibit list after filing of statement of intent: If there are any modifications to a party's witness list or exhibit list after filing the statement of intent to present evidence, the party shall provide its modified witness list or exhibit list to the commission and all parties of record before the hearing or at the hearing.

[9.1.1.13 NMAC - Rp, 9.1.1.12 NMAC, 11/14/2017]

9.1.1.14 COMMISSION HEARING:

A. Issuance of commission complaint:

(1) If after a probable cause determination, efforts at conciliation have failed, the commission shall issue a written complaint in its own name, on behalf of the complainant, against the respondent. The commission shall set forth the alleged discriminatory practice, the section of the Human Rights Act alleged to have been violated and the relief requested.

(2) The commission complaint shall require the respondent to answer the allegations of the commission complaint by appearing at a hearing before the commission on the date, time and place specified in the commission complaint. The respondent may also file a written answer to the commission complaint.

(3) The

commission complaint shall be served on the complainant and the respondent or their legal representatives by certified mail, return receipt requested. Such complaint shall advise the parties that failure to appear at the hearing may result in the entry of a judgment or order against the party that fails to appear.

(4) The complainant shall review the commission complaint and verify that the complaint sets forth the discriminatory practice that is alleged to have occurred. Any motion by the complainant to amend the commission complaint should be made as soon as possible and in advance of the hearing. If a motion to amend the complaint is made on the day the hearing is set to commence, the commission may allow the respondent additional time to prepare. The commission will not allow an amendment to the complaint which alleges a discriminatory practice that was not raised and investigated at the bureau level or that was dismissed at the bureau level.

B. Scheduling the hearing:

(1) Hearing date: The hearing clerk, in coordination with the commission and the hearing officer, shall schedule a hearing date which shall not be more than 15 nor less than 10 days after service of the complaint.

(2) Location of hearing: Such hearings shall be held in the county where respondent is doing business or where the alleged discriminatory practice occurred.

(3) Hearing mode: A hearing may be scheduled to be heard by a three-member panel of commissioners or a single hearing officer.

(4) Notice of hearing: The hearing clerk shall:

(a) serve a copy of the written commission complaint and notice of hearing upon each party;

(b) send copies of the notice of hearing, with a request for publication, to

at least one newspaper of general circulation in the state; and

(c)
file the following documents in the official case file: a copy of the commission complaint; a copy of the notice of hearing with affidavits of publication attached; and documentation of how and when the commission complaint and the notice of hearing was served on the parties.

C. Hearing procedures:
(1)

Appearance and representation:

(a)
The complainant shall be present at the hearing, may present testimony or evidence and may be represented by an attorney or other representative. The complainant or complainant's representative shall present the case supporting the complaint at hearing.

(b)
If the complainant does not appear at the hearing after proper notice has been served, the complaint may be dismissed for failure of the complainant to appear and present the complainant's case at hearing as required in Subsections A and C of Section 28-1-11 NMSA 1978, as amended.

(c)
The respondent to a complaint may file a written answer to the complaint, may appear at the hearing, may give testimony and may be represented by an attorney or other representative. If the respondent is an entity, the respondent may designate a person to serve as its representative at the hearing. The respondent, respondent's representative or respondent's counsel may present the case responding to the complaint at hearing.

(d)
Commission counsel may advise the commission during the hearing on legal matters and will assist in the preparation of the findings of fact, the conclusions of law and the order.

(2) Sequence of the proceeding:

(a)
introduction to the proceeding by the presiding commissioner or the hearing officer;

(b)
consideration of any preliminary matters or motions;

(c)
administration of oath of the parties and the witnesses by presiding commissioner or hearing officer;

(d)
opening statement by the complainant or the complainant's attorney or other representative;

(e)
opening statement by the respondent or the respondent's attorney or other representative;

(f)
presentation of the complainant's case;

(g)
presentation of the respondent's case;

(h)
closing argument by the complainant or the complainant's attorney or other representative;

(i)
closing argument by the respondent or the respondent's attorney or other representative;

(j)
instructions to the parties as to the schedule for filing findings of fact, conclusions of law, briefs or other documents with the commission following the hearing; and

(k)
final adjournment of the hearing.

(4)
Sequestering witnesses: The commission shall sequester the witnesses from the hearing until the time of their testimony. A complainant or the designated representative for respondent will be allowed to be present throughout the hearing, even though the complainant or the designated representative for respondent may be called to testify.

(5) Custody of evidence: Evidence introduced as exhibits at the hearing will be retained in the custody of the hearing clerk at the bureau for commission purposes.

(6) Matters of proof:

(a)
Burden of proof: Complainant has the burden of proof.

(b)

Standard of proof: The complainant must prove his or her case by a preponderance of the evidence.

(7)

Evidentiary matters at hearing:

(a)
Formal rules of evidence not binding on the commission: The formal rules of evidence governing the courts of law or equity shall not bind the commission or the hearing officer in hearing the evidence, as provided in Subsection D of Section 28-1-11 NMSA 1978, as amended.

(b)
Objections to evidence offered: A party who has an objection to the evidence offered or to procedural matters in the proceeding may raise the objection orally during the hearing. The party raising the objection must state the grounds for the objection. The ruling on the objection, made by the presiding commissioner or hearing officer, shall be made a part of the record. A party's exception to each overruled objection shall be automatic and is not waived by the party's further participation in the hearing.

(c)
Offers of proof: Whenever there is a ruling to exclude the evidence offered, the party offering the evidence may make an offer of proof, which shall be included in the record. An offer of proof for excluded evidence consists of a brief description of the nature of the evidence excluded, the purpose for which it is offered and its relevance to the issues before the commission. An offer of proof for excluded documents or exhibits shall additionally include the insertion into the record of the excluded documents or exhibits. If the commission decides that a hearing officer's ruling to exclude evidence was both erroneous and prejudicial, the commission may consider the excluded evidence and may reopen the proceedings to take such evidence.

(8)

Continuation and adjournment: The presiding commissioner or the hearing officer may continue a hearing from day to day or adjourn it to a later date.

(9) Improper conduct: The commission may

exclude from the hearing room any person who engages in improper conduct.

(10) Closing arguments, briefs and findings of fact and conclusions of law:

(a) Closing arguments: At the hearing, a party or the party's attorney may present an oral closing argument in support of the party's position. The commission or hearing officer may elect to allow the parties to present a written closing argument in addition to or in place of an oral closing argument. Written closing arguments, where applicable, shall be filed with the commission and served on all parties of record within 10 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise.

(b) Findings of fact and conclusions of law: Each party may submit proposed findings of fact and conclusions of law to the commission within 10 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise.

(c) Briefs and answer briefs:

(i) Briefs: Each party may submit a brief in support of its position, including an argument of how the law applies to the facts in the case. If a party elects to submit a brief, it shall be filed with the commission and a copy served on all parties of record within 10 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise.

(ii) Answer briefs: When a party has filed a brief, the opposing party may submit an answer brief to the commission and serve a copy on all parties of record within five calendar days of the filing of the brief, unless the commission or the hearing officer directs otherwise.

(d) Attorney fees:

(i) If the complainant is represented

by private legal counsel and seeks to recover attorney fees from the respondent, complainant's counsel is required to submit an attorney affidavit setting forth his or her fees. The attorney affidavit shall be submitted to the commission and a copy served on the respondent within 15 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise. The attorney affidavit shall include an itemization of fees, be signed by the attorney and be notarized.

(ii) The respondent may submit a written objection, if any, to the attorney fees requested by the complainant. The objection to attorney fees shall be submitted to the commission and a copy served on the complainant within five calendar days after the submission of the attorney affidavit setting forth fees, unless the commission or the hearing officer directs otherwise.

(11) Close of the hearing record: The hearing record closes following the final adjournment of the hearing, when the last time set for the submission of all documents to the commission has expired.

[9.1.1.14 NMAC - Rp, 9.1.1.12 NMAC, 11/14/2017]

9.1.1.15 COMMISSION RULING AND FINAL ORDER:

A. The final decision and ruling on the merits in each case is reserved to the commission.

B. Where a hearing is before a three-member panel of commissioners, the commission will publicly announce its decision and final order within 30 days, or at such other time as the commission may direct. The decision and final order will be announced orally at a public meeting, for which notice will be given. Within five days thereafter, the commission shall cause a written copy of the decision and final order to be sent by certified mail, return receipt requested, to each party and to the party's attorney, if any, at the address of record for the party and for the

party's attorney.

C. Where a hearing is conducted by a hearing officer, the hearing officer shall prepare a written report, setting forth proposed findings of fact, proposed conclusions of law and a recommended action to be taken by the commission, after the last time set for the submission of all documents following the final adjournment of a hearing, or at such other time as the commission may direct. The hearing officer's report shall be submitted for consideration by a review panel, consisting of no more than three commissioners designated by the chairperson. The commission may adopt, modify or reject the findings of fact, the conclusions of law and the recommended action proposed by the hearing officer. The commission's decision and final order will be announced orally at a public meeting, for which notice will be given. Within five days thereafter, the commission shall cause a written copy of the decision and final order to be sent by certified mail, return receipt requested, to each party and to the party's attorney, if any, at the address of record for the party and for the party's attorney.

[9.1.1.15 NMAC - Rp, 9.1.1.13 NMAC, 11/14/2017]

9.1.1.16 TRANSCRIPTS:

A. Upon receipt of a notice of appeal, the division will supply as much of the transcript of the record as is requested by the parties or the district court, pursuant to Subsection B of Section 28-1-13 NMSA 1978.

B. All costs of providing the transcript of record on appeal will be paid by the party requesting the transcript. However, nothing in these rules will be deemed as prohibiting an agreement between a complainant and a respondent concerning the cost of providing the transcript on appeal.

[9.1.1.16 NMAC - Rp, 9.1.1.14 NMAC, 11/14/2017]

9.1.1.17**CONFIDENTIALITY AND PUBLIC RECORDS:**

A. The commission complaint, commission decision and commission orders will be considered public records. Any other information contained within a division investigation file will not be considered public records, except as determined by law. The deliberations of the commission related to a case which the commission is hearing are not part of an open public meeting and are not considered to be public records.

B. These provisions will not be applicable to the request for information about a pending case by the complainant, the respondent or their respective attorneys in that particular pending case prior to hearing. Nor do they apply to the disclosure of necessary information by the bureau to a representative of any duly authorized civil rights agency holding a work sharing agreement or memorandum of understanding with the bureaux.

C. Requests for records under the Inspection of Public Records Act (NMSA 1978 Chapter 14, Article 2) should be submitted in writing to the record custodian of the department of workforce solutions. Documents that are part of complaints dually filed with the EEOC are not available from the department of workforce solutions pursuant to Section 14-2-1(8) NMSA 1978. [9.1.1.17 NMAC - Rp, 9.1.1.15 NMAC, 11/14/2017]

9.1.1.18 [RESERVED]**HISTORY OF 9.1.1 NMAC:****Pre-NMAC Regulatory Filing**

History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

HRC 70-1, Rules and Regulations for Implementation of the Human Rights Act, filed 3/11/70;

HRC 72-1 Rules and Regulations for Implementation of the Human Rights Act, filed 7/11/72;

HRC 74-1, Rules and Regulations,

filed 3/26/74;
HRC 77-1, Rules and Regulations, filed 6/10/77;
HRC-I, Definitions, filed 5/26/80;
HRC-II, Filing a Complaint, filed 5/26/80;
HRC-III, Investigations, filed 5/26/80;
HRC-IV, Pre-Determination Procedures, filed 5/26/80;
HRC-V, Dismissal, filed 5/26/80;
HRC-VI, Review Hearing by Commission, filed 5/26/80;
HRC-VII, Conciliation and Persuasion, filed 5/26/80;
HRC-VIII, Confidentiality, filed 5/26/80;
HRC-IX, Hearing, filed 5/26/80;
HRC-X, Subpoenas and Subpoenas Duces Tecum, filed 5/26/80;
HRC-XI, Final Order, filed 5/26/80;
HRC-XII, Transcripts, filed 5/26/80;
HRC-XIII, Affirmative Action Definition, filed 5/26/80;
HRC-XIV, Procedures for Filing an Affirmative Action Plan with the Human Rights Commission, filed 5/26/80;
HRC-XV, Affirmative Action Plan Contents, filed 5/26/80;
FEPC 68-1, Rules and Regulations for the State of New Mexico, Fair Employment Practices Commission, filed 5/31/68;
HRC 83-1, Rules and Regulations, filed 11/10/83 and HRC 88-1, Rules and Regulations, filed 10/13/88.

History of Repealed Material:

9.1.1 NMAC filed 9/1/1998 and recompiled 10/1/2001, repealed effective 11/14/2017.

WORKFORCE SOLUTIONS, DEPARTMENT OF

TITLE 11 LABOR AND WORKERS COMPENSATION CHAPTER 1 LABOR GENERAL PROVISIONS PART 4 WAGE AND HOUR AND EMPLOYMENT OF CHILDREN

11.1.4.1 ISSUING

AGENCY: Labor Relations Division, (LRD) New Mexico Department of

Workforce Solutions (NMDWS).

[11.1.4.1 NMAC - Rp, 11.1.4.1 NMAC, 11/14/2017]

11.1.4.2 SCOPE:

Employers and employees within the state of New Mexico.

[11.1.4.2 NMAC - Rp, 11.1.4.2 NMAC, 11/14/2017]

11.1.4.3 STATUTORY

AUTHORITY: Article 1, Article 4, and Article 6 of Chapter 50 NMSA 1978, relating to the powers and duties of the labor commissioner and director of labor and industrial division, now known as the director of the labor relations division, in the enforcement of the employment laws of the state of New Mexico.

[11.1.4.3 NMAC - Rp, 11.1.4.3 NMAC, 11/14/2017]

11.1.4.4 DURATION:

Permanent.

[11.1.4.4 NMAC - Rp, 11.1.4.4 NMAC, 11/14/2017]

11.1.4.5 EFFECTIVE

DATE: November 14, 2017, unless a later date is cited at the end of a section.

[11.1.4.5 NMAC - Rp, 11.1.4.5 NMAC, 11/14/2017]

11.1.4.6 OBJECTIVE: The

objective of this Part 4 of Title 11, Chapter 1 is to establish standards and procedures for the administration of Articles 1, 4 and 6 of Chapter 50 NMSA 1978.

[11.1.4.6 NMAC - Rp, 11.1.4.6 NMAC, 11/14/2017]

11.1.4.7 DEFINITIONS:

A. "Certified teacher" means any person with a valid and current New Mexico teaching certificate issued by the New Mexico public education department or its equivalent in the United States.

B. "Child performer" means a minor person employed to act or otherwise participate in the performing arts, including but not limited to motion pictures, theatrical, radio, or television products.

C. The definitions

of “employee” and “employer” that apply to these rules are set forth in Sections 50-4-1 and 50-4-21 NMSA 1978 and are incorporated herein by reference.

D. “Employ” includes suffer or permit to work.

E. “Entertainment industry” means an employer including, but not limited to, any organization or individual using the services of any minor in: motion pictures of any type, using any format including theatrical film, commercial, documentary, and television program, or similar format by any medium including photography, recording, modeling, theatrical productions, publicity, and any performances where minors perform or entertain.

F. “Forepersons, superintendents and supervisors”, as used in Section 50-4-1(C)(2) of the Minimum Wage Act means an employee who meets all of the following requirements:

(1) their primary duty is to perform non-manual work related to management of the business;

(2) they are to exercise discretion;

(3) they regularly assist executives or perform specialized work or special assignments; and

(4) they perform less than twenty percent manual work;

G. “Good cause” means a substantial reason, one that affords a legal excuse, a legally sufficient ground or reason.

H. “Legal guardian” means a person appointed as a guardian by a court or Indian tribal authority.

I. “Labor commissioner” and “director of the labor and industrial division”, as used in Articles 1, 4, and 6 of Chapter 50 NMSA are synonymous with the current designation used by NMDWS of “director, labor relations division”.

J. “Minor” means any person under the age of 18 years.

K. “Person”, as used in these rules, means an individual

person.

L. “Place of employment”, “work location”, “movie set”, “set”, and “location” mean the actual work site where any person provides services in New Mexico as a performer, paid or non-paid.

M. “Resolution phase” means one or more of the procedures set forth in 11.1.4.107 to 11.1.4.109 NMAC.

N. “Safety” means the conditions of being protected from any situation that is detrimental to the child’s health and well-being.

O. “Wages” as defined in Section 50-4-1 NMSA 1978, which definition is incorporated herein by reference. Vacation pay and other forms of pay for time that is not worked are included in the definition of “wages” if such pay is compensation for labor or service rendered pursuant to the employer’s written policy.

P. “Wage claimant” or “claimant” is the individual employee on behalf of whom a wage claim is filed.

Q. “Work permit” is a permit to allow a child under the age of 16 to be able to work under certain conditions and issued by a designated school official or a representative of the LRD.

R. “Written authorization” means a document an employee signs at the time of hiring or prior to the taking of a particular deduction, giving the employer permission to deduct certain items from the employee’s pay. A written authorization is needed for an employer to deduct an advance or over-payment of wages, however, the employer must pay at least minimum wages times the hours worked to the employee.

[11.1.4.7 NMAC - Rp, 11.1.4.7 NMAC, 11/14/2017]

11.1.4.8 [RESERVED]

11.1.4.9 EMPLOYMENT OF CHILDREN:

A. A work permit is ordinarily required when employing

children under the age of 16.

B. Work permits shall be issued only by the school superintendents, school principals, designated issuing school officers or the director or the director’s designee, upon proof of age of the student and that the work the child is engaged is not dangerous to the child or prohibited as outlined in Section 50-6-4 NMSA 1978 and in the Fair Labor Standards Act, (FLSA).

C. It is the responsibility of the employer to preserve on file the work permit in a place about the premises where the child is employed. All work permits and records are subject to inspection by representatives of the LRD.

D. The maximum number of hours allowed for children under the age of 16 is 18 hours a week during the school week and 40 hours a week in a non-school week.

E. Hazardous occupation means any occupation defined as hazardous by the United States department of labor under 29 U.S.C. 201 et seq. of the FLSA.

F. The student labor specialist will investigate any alleged violation of the Child Labor Act. The investigation may include investigating the premises of the employer, issuing a subpoena *duces tecum*, or holding an administrative hearing, to resolve the complaint. [11.1.4.9 NMAC - Rp, 11.1.4.9 NMAC, 11/14/2017]

11.1.4.10 EMPLOYMENT OF CHILDREN IN THE ENTERTAINMENT INDUSTRY:

A. Any person who employs a person under the age of 18 as an actor or performer in the entertainment industry must obtain a pre-authorization certificate issued by the department of workforce solutions prior to the start of work. The pre-authorization certificate will include: the project name, estimated dates and length of the project, employer name, employer’s New Mexico address, a minimum of three contact personnel including name, address, and contact telephone numbers. The pre-authorization certificate

will include: the child performer's information: name, address, date of birth, where the child is registered to attend school, grade level of the child, special educational needs, anticipated length of employment on this project, nature of work on this project, and list any possible exposure to potentially hazardous materials or substances. A signature will be required from the child performer when the child is 14 years of age and older. A signature will be required from the parent or legal guardian giving the child permission to be employed in the entertainment industry. A signature will be required from the employer certifying compliance with all requirements of the pre-authorization certificate.

B. It is the responsibility of the employer to obtain a child performer pre-authorization certificate before the employment begins. The employer must be able to provide a copy at the work site when requested to do so. The LRD will retain a copy.

C. The child performer pre-authorization certificate is valid for one year from the date it was issued or until the specific project for which the child is employed by the employer who makes the application for the pre-authorization ceases, whichever time period is shorter.

D. The parent or legal guardian of the child performer can contact the LRD to renew the permit 30 days prior to expiration.

E. A pre-authorization certificate for a child performer can only be issued by the LRD.

F. No pre-authorization certificate will be given or issued without a signature of a parent or legal guardian indicating their permission for their child to work on the specific project. A parent or legal guardian must be within eyesight and earshot of the child performer at all times other than the time periods in which teachers are teaching school.

G. The employer must provide a certification of compliance for the certified teacher with appropriate teaching credentials

for grade levels kindergarten through 12 or to teach the level of education required for the child performer at the place of employment to the LRD prior to issuance of the pre-authorization certificate.

H. It is the responsibility of the employer to provide a New Mexico certified trainer or technician accredited in a United States department of labor occupational safety and health administered-certified safety program at the place of employment at all times when a child performer may be exposed to potentially hazardous conditions. Hazardous conditions are special effects, which potentially could be physically dangerous to the child performer.

I. The employer must provide a written background check on all certified teachers, and certified trainers and technicians on the movie set to the LRD. It is the responsibility of the employer, parent, legal guardian, teacher, trainer and technician to report any arrest or conviction record and any other information that may present a possible danger to the health, safety and well-being of the child performer. [11.1.4.10 NMAC - Rp, 11.1.4.10 NMAC, 11/14/2017]

11.1.4.11 CERTIFICATE AND DUTIES OF CERTIFIED TEACHERS:

A. A certified teacher of New Mexico resident children, who attend public schools, must possess a valid and current teaching certificate issued by the New Mexico public education department. Certified teachers of non-resident students must possess a valid and current teaching certificate from one of the United States to teach grade levels kindergarten through 12 or teach the level of education required for the child performer at the place of employment.

B. All certified teachers, shall, in addition to teaching, and in conjunction with the parent or legal guardian, also have the responsibility of monitoring and protecting the health, safety and

well-being of the child performers they have been hired to teach during the time the teacher is required to be present.

C. The certified teacher, parent, or legal guardian may refuse to allow the engagement of the child performer at the place of employment. Any party may report conditions threatening the health, safety, and well-being of the child performer to the department of workforce solutions. It is the ultimate responsibility of the parent or legal guardian to assure that the safety, health and well-being of the child are being protected. A teacher must be present during the time reserved for school, except that the child performers under 16 do not require the presence of a teacher for up to one hour for wardrobe, make-up, hairdressing, promotional publicity, personal appearances, or audio recording if these activities are not the actual site of filming or at the theatre or if school is not in session, and if the parent or legal guardian is present within earshot or eyesight of the child performer.

[11.1.4.11 NMAC - Rp, 11.1.4.11 NMAC, 11/14/2017]

11.1.4.12 LIMITATIONS OF CHILD PERFORMERS WORKING HOURS INCLUDING SCHOOL TIME:

A. All child performers' ages six to 18 years must be provided with a teacher for each group of 10 or fewer child performers when school is in session.

B. No child performers shall begin work before 5:00 a.m. or continue work after 10:00 p.m., on evenings preceding school days. Child performers shall not work later than 12:00 a.m. on days preceding non-school days. The time the child performer can be permitted at the place of employment may be extended by one-half hour for a meal period.

C. No infants 15 days old to six months of age may be employed as a child performer unless a United States licensed physician who is board-certified in pediatrics

provides a written certification that the infant is at least 15 days old and, is physically capable of handling the stress of filmmaking. With the physician's approval the infant performer may be at the place of employment a maximum of two hours, with no more than 20 minutes of work time. Work time for infants shall be limited to one period of two consecutive hours in any one day.

D. Child performers ages seven months to two years may be at the place of employment for up to four hours and may work up to two hours. The remaining time must be reserved for the child performers rest and recreation.

E. Child performers ages three years to five years may be at the place of employment for up to six hours and may work up to three hours. The remaining time must be reserved for the child performer's rest and recreation.

F. When school is in session, child performers ages six years to eight years may be at the place of employment for up to eight hours, the sum of four hours work, three hours schooling, and one hour of rest and recreation. When school is not in session, work time may be increased up to six hours, with the remaining time reserved for the child performer's rest and recreation.

G. When school is in session, child performer ages nine to 15 years may be at the place of employment for up to nine hours, the sum of five hours work, three hours schooling, and one hour rest and recreation. When school is not in session, work time may be increased up to seven hours, with the remaining time reserved for the child performer's rest and recreation.

H. When school is in session, child performers age 16 to 18 years may be at the place of employment for up to 10 hours, the sum of six hours work, three hours schooling and one hour of rest and recreation. When school is not in session, work time may be up to eight hours, with the remaining time reserved for the child performer's rest and recreation.

I. In exceptional circumstances due to unusual performance requirements, a waiver of the mandatory hours and start to finish times may be granted by the department of workforce solutions. Such waiver must be granted prior to the performances of the work that is the subject of the waiver. The department of workforce solutions will grant a waiver only under the following circumstances:

(1) written notification through a listing of specific dates and times that the child performers will be employed or present at the place of employment;

(2) written acknowledgement that the child performer's parent or legal guardian have been fully informed of the circumstances and have granted advance consent.

J. The child performer must be provided with a 12-hour rest break at the end of the workday.

K. All time spent in traveling from a studio to a location or from a location to a studio shall count as part of the working day for a minor. When a minor with a company on a location which is sufficiently distant to require an overnight stay and is required to travel daily between living quarters and the place where the company is actually working, the time spent by the minor in such traveling will not count as work time, provided the company does not spend more than 45 minutes traveling each way and furnishes the necessary transportation.

[11.1.4.12 NMAC - Rp, 11.1.4.12 NMAC, 11/14/2017]

11.1.4.13 REQUIREMENT OF TRUST ACCOUNT FOR ALL CHILD PERFORMERS:

A. Each time a child performer is employed in the state of New Mexico with a contract equal or greater than \$1000, a trust account will be created for the child performer.

B. It is the responsibility of the parent or legal guardian, or trustee to set up a trust account for the child performer in

the child's state of residence for the sole benefit of the child within seven business days after the child performer's employment contract is signed. The child will not have access to the trust account until the child is 18 years of age or becomes legally emancipated.

C. The parent, guardian, or trustee shall provide the employer with a trustee statement within 15 days after the start of employment. Once the employer receives the trustee statement, the employer will provide the parent, guardian, or trustee with a written acknowledgement of receipt.

D. If the employer does not receive the trustee statement within 90 days after the start of employment, the child's employer shall refer the matter to district court. The district court shall have continuing jurisdiction over the trust.

E. The employer shall deposit not less than fifteen percent of the child's gross earnings directly into the child trust account within 15 business days of the work performance. If the account is not established, the employer shall withhold fifteen percent of the gross income until a trust account is established or until court orders otherwise. Once the employer deposits fifteen percent of the gross earnings in the trust account, the employer shall have no further obligation to monitor the funds.

F. Once the funds are deposited in the trust account, only the trustee shall be obligated to monitor and account for the funds. [11.1.4.13 NMAC - Rp, 11.1.4.13 NMAC, 11/14/2017]

11.1.4.14 SAFETY REQUIREMENTS FOR CHILD PERFORMERS:

A. No dressing room is to be occupied simultaneously by a minor and an adult performer or by minors of the opposite sex.

B. It is the responsibility of the employer to provide a safe, secure shelter for child performers under the age of 18 to rest when required to be at the place of

employment during non-performances times.

C. No employer may cause, induce, entice, or permit a child performer to engage or to be used sexually exploitive material for the purpose of producing a performance. No child performer may be depicted in any media as appearing to participate in a sex act.

[11.1.4.14 NMAC - Rp, 11.1.4.14 NMAC, 11/14/2017]

11.1.4.15 PENALTIES AND DETERMINATION PROCESS:

A. The director of the labor relations division may for cause refuse to issue a pre-authorization certificate to any project that has violated the provision of this act within a two year period.

B. The director will notify the employer within 10 days from the dates requested of a non-issuance of a pre-authorization certificate.

C. Any affected party may request a reconsideration of the director's actions, in writing, within 10 days.

D. The director may schedule an administrative hearing when, in their judgment, it would facilitate resolution of the complaint. The conduct of the hearing is not governed by the Administrative Procedures Act, but rather by procedures established by the LRD. (50-1-2)

E. The director may issue a subpoena *duces tecum* to compel the production of records they believe are necessary for the resolution of the complaint.

F. The director may issue written findings whenever they have sufficient evidence upon which to base their determination.

G. Other penalties for violations may be assessed pursuant to Section 50-6-12 NMSA 1978 compilation.

[11.1.4.15 NMAC - Rp, 11.1.4.15 NMAC, 11/14/2017]

11.1.4.16 THROUGH 11.1.4.99: [RESERVED]

11.1.4.100 FILING OF A WAGE CLAIM: The claim form is to be completed by answering the questions in the form as completely as possible, and is to be signed and dated by the employee making the wage claim. The form does not need to be notarized. A wage claim may be filed for any amount that is in dispute for any claim arising entirely or in part within the three years prior to the filing of the claim. The wage claim form will give the claimant the opportunity to choose to correspond with the LRD by email or regular mail but if the wage claimant does not make a choice, the correspondence with the wage claimant will be by regular mail. A claimant may complete the wage claim form themselves or have a LRD employee assist in completing the form based on the claimant's statements in-person or by telephone. If the LRD provides assistance in completing the form by telephone, the LRD shall mail or email the unsigned form to the claimant to be reviewed, approved, signed, and submitted to the LRD for filing. The wage claimant may provide any additional information and documentation supporting the claim, but is not required to do so. Any such documents should be copies and not originals, as the originals may be needed for any further proceedings. Upon receipt of the completed claim form, the LRD will assign a claim number and open a file. The form will be assigned to an employee of the LRD who will: (1) review the claim form to determine whether the LRD has jurisdiction over the claim; (2) determine if more information from the claimant is needed; (3) determine if the form needs to be referred for consideration as to whether a directed investigation is appropriate; and (4) interview the wage claimant, if necessary, to clarify any discrepancies, omissions, or errors in the wage claim, and obtain additional information regarding the claim. If a directed investigation is not warranted, the LRD will follow the procedures set forth in 11.1.4.104 to 11.1.4.109 NMAC. If a wage claimant is represented by an attorney

at any time during the proceedings, the attorney shall give written notice to the LRD of said representation.

[11.1.4.100 NMAC - N, 11/14/2017]

11.1.4.101 JURISDICTION OF THE LRD: The authority of the LRD is limited to the enforcement of the laws of the State of New Mexico. The LRD does not have authority to enforce the laws of any other state. The LRD may refuse to accept a wage claim if the wage claim form involves work performed entirely outside the State of New Mexico.

[11.1.4.101 NMAC - N, 11/14/2017]

11.1.4.102 DEADLINE FOR FILING A WAGE CLAIM: A wage claimant must file a wage claim with the LRD against an employer within three years of that employer's last violation of the wage and hour laws as to the wage claimant. As long as any portion of the wage claim falls within the three-year time limit, the LRD will investigate the claim as far back as the beginning of the continued course of conduct as to the wage claimant or, in the case of a directed investigation, as far back as the course of conduct actually began as to any employee.

[11.1.4.102 NMAC - N, 11/14/2017]

11.1.4.103 INITIAL CLOSURE OF CERTAIN WAGE CLAIMS: The LRD may close any wage claim file after the initial screening with no further investigation if the LRD determines that it does not have jurisdiction, it is impossible to identify claimant's alleged employer, or if no portion of the claim falls within a three-year time period. Upon closure, the LRD will send the claimant a letter that sets forth the material facts, statutes, or regulations on which the closure is based.

[11.1.4.103 NMAC - N, 11/14/2017]

11.1.4.104 DELIVERY OF THE WAGE CLAIM TO THE EMPLOYER: Within 10 business days of the initial screening, the LRD shall mail the employer an initial correspondence, which shall

include details from the claim form that are relevant to the wage claim, any supporting documentation received from the wage claimant, and a blank response form. The initial correspondence shall be mailed to the last known address of the employer. The notice to the employer will give the employer the opportunity to choose to receive correspondence from the LRD by email or regular mail, but if the employer does not make a choice, the correspondence will be sent by regular mail.
[11.1.4.104 NMAC - N, 11/14/2017]

11.1.4.105 RESPONSE OF THE EMPLOYER: Within 10 business days of the receipt of the initial correspondence regarding the wage claim, the employer shall respond in writing to the wage claim and shall provide all information and documentation it has that is relevant to the wage claim, including true and accurate wage and hour records. If the employer fully admits the alleged violation, the LRD may proceed directly to the resolution phase of the investigation. If after the employer's initial response the LRD deems necessary, the LRD may interview the employer to obtain any additional information and shall issue a subpoena to compel time records, payroll records or other documents the LRD deems necessary to conduct an investigation into the merits of the wage claim, if such records were not voluntarily provided. If wage and hour records are not identified after these steps are completed, the LRD may interview the wage claimant to obtain any additional information needed and then shall proceed to the resolution phase of the investigation. If an employer is represented by an attorney at any time during the proceedings, the attorney shall give written notice to the LRD of said representation.
[11.1.4.105 NMAC - N, 11/14/2017]

11.1.4.106 DELIVERY OF THE RESPONSE TO THE WAGE CLAIMANT: If the employer disputes the alleged violation and submits relevant documentary

evidence, the LRD shall give the claimant an opportunity to respond in writing, by sending the claimant the employer's response and evidence. The wage claimant may respond within 10 business days of receipt of the communication with any additional information regarding the wage claim. The LRD may also telephone the wage claimant to obtain any additional information needed. Upon receipt of information from the claimant, or upon expiration of the 10 day period, whichever is earlier, the LRD shall proceed to the resolution phase of the investigation.
[11.1.4.106 NMAC - N, 11/14/2017]

11.1.4.107 SETTLEMENT BY PARTIES: Upon completing the investigatory steps set forth herein, the LRD may schedule a settlement meeting between the parties. During the settlement meeting, the LRD shall inform the parties of the preliminary conclusions the LRD has reached upon initial investigation of the claim, including the potential amount owed to the wage claimant. If the claim involves a violation of Section 50-4-22 NMSA 1978, the potential amount owed shall include the unpaid and underpaid wages of the wage claimant, plus an additional amount equal to twice the amount of the unpaid or underpaid wages. The LRD shall also inform the parties that any award by the LRD can only be enforced by a court entering a judgment and enforcing the judgment in the same manner as other judgments are enforced, and that the LRD will pursue such enforcement action if the claim is not resolved through settlement. The employer and the wage claimant will be given the opportunity to discuss the settlement of the wage claim and the wage claimant will have the right to decide whether to accept any settlement offered by the employer or proceed, if necessary, to a LRD hearing on the wage claim or to court to collect on the wage claim. If a settlement of the wage claim is agreed to between the employer and the wage claimant, the LRD shall prepare a document for the parties to sign

reflecting the resolution.
[11.1.4.107 NMAC - N, 11/14/2017]

11.1.4.108 HEARING BY THE LRD: If parties do not agree to a settlement, and the LRD deems necessary, the LRD may schedule a hearing. If a hearing is held, the following procedures shall apply: At the commencement of the hearing, the LRD shall once again inform the parties of the preliminary conclusions the LRD has reached upon initial investigation of the claim, including the potential amount owed to the wage claimant. If the claim involves a violation of Section 50-4-22 NMSA 1978, the potential amount owed shall include the unpaid and underpaid wages of the wage claimant, plus an additional amount equal to twice the amount of the unpaid or underpaid wages. The LRD shall also inform the parties that any award by the LRD can only be enforced by a court entering a judgment and enforcing the judgment in the same manner as other judgments are enforced, and that the LRD will pursue such enforcement action if the claim is not resolved through settlement. At the hearing, the LRD shall place witnesses under oath and shall obtain the testimony of the witnesses who are available in person and by telephone.
[11.1.4.108 NMAC - N, 11/14/2017]

11.1.4.109 DECISION OF THE LRD: The LRD shall issue a written determination whenever a wage claim or investigation is not resolved through settlement. The LRD has discretion to render a written decision without conducting a hearing. The decision of the LRD shall be in writing and shall set forth the material facts upon which the decision is based, the specific statutes or regulations on which the decision is based, an explanation of the reasons supporting the decision, and a calculation of the damages. When the claim involves a violation of any provision of Section 50-4-22 NMSA 1978, damages shall include the amount of the claimant's unpaid minimum wages plus interest, and an additional amount equal to twice

the unpaid or underpaid wages. A copy of the decision shall be sent to each party, by the method of correspondence selected by the party, as soon as it has been entered, and a copy shall be kept in the file of the LRD regarding the claim. The parties will be given an additional opportunity to resolve the claim for an amount agreed to by the parties and acceptable to the wage claimant, prior to the claim being filed with a court of competent jurisdiction.
[11.1.4.109 NMAC - N, 11/14/2017]

11.1.4.110 NO RIGHT OF ADMINISTRATIVE APPEAL: the LRD's administrative determinations are not judgments, and the LRD does not have the power to issue judgments. The LRD may only enforce a judgment against the employer after a legally-enforceable judgment has been docketed in the appropriate court. The LRD has no administrative appeals process provided by law by which a party may appeal wage claim decisions. Wage claimants who disagree with the LRD's administrative determinations have no right of administrative appeal, but may exercise the private right of action set forth in Sections 37-1-5 and 50-4-26 NMSA1978.
[11.1.4.110 NMAC - N, 11/14/2017]

11.1.4.111 DIRECTED INVESTIGATIONS: When the LRD has information about an alleged violation that affects multiple employees, which the director, in his sole discretion, believes involves a systemic violation of the wage and hour laws of the state of New Mexico by an employer, the director may direct the LRD to undertake a directed investigation. A directed investigation is a workplace-wide investigation into an employer's wage payment practices, which is not limited in scope to the claims of the individual reporting the alleged violation of the law. Among other investigatory methods, a directed investigation may include interviews with individuals having information and obtaining and reviewing all employment records for the time period under investigation. It

may also include enforcement action against the employer to collect wages, damages, or penalties owed, based on violations uncovered as to any employee.
[11.1.4.111 NMAC - N, 11/14/2017]

11.1.4.112 ACTION BY THE LRD IN DISTRICT COURT TO ENFORCE DECISION ON MINIMUM WAGE ACT CLAIM: To enforce the Minimum Wage Act, Sections 50-4-19 through 50-4-30 NMSA1978, the director may institute an action in the name of the state in the district court of the county wherein the employer who has failed to comply with the act resides or has a principal office or place of business, and shall seek the assistance of the district attorney whenever, in the director's discretion, such assistance is necessary or advisable.
[11.1.4.112 NMAC - N, 11/14/2017]

11.1.4.113 ACTION BY THE LRD TO ENFORCE DECISION ON ALL OTHER WAGE CLAIMS: To enforce any provision of Chapter 50, Article 4, if the amount of the wage claim does not exceed the jurisdictional limit for the metropolitan or magistrate court, the LRD may file an action against the employer on behalf of the wage claimant in the appropriate court. The LRD shall obtain an assignment of the wage claim as provided in Section 50-4-11 NMSA1978 prior to proceeding with any court action. The LRD will request a recording of all hearings in magistrate or metropolitan court to preserve the right to appeal to district court. The LRD will promptly forward any notice of hearing received from the magistrate or metropolitan court to the claimant in the manner selected by the wage claimant in the wage claim form. In the event the amount of a valid and enforceable wage claim exceeds the jurisdictional limit for the metropolitan or magistrate court, the LRD shall refer the matter to the district attorney for the district wherein any violation occurs by sending the district attorney the complete investigation file and

cooperating with the district attorney throughout the prosecution of the action. The LRD may file a proof of claim on behalf of the wage claimant in any U.S. bankruptcy court. The LRD will not be responsible for providing an attorney to represent a wage claimant in any administrative or judicial proceeding. The wage claimant will also be advised that he or she may exercise the private right of action set forth in Sections 37-1-5 and 50-4-26 NMSA1978 and may wish to consult with an attorney regarding filing such a claim.
[11.1.4.113 NMAC - N, 11/14/2017]

11.1.4.114 SUBPOENA POWERS: The LRD may issue a subpoena compelling any witness, including but not limited to the employer and the wage claimant, to appear for the taking of a deposition and for the production of any documents relevant to the claim at the time of the deposition, or to appear for any hearing and for the production of any documents relevant to the claim at the time of the hearing.
[11.1.4.114 NMAC - N, 11/14/2017]

11.1.4.115 EMPLOYER RECORDS: It is the employer's burden to maintain true and accurate time and pay records for all employees. Therefore, upon a finding by the LRD of an employment relationship, if the employer has not maintained and produced to the LRD the wage and hour records required by law, or if the LRD determines that employer records are inaccurate or incomplete, the LRD will calculate the wages due to the wage claimant based on employee records or the employee's credible recollection of the hours worked and wages paid or unpaid.
[11.1.4.115 NMAC - N, 11/14/2017]

11.1.4.116 CONFIDENTIALITY: If there is danger of retaliation by the employer against the individual or other good cause to believe that the person providing the information about the misconduct may suffer harm for providing the information, the identity

of the source of the information of misconduct by the employer shall be kept confidential by the LRD and its employees. The LRD shall not require a social security number or a taxpayer identification number of a wage claimant and shall adopt procedures to ensure that such information, if obtained, does not remain in its case files.
[11.1.4.116 NMAC - N, 11/14/2017]

11.1.4.117 CONFLICTS WITH STATE LAWS: In the event any of the rules and regulations set forth herein conflict with any applicable state law, the state law shall control.
[11.1.4.117 NMAC - N, 11/14/2017]

11.1.4.118 CONSIDERATION OF FEDERAL FAIR LABOR STANDARDS ACT: In making a decision, the LRD may rely upon definitions used within and decisions relating to the FLSA, 29 U.S.C. 201 *et seq.*
[11.1.4.118 NMAC - N, 11/14/2017]

11.1.4.119 EFFECT OF FILING OF PRIVATE ACTION: The LRD may close a wage claimant's wage claim file and take no further action if the wage claimant files a separate civil action against the employer in a court of competent jurisdiction asserting the same legal claims that are the subject of a LRD investigation.
[11.1.4.119 NMAC - N, 11/14/2017]

11.1.4.120 REOPENING OF INVESTIGATION BY THE LRD: Prior to a final decision by the LRD, and upon a showing of good cause for doing so, the LRD may reopen the investigation of any wage claim at the written request of a wage claimant. Upon reopening, the LRD may pursue any investigatory steps available to it pursuant to law and these rules and regulations.
[11.1.4.120 NMAC - N, 11/14/2017]

11.1.4.121 STANDARD OPERATING PROCEDURES: The LRD may adopt standard operating procedures to provide

additional instructions for its employees in the performance of their duties and responsibilities, which shall be made available on the LRD website upon adoption. The LRD shall also adopt a manual containing information for employees about how to apply the relevant laws to wage claims based on applicable statutes and judicial or administrative decisions. The most recent version of the manual shall be made available on the LRD website upon adoption, and changes to the manual shall be identified by date. In the event of a conflict between a provision of these rules and regulations and a provision of any standard operating procedure or manual, these rules shall control.
[11.1.4.121 NMAC - N, 11/14/2017]

11.1.4.122 LANGUAGE ACCESS: The LRD shall translate into Spanish all standardized portions of written materials provided to the parties or made available to the public, including the claim form, form letters, standardized portions of administrative decisions, notices, brochures, and informational materials. Interpretation services will be made available by the LRD to all individuals with whom the LRD interacts in the course of carrying out its duties under the relevant statutes and rules. The claim form and the employer response form will give the parties the opportunity to indicate a language preference. The LRD shall provide a multilingual notice for members of the public to access the LRD's interpretation service, which shall include the LRD's phone number and a statement that interpretation services are available free of charge. The multilingual notice shall include the top five written languages spoken in each county in New Mexico, set forth in the language access plans of the New Mexico state courts. The notice shall appear on the LRD website and at the front desk of all LRD offices. It shall also be printed in the claimant's preferred language on all documents sent to parties who select a preferred language other than English.
[11.1.4.122 NMAC - N, 11/14/2017]

11.1.4.123 ACCESS TO DWS OFFICES: The wage claim form shall be made available in all offices in which department of workforce solutions services are administered, and claimants shall be permitted to use landline telephones or computers in such offices to communicate with the LRD for any purpose relevant to filing a wage claim or the investigation and enforcement of the wage claim. Administrative hearings or other LRD administrative functions may also be conducted in such offices.
[11.1.4.123 NMAC - N, 11/14/2017]

HISTORY OF 11.1.4 NMAC:
[RESERVED]

History of Repealed Material:
11.1.4 NMAC, Wage and Hour and Employment of Children, filed 11/14/1998, repealed effective 11/14/2017.

**Continued On The
Following Page**

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to Section 20 of 11.1.2 NMAC, effective 1/1/2018.

11.1.2.20 PREVAILING WAGE AND FRINGE BENEFIT RATES: Pursuant to 11.1.2.13 NMAC, the department of workforce solutions hereby publishes the attached proposed [2017] 2018 prevailing wage and fringe benefit rates that will apply to all wage rate decisions issued from January 1, [2017] 2018 to December 31, [2017] 2018.

A. Type A: street, highway, utility and light engineering

Trade classification	Base rate	Fringe rate
Bricklayer/blocklayer/stonemason	[23.46] <u>23.52</u>	[8.40] <u>8.84</u>
Carpenter/lather	[23.75] <u>24.00</u>	[9.27] <u>9.97</u>
Cement mason	17.42	6.35
Ironworker	26.50	[14.32] <u>15.30</u>
Painter (brush/roller/spray)	[16.60] <u>16.75</u>	[5.78] <u>6.28</u>
Plumber/pipefitter	[22.84] <u>28.95</u>	[7.48]-12.23
Electricians outside classifications		
Groundman	[21.81] <u>22.36</u>	[10.92] <u>11.56</u>
Equipment operator	[31.31] <u>32.08</u>	[13.39] <u>14.09</u>
Lineman/wireman or tech	[36.83] <u>37.75</u>	[14.82] <u>15.57</u>
Cable splicer	[40.51] <u>41.53</u>	[15.38] <u>16.56</u>
Laborers		
Group I	[12.20] <u>11.96</u>	[5.30] <u>5.55</u>
Group II	[12.50] <u>12.26</u>	[5.30] <u>5.55</u>
Group III	[12.90] <u>12.66</u>	[5.30] <u>5.55</u>
Operators		
Group I	[16.69] <u>16.94</u>	[6.03] <u>6.33</u>
Group II	[17.44] <u>17.69</u>	[6.03] <u>6.33</u>
Group III	[17.55] <u>17.80</u>	[6.03] <u>6.33</u>
Group IV	[17.63] <u>17.88</u>	[6.03] <u>6.33</u>
Group V	[17.75] <u>18.00</u>	[6.03] <u>6.33</u>
Group VI	[17.89] <u>18.14</u>	[6.03] <u>6.33</u>
Group VII	[18.27] <u>18.52</u>	[6.03] <u>6.33</u>
Group VIII	[18.50] <u>18.75</u>	[6.03] <u>6.33</u>
Group IX	[25.45] <u>25.70</u>	[6.03] <u>6.33</u>
Group X	[28.35] <u>28.60</u>	[6.03] <u>6.33</u>
Truck drivers		
Group I	16.00	[7.02] <u>7.17</u>
Group II	16.00	[7.02] <u>7.17</u>
Group III	16.00	[7.02] <u>7.17</u>
Group IV	16.00	[7.02] <u>7.17</u>

B. Type B: general building

Trade classification	Base rate	Fringe rate
Asbestos worker - heat & frost insulator	[31.26] <u>31.76</u>	11.11
Boilermaker	[21.77] <u>32.06</u>	[3.98] <u>27.35</u>
Bricklayer/blocklayer/stonemason	[23.46] <u>23.52</u>	[7.66] <u>8.84</u>

Carpenter/lather	[23.75] <u>24.00</u>	[8.77] <u>9.47</u>
Cement mason	[19.96] <u>20.37</u>	[9.57] <u>9.78</u>
Electricians		
Outside classifications		
Groundman	[21.81] <u>22.36</u>	[10.70] <u>11.34</u>
Equipment operator	[31.31] <u>32.08</u>	[13.08] <u>13.77</u>
Lineman/tech	[36.83] <u>37.75</u>	[14.45] <u>15.19</u>
Cable splicer	[40.51] <u>41.53</u>	[15.38] <u>16.14</u>
Inside classifications		
Wireman/technician	[30.00] <u>30.40</u>	[10.15] <u>10.36</u>
Cable splicer	[33.00] <u>33.44</u>	[10.24] <u>10.45</u>
Sound classifications		
Installer	23.39	8.31
Technician	28.95	7.52
Soundman	27.01	8.31
Elevator constructor	[38.37] <u>33.01</u>	[28.08] <u>32.40</u>
Elevator constructor helper	[26.86] <u>23.11</u>	[28.08] <u>32.40</u>
Glazier	[20.15] <u>20.25</u>	[4.35] <u>4.55</u>
Ironworker	26.50	[13.68] <u>14.66</u>
Painter (brush/roller/spray)	[16.60] <u>16.75</u>	[5.38] <u>5.88</u>
Paper hanger	[16.60] <u>16.75</u>	[5.38] <u>5.88</u>
Drywall finisher/taper	[23.75] <u>24.00</u>	[8.77] <u>9.47</u>
Plasterer	[21.66] <u>22.07</u>	[7.93] <u>8.16</u>
Plumber/pipefitter	[28.87] <u>28.95</u>	[10.83] <u>12.23</u>
Roofer	[15.18] <u>23.78</u>	[0.50] <u>7.85</u>
Sheetmetal worker	[28.28] <u>29.28</u>	[15.91] <u>17.16</u>
Soft floor layer	[23.75] <u>24.00</u>	[8.77] <u>9.47</u>
Sprinkler fitter	[28.90] <u>29.90</u>	[18.82] <u>19.67</u>
Tile setter	[23.46] <u>23.52</u>	[7.66] <u>8.84</u>
Tile setter helper/finisher	[15.53] <u>15.59</u>	[7.66] <u>8.84</u>
Laborers		
Group I	16.09	[5.38] <u>5.68</u>
Group II	[16.74] <u>17.00</u>	[5.38] <u>5.68</u>
Group III	[17.71] <u>18.00</u>	[5.38] <u>5.68</u>
Group IV	[19.94] <u>20.25</u>	[5.38] <u>5.68</u>
Operators		
Group I	[19.96] <u>20.32</u>	[6.10] <u>6.47</u>
Group II	[21.97] <u>22.38</u>	[6.10] <u>6.47</u>
Group III	[22.40] <u>22.82</u>	[6.10] <u>6.47</u>
Group IV	[22.81] <u>23.24</u>	[6.10] <u>6.47</u>
Group V	[22.98] <u>23.41</u>	[6.10] <u>6.47</u>
Group VI	[23.18] <u>23.62</u>	[6.10] <u>6.47</u>
Group VII	[23.29] <u>23.73</u>	[6.10] <u>6.47</u>

Group VIII	[26.10] <u>26.61</u>	[6.10] <u>6.47</u>
Group IX	[28.32] <u>28.89</u>	[6.10] <u>6.47</u>
Group X	[31.48] <u>32.13</u>	[6.10] <u>6.47</u>
Truck drivers		
Group I	14.76	6.25
Group II	15.00	6.25
Group III	15.50	6.25
Group IV	15.51	6.25
Group V	15.60	6.25
Group VI	15.75	6.25
Group VII	15.90	6.25
Group VIII	16.11	6.25
Group IX	16.32	6.25

C. Type C: residential

Trade classification	Base rate	Fringe rate
Asbestos worker - heat & frost insulator	[31.26] <u>31.76</u>	11.11
Boilermaker	21.77	3.98
Bricklayer/blocklayer/stonemason	[23.46] <u>23.52</u>	[7.66] <u>8.00</u>
Carpenter/lathe	[23.75] <u>24.00</u>	[8.77] <u>9.47</u>
Millwright/piledriver	31.00	[19.37] <u>23.08</u>
Cement mason	[16.81] <u>17.61</u>	[8.71] <u>9.03</u>
Electricians		
Outside classifications		
Groundman	[21.81] <u>22.36</u>	[10.70] <u>11.34</u>
Equipment operator	[31.31] <u>32.08</u>	[13.08] <u>13.77</u>
Lineman/tech	[36.83] <u>37.75</u>	[14.45] <u>15.19</u>
Cable splicer	[40.51] <u>41.53</u>	[15.38] <u>16.14</u>
Inside classifications		
Wireman/technician	[30.00] <u>30.40</u>	[10.15] <u>10.36</u>
Cable splicer	[33.00] <u>33.44</u>	[10.24] <u>10.45</u>
Sound classifications		
Installer	10.00	1.01
Technician	28.95	7.52
Soundman	13.62	1.01
Elevator constructor	[38.37] <u>33.01</u>	[28.08] <u>32.40</u>
Elevator constructor helper	[26.86] <u>23.11</u>	[28.08] <u>32.40</u>
Glazier	[20.15] <u>20.25</u>	[4.35] <u>4.55</u>
Ironworker	[13.00] <u>26.50</u>	[6.16] <u>14.66</u>
Painter (brush/roller/spray)	[11.75] <u>11.90</u>	[5.38] <u>5.88</u>
Paper hanger	[12.75] <u>12.90</u>	[5.38] <u>5.88</u>
Drywall finisher/taper	[23.75] <u>24.00</u>	[8.77] <u>9.47</u>
Plasterer	[18.24] <u>18.65</u>	[6.86] <u>7.03</u>
Plumber/pipefitter	[22.84] <u>28.95</u>	[6.63] <u>12.23</u>

Rofer	[13.96] <u>23.09</u>	[1.87] <u>7.40</u>
Sheetmetal worker	[28.28] <u>29.28</u>	[15.91] <u>17.16</u>
Soft floor layer	[23.75] <u>24.00</u>	[8.77] <u>9.47</u>
Sprinkler fitter	[28.90] <u>29.90</u>	[18.82] <u>19.67</u>
Tile setter	23.46	7.66
Tile setter help/finisher	16.04	7.66
Laborers		
Group I	14.55	[5.38] <u>5.68</u>
Group II	[15.45] <u>15.50</u>	[5.38] <u>5.68</u>
Group III	[16.35] <u>16.50</u>	[5.38] <u>5.68</u>
Group IV	[17.25] <u>17.50</u>	[5.38] <u>5.68</u>
Operators		
Group I	[11.82] <u>12.03</u>	[5.55] <u>5.90</u>
Group V	[13.01] <u>13.25</u>	[5.55] <u>5.90</u>
Group VII	[15.91] <u>16.22</u>	[5.55] <u>5.90</u>
Group VIII	[17.37] <u>17.71</u>	[5.55] <u>5.90</u>
Truck drivers		
Group I	14.88	0.00
Group II	15.00	0.00
Group III	15.08	0.00
Group IV	15.20	0.00
Group V	15.25	0.00
Group VI	15.35	0.00
Group VII	15.45	0.00
Group VIII	15.59	0.00
Group IX	15.74	0.00

D. Type H: heavy engineering

Trade classification	Base rate	Fringe rate
Asbestos worker – heat & frost insulator	[31.26] <u>31.76</u>	11.11
Boilermaker	[18.50] <u>32.06</u>	[3.31] <u>27.35</u>
Bricklayer/blocklayer/stonemason	[23.46] <u>23.52</u>	[7.66] <u>8.00</u>
Carpenter/lather	[23.75] <u>24.00</u>	[8.77] <u>9.47</u>
Millwright/piledriver	31.00	[19.37] <u>23.08</u>
Cement mason	21.00	9.38
Electricians		
Outside classifications		
Groundman	[21.81] <u>22.36</u>	[10.70] <u>11.34</u>
Equipment operator	[31.31] <u>32.08</u>	[13.08] <u>13.77</u>
lineman/ technician	[36.83] <u>37.75</u>	[14.45] <u>15.19</u>
Cable splicer	[40.51] <u>41.53</u>	[15.38] <u>16.14</u>
Inside classifications		
Wireman/ technician	[30.00] <u>30.40</u>	[10.15] <u>10.36</u>
Cable splicer	[33.00] <u>33.44</u>	[10.24] <u>10.45</u>

Glazier	[20.15] <u>20.25</u>	[4.35] <u>4.55</u>
Ironworker	26.50	[13.68] <u>14.66</u>
Painter (brush/roller/spray)	21.25	[6.73] <u>8.62</u>
Plumber/pipefitter	[31.76] <u>31.90</u>	[11.55] <u>13.40</u>
Roofer	[19.56] <u>23.09</u>	[11.34] <u>7.40</u>
Sheetmetal worker	[28.28] <u>29.28</u>	[15.91] <u>17.16</u>
Operators		
Group I	[17.67] <u>19.38</u>	[6.03] <u>5.74</u>
Group II	[18.76] <u>19.56</u>	[6.03] <u>5.74</u>
Group III	[19.41] <u>19.74</u>	[6.03] <u>5.74</u>
Group IV	[19.62] <u>19.88</u>	[6.03] <u>5.74</u>
Group V	[19.68] <u>19.98</u>	[6.03] <u>5.74</u>
Group VI	[19.82] <u>20.15</u>	[6.03] <u>5.74</u>
Group VII	[19.94] <u>20.17</u>	[6.03] <u>5.74</u>
Group VIII	[21.38] <u>21.96</u>	[6.03] <u>5.74</u>
Group IX	[26.45] <u>27.30</u>	[6.03] <u>5.74</u>
Group X	[29.35] <u>30.35</u>	[6.03] <u>5.74</u>
Laborers		
Group I	[18.00] <u>16.76</u>	[5.05] <u>5.30</u>
Group II	[19.18] <u>17.51</u>	[5.05] <u>5.30</u>
Group III	[19.53] <u>19.02</u>	[5.05] <u>5.30</u>
Group IV	[19.94] <u>19.42</u>	[5.05] <u>5.30</u>
Group V	20.30	[5.05] <u>5.30</u>
Group VI	[19.03] <u>18.67</u>	[5.05] <u>5.30</u>
Group VII	[19.18] <u>19.04</u>	[5.05] <u>5.30</u>
Group VIII	[19.43] <u>19.39</u>	[5.05] <u>5.30</u>
Group IX	19.63	[5.05] <u>5.30</u>
Group X	20.30	[5.05] <u>5.30</u>
Truck drivers		
Group I	16.00	[7.06] <u>7.17</u>
Group II	16.00	[7.06] <u>7.17</u>
Group III	16.00	[7.06] <u>7.17</u>
Group IV	16.00	[7.06] <u>7.17</u>
Group V	16.00	[7.06] <u>7.17</u>
Group VI	16.00	[7.06] <u>7.17</u>
Group VII	16.00	[7.06] <u>7.17</u>
Group VIII	16.06	[7.06] <u>7.17</u>
Group IX	16.41	[7.06] <u>7.17</u>

[11.1.2.20 NMAC - N, 02-29-2016; Rp, 1/1/2017; A, 1/1/2018]

This Page Intentionally Left Blank

Other Material Related To Administrative Law

HIGHER EDUCATION DEPARTMENT

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The New Mexico Higher Education Department gives Notice of Minor, Nonsubstantive Correction.

The following corrections have been identified and amended regarding:

5.7.12 NMAC, Minority Doctoral Loan Repayment Assistance

5.7.33 NMAC, Tax Refund Intercept by the New Mexico Higher Education Department filed on October 17, 2017, published on October 31, 2017.

Pursuant to the authority granted under State Rules Act, Paragraph D of Section 14-4-5 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all published and electronic copies of the above rules:

1) 5.7.12.7 NMAC:

Re-numbered second subsection F to subsection G and former subsection G to subsection H;

2) 5.7.33.4 NMAC and 5.7.33.5 NMAC:

Removed brackets surrounding the text for both sections.

A copy of this Notification was filed with the official version of the above rule.

Copies of the referenced rule may be accessed through the New Mexico Higher Education Department's website at <http://www.hed.state.nm.us/> under the "Recent Postings" section, or may be obtained from Alicia Armijo by contacting her at 1-800-279-9777 during regular business hours.

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

Notice of Public Comment

The United States Department of Health and Human Services requires the New Mexico Human Services Department meet certain Temporary Assistance for Needy Families (TANF) work participation requirements. To assist in meeting these requirements, federal regulations (45 CFR 261.40) allow New Mexico to decrease its work participation rate percentage by the number of percentage points that the FY 2017 caseload fell in comparison to the FY 2005 caseload. This is termed the TANF Caseload Reduction Credit. The total Federal and Maintenance of Effort (MOE) expenditures that are included in this report are subject to change due to fluctuations during year end budget close-out and increases in MOE funding.

The estimated changes and corresponding methodologies are reported in the proposed TANF Caseload Reduction Credit Report which is available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>.

If you do not have Internet access, a copy of the proposed report may be requested by contacting the Income Support Division's Work and Family Support Bureau (WFSB) at (505) 827-7227. If you are a person with a disability and you require this information in an alternative format, please contact the American Disabilities Act Coordinator, at (505) 827-7701 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats.

The comment period will begin at 8:00 a.m. on November 14, 2017 and end at 5:00 p.m. on December 14, 2017. Individuals wishing to comment on the TANF Caseload Reduction Credit Report should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, New Mexico, 87505-2348, or by calling (505) 827-7227.

Interested persons may address written or recorded comments to:

Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to: HSD-isdrules@state.nm.us.

2017 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXVII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 5	January 17
Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	April 27	May 16
Issue 10	May 18	May 30
Issue 11	June 1	June 13
Issue 12	June 15	June 27
Issue 13	June 29	July 11
Issue 14	July 13	July 25
Issue 15	July 27	August 15
Issue 16	August 17	August 29
Issue 17	August 31	September 12
Issue 18	September 14	September 26
Issue 19	September 28	October 17
Issue 20	October 19	October 31
Issue 21	November 2	November 14
Issue 22	November 16	November 28
Issue 23	November 30	December 12
Issue 24	December 14	December 26

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.nmcpr.state.nm.us/nmregister>. For further information, call 505-476-7942.