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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

Volume XXX, Issue 24

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Notices of Rulemaking and Proposed Rules

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

Protective Services Division (PSD) of the Children, Youth and Families Department (CYFD) is extending the written public comment period for the proposed changes to the 8.26.4 NMAC—Licensing Requirements for Foster and Adoptive Homes, until 5:00 p.m. on Friday, January 10th, 2020. *Notice of Public Hearing* was published in issue 20 of the New Mexico Register and a rule hearing was held on Wednesday, December 4, 2019.

A free electronic copy of the proposed changes can be found at <https://cyfd.org/for-providers/rfp>. A hard copy of the proposed changes may be reviewed between 8:00 a.m.-5:00 p.m. at the PSD Director's office, Room 254, in the PERA building in Santa Fe.

Written comments can be provided via e-mail to Serra Dittel-Payne at serra.dittel-payne@state.nm.us or by mail to CYFD, Serra Dittel-Payne, Protective Services Division, PO Drawer 5160, Santa Fe, NM 87502. All written comments must be received no later than 5:00 p.m. on January 10th, 2020.

Subsection D of Section 9-2A-7 NMSA 1978 states "The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions" which provides the authority authorizing the proposed rule and the adoption of the proposed rule.

The PERA building is accessible to people with disabilities. Documents can be available in different formats to accommodate a particular disability upon request by calling 505-827-8400.

SECRETARY OF STATE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State ("Office") hereby gives notice that the Office will conduct a public hearing on the described rule below.

A public hearing will be held in Morgan Hall, at the State Land Office, 310 Old Santa Fe Trail, Santa Fe, New Mexico 87501, on Wednesday, February 5, 2020, from 9:00 am to 12:00 pm. Every effort will be made to ensure that this hearing will be live streamed on the Office's website.

The purpose of this hearing is to obtain public input on the new Randomization of Candidate Names on Ballots to be codified as *Part 1.10.7 NMAC* and the repeal of Determination of Ballot Position for United States Representative Special Elections, Part 1.10.7. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below.

Authority: NMSA 1978, Sections 1-2-1, 1-10-8.1, and 1-22-3.1 of the Election Code, authorize the Office to adopt and promulgate rules and regulations to order candidates for the same office using a randomization method provided by rule based on the candidate's name.

1.10.7 NMAC Randomization of Candidate Names on Ballots

Purpose: The purpose for this rule is to provide a uniform and transparent system of randomizing candidate names running for the same office for the order that they appear on the ballot in all elections conducted pursuant to the Election Code. This rule defines certain terms related to the selection of the alphabet, how the Office will determine a candidate's

name and how the auditor, who will conduct the randomization, will be selected. This rule also provides the process for determining the alphabet used to order candidates after the passage of this rule and going forward. This rule was mandated by the legislature in House Bill 407 (N.M. 2019).

Summary of Full Text: Section *1.10.7.7 NMAC* defines key terms like "alphabet," "letter," and "candidate name". Section *1.10.7.8 NMAC* describes the creation of the New Mexico Election Alphabet ("alphabet") and the SOS's duties to publicize the selected alphabet. Section *1.10.7.9 NMAC* provides the procedures for how candidates' names will be ordered once the alphabet is determined including procedures for candidates running for the same office with the same last name. Section *1.10.7.10 NMAC* addresses candidate order when the candidates are designated by convention pursuant to NMSA 1978, Section 1-8-21.1. Section *1.10.7.11 NMAC* provides the procedure for selecting the auditor to conduct the randomization including the requirement that the auditor must be selected 90 days before prior to the general election. Section *1.10.7.12 NMAC* provides the procedure for how the Office will determine the first alphabet following adoption of the rule.

REPEAL 1.10.7 NMAC Determination of Ballot Position for United States Representative Special Elections

Purpose: The purpose of the repeal is that this administrative rule is redundant after the effective date of the proposed *1.10.7 NMAC* Randomization of Candidate Names on Ballots. Current *1.10.7 NMAC* relates to candidates for the office of United States Representative in a special election. The new randomization rule incorporates such candidates and will determine the order their name will appear on the

ballot. Additionally, ballot position will no longer be determined by party.

Details for Obtaining a Copy of Rules and Submitting Oral or Written Comments: Copies of the proposed rule are available on the Office’s website at www.sos.state.nm.us or can be obtained from the Bureau of Elections by calling (505) 827-3600 or emailing sos.rules@state.nm.us. Interested individuals may provide comments at the public hearing and/or submit written comments to Dylan Lange, Director of Legislative and Executive Affairs, via email at sos.rules@state.nm.us, or Dylan.Lange@state.nm.us, fax (505) 827-8403, or by regular mail at Attn: Dylan Lange – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. Written comments must be received no later than 5:00 pm on the date prior to the public hearing. All written public comments will be posted on the website throughout the written comment period at: www.sos.state.nm.us.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email Dylan.Lange@state.nm.us (5) business days prior to the hearing.

**WATER QUALITY CONTROL COMMISSION
NOTICE OF PUBLIC HEARING FOR AMENDMENTS TO 20.6.4 NMAC ESTABLISHING A NUTRIENT TEMPORARY STANDARD FOR THE CITY OF RATON, NM WASTEWATER TREATMENT PLANT**

The Water Quality Control Commission (“WQCC”) will hold a public hearing beginning at **9:00 am on March 10, 2020** and continuing thereafter as necessary at the **Runnels**

Auditorium located in the Harold Runnels Building, 1190 South St. Francis Drive, Santa Fe, NM 87505. The hearing location may change prior to the hearing date, and those interested in attending should visit the New Mexico Environment Department’s (“NMED”) website prior to the hearing: <https://www.env.nm.gov/water-quality-control-commission/wqcc/>. The purpose of the hearing is to consider proposed amendments to 20.6.4 NMAC. The proposed amendments would allow the Bureau to implement a mechanism for making progress toward attaining a designated use and water quality criterion that are not currently attainable. NMED’s Surface Water Quality Bureau (“Bureau”) is the proponent of the proposed amendments.

The Bureau proposes the WQCC adopt the proposed amendments to 20.6.4 NMAC, pursuant to its authority under NMSA 1978, Sections 47-6-1 through -17 (1967 as amended through 2019) and 20.6.4 NMAC. Please note that formatting and minor technical changes to 20.6.4 NMAC, other than those proposed by NMED, may be proposed at the hearing. Additionally, other changes may be made as necessary in response to public comments and evidence presented at the hearing. The commission may make a decision on the proposed regulatory change at the conclusion of the hearing.

The proposed amended rule 20.6.4 NMAC may be reviewed during regular business hours at the NMED Hearing Office located in the Harold Runnels Building, 1190 South St. Francis Drive, Santa Fe, NM, 87505. The full text of the proposed amended 20.6.4 NMAC is also available online at <https://www.env.nm.gov/surface-water-quality/ts-raton/>.

Pursuant to 20.1.6.202 NMAC, those wishing to present technical testimony must file a written notice of intent to present technical testimony with the Hearing Office on or before 5:00 p.m. on **February 19, 2020, twenty (20)**

days before the hearing. Notices of intent to present technical testimony should reference the name of the regulation, the date of the hearing, and the docket number, **WQCC 19-46.**

The form and content of the notice shall:

- * Identify the person for whom the witness(es) will testify;
- * Identify each technical witness the person intends to present and state the qualification of that witness, including a description of their education and work background;
- * Include a copy of the direct testimony of each technical witness in narrative form;
- * Include the text of any recommended modifications to the proposed regulatory change; and
- * List and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

Notices of intent to present technical testimony shall be filed with:

Cody Barnes, Hearing Office Administrator
New Mexico Environment Department
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502
telephone: (505) 827-2428
email: cody.barnes@state.nm.us

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing; to introduce exhibits; and to examine witnesses. Any person wishing to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing. Written comments regarding the proposed new rule may be addressed to Mr. Cody Barnes, Hearing Office Administrator, at the above address, and should reference docket number **WQCC 19-46.**

Pursuant to 20.1.6.203 NMAC, any member of the public may file an entry of appearance as a party at the hearing. The entry of appearance shall be filed with Cody Barnes, at the above address, no later than February 17, 2020, twenty (20) days before the date of the hearing.

The hearing will be conducted in accordance with the WQCC's rulemaking procedures, NMSA 1978, Sections 47-6-1 through -17 (1967 as amended through 2019), 20.6.4 NMAC, the State Rules Act, NMSA 1978, Sections 14-4-1 through -11 (1967 as amended through 2017), and other applicable procedures.

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Cody Barnes, at the above address, by March 3, 2020. (TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

STATEMENT OF NON-DISCRIMINATION

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Yurdin, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr.,

Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855; email: nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator.

AVISO DE AUDIENCIA PÚBLICA PARA ENMIENDAS A 20.6.4 NMAC ESTABLECIMIENTO DE UN ESTÁNDAR TEMPORAL DE NUTRIENTES PARA LA PLANTA DE TRATAMIENTO DE AGUAS RESIDUALES, LOCALIDAD DE RATON, NM

La Comisión de Control de Calidad del Agua ("WQCC" por sus siglas en inglés) celebrará una audiencia pública a partir de las **9:00 de la mañana del 10 de marzo de 2020**, y continuará después según sea necesario en **El Auditorio Runnels ubicado en el Edificio Harold Runnels, 1190 South St. Francis Drive, Santa Fe, NM 87505**. El lugar de la audiencia puede cambiar antes de la fecha de la audiencia, y los interesados en asistir deben visitar el sitio web del Departamento de Medio Ambiente de Nuevo México ("NMED" por sus siglas en inglés) antes de la audiencia: <https://www.env.nm.gov/water-quality-control-commission/wqcc/>. El propósito de la audiencia es considerar las enmiendas propuestas a 20.6.4 NMAC. Las enmiendas propuestas permitirían a la Oficina aplicar un mecanismo para avanzar hacia el logro de un criterio de uso designado y calidad del agua que actualmente no es alcanzable. La Oficina de Calidad de las Aguas Superficiales de NMED ("Oficina") es la proponente de las enmiendas propuestas.

La Oficina propone que la WQCC adopte las enmiendas propuestas a 20.6.4 del NMAC, de conformidad con su autoridad bajo NMSA 1978, Secciones 47-6-1 a -17 (1967 según enmendado hasta 2019) y 20.6.4 del NMAC. Tenga en cuenta que el

formato y cambios técnicos menores a 20.6.4 NMAC, que no sean los propuestos por NMED, pueden ser propuestos en la audiencia. Además, se pueden hacer otros cambios según sea necesario en respuesta a los comentarios del público y las pruebas presentadas en la audiencia.

La norma enmendada propuesta 20.6.4 NMAC puede ser revisada durante horas hábiles regulares en la Oficina de Audiencias de NMED ubicada en el Edificio Harold Runnels, 1190 South St. Francis Drive, Santa Fe, NM, 87505. El texto completo de la propuesta enmendada 20.6.4 NMAC también está disponible en línea en <https://www.env.nm.gov/surface-water-quality/ts-raton/>.

De conformidad con el 20.1.6.202 NMAC, aquellos que deseen presentar un testimonio de carácter técnico deben presentar un aviso escrito de su intención de presentar testimonio técnico en la Oficina de Audiencias a más tardar hasta las 5:00 de la tarde del **19 de febrero de 2020, veinte (20) días antes de la audiencia**. Los avisos de intención de presentar testimonio técnico deben hacer referencia al nombre del reglamento, la fecha de la audiencia y el número de expediente, **WQCC 19-46**.

La forma y el contenido del aviso deberán:

- * Identificar a la persona para la cual testificará el testigo o testigos;
- * Identificar a cada testigo técnico que la persona tiene la intención de presentar y declarar la calificación de ese testigo, incluyendo una descripción de su historial educativo y laboral;
- * Incluir una copia del testimonio directo de cada testigo técnico en forma narrativa;
- * Incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; y
- * Enumerar y adjuntar todos los documentos u objetos de pruebas que se espera que esa persona presentará en la audiencia, incluyendo

cualquier declaración propuesta de las razones para la adopción de las reglas.

Los avisos de la intención de presentar testimonio técnico deberán presentarse a:

Cody Barnes, Hearing Office
Administrator
New Mexico Environment
Department
Harold Runnels Building
P.O. Box 5469
Santa Fe, NM 87502
teléfono: (505) 827-2428
correo electrónico: cody.barnes@state.nm.us

Toda persona interesada tendrá una oportunidad razonable en la audiencia de presentar pruebas, datos, puntos de vista y argumentos pertinentes, oralmente o por escrito; de presentar documentos u objetos de pruebas y de interrogar a los testigos. Cualquier persona que desee presentar una declaración escrita de carácter no técnico para que conste en actas en lugar de un testimonio oral debe presentar dicha declaración antes de la clausura de la audiencia. Los comentarios por escrito sobre la nueva norma propuesta pueden dirigirse al Sr. Cody Barnes, Administrador de la Oficina de Audiencias, a la dirección antes mencionada, y deben hacer referencia al número de expediente **WQCC 19-46**. De conformidad con 20.1.6.203 NMAC, cualquier miembro del público puede presentar una *entry of appearance* como parte interesada en la audiencia. La *entry of appearance* se presentará ante Cody Barnes, a la dirección antes mencionada, a más tardar el **17 de febrero de 2020, veinte (20) días** antes de la fecha de la audiencia.

La audiencia se llevará a cabo de acuerdo con los procedimientos de reglamentación de la WQCC, NMSA 1978, Secciones 47-6-1 a -17 (1967, enmendado hasta 2019), 20.6.4 NMAC, la Ley de Normas Estatales, NMSA 1978, Secciones 14-4-1 a -11 (1967, enmendado hasta 2017), y otros procedimientos aplicables.

Si alguna persona requiere asistencia, un intérprete o un dispositivo auxiliar para participar en este proceso, comuníquese con Cody Barnes, a la dirección antes mencionada, antes del 3 de marzo de 2020. (Los usuarios de TDD o TTY pueden acceder al número a través de New Mexico Relay Network, 1-800-659-1779 [voz]; los usuarios de TTY: 1-800-659-8331).

DECLARACIÓN DE NO DISCRIMINACIÓN

NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigen las leyes y regulaciones aplicables. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas sobre los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas de la Ley de Control de la Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o alguno de los programas, políticas o procedimientos de no discriminación de NMED o si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con: Kristine Yurdin, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, teléfono (505) 827-2855, correo electrónico nd.coordinator@state.nm.us. También puede visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para saber cómo y dónde presentar una queja de discriminación.

**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.

PUBLIC RECORDS, COMMISSION OF

This is an amendment to 1.13.30 NMAC, Section 11, effective 12/31/2019.

1.13.30.11 ON-SITE DESTRUCTION OF RECORDS:

On-site destruction of records may occur at the custodial agency's location. For approval of on-site destruction, the records custodian, chief records officer or records liaison officer shall submit a request on a form approved by the state records administrator.

A. The form may be submitted electronically with a valid digital signature issued by the state records administrator.

B. The state records administrator or designee may inspect records prior to approval of on-site destruction.

C. The state records administrator may suspend destruction of records determined to have historical value and, upon approval of the Commission, transfer the records to the state archives.

D. For legal and audit purposes, the agency shall retain a certificate of destruction as proof of the records destroyed. The certificate of destruction shall include, at a minimum, the following information:

(1) For paper records:

- (a)** place and date of pick up;
- (b)** printed name and signature of employee(s) performing service;
- (c)** printed name and signature of witnesses;
- (d)** number of pounds destroyed/shredded

(vendor) or number of boxes (agency certified);

(e) date of destruction/shredding;

(f) identification of company's authorizing agent by name and position;

(g) printed name and signature of official certifying the destruction (vendor or designated records management personnel); and

(h) statement that shredded records cannot be read, interpreted, or reconstructed.

(2) For electronic records:

(a) records classification;

(b) printed name and signature of employee(s) performing destruction;

(c) printed name and signature of record owner;

(d) number of e-records destroyed;

(e) date of destruction;

(f) printed name and signature of official certifying the destruction (designated records management personnel); and

(g) statement that destroyed records cannot be read, interpreted, or reconstructed.

E. Approved methods for on-site destruction of records are as follows:

- (1)** Records that contain confidential or sensitive information shall be destroyed through a bonded ~~[insured, and national association for information destruction (NAID) AAA]~~ and insured document recycling vendor by shredding in such a manner that

the information cannot be read, interpreted or reconstructed.

(2) Records that do not contain confidential or sensitive information shall be destroyed by:

(a) recycling by a bonded document recycling vendor;

(b) shredding; or

(c) dumpsite burial.
(3) Records which have been contaminated may be destroyed by:

(a) any of the approved methods described above; or

(b) incineration.
(4) Agencies shall select from the following methods of destruction for electronic records:

(a) erasure from electronic media and all back up media;

(b) overwriting of reusable magnetic media multiple times as recommended by the United States (U.S.) department of defense;

(c) degaussing of the magnetic media; or

(d) physical destruction of the media as recommended by the U.S. department of defense.

[1.13.30.11 NMAC - Rp, 1.13.30.11 NMAC, 11/28/2017; A, 6/12/2018; A, 12/31/2019]

**ECONOMIC
DEVELOPMENT
DEPARTMENT**

This is an amendment to 5.50.5 NMAC, Section 10, effective January 1, 2020.

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses may be eligible for reimbursement through JTIP

(1) A percentage of trainee wages for up to six months of initial training.

(2) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.

(3) A percentage of intern wages for up to 640 training hours.

B. Standard reimbursement rates for wages range up to seventy-five percent. Positions that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be also eligible for an additional five percent wage reimbursement. Positions filled by trainees who meet any of the three following criteria may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(1) Trainee has taken the WorkKeys® assessments as part of the hiring/recruitment process.

(2) Trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education.

(3) Trainee is a U.S. veteran.

Companies may combine any one of the three conditions above with the additional five percent wage reimbursement for high-wage positions, for a total additional wage

reimbursement not to exceed ten percent above the standard rates. If a company is participating in other job reimbursement training programs such as the Workforce Innovation and Opportunity Act (WIOA), the combined reimbursement to the company may not exceed one hundred percent.

C. The job training incentive program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

D. Wage reimbursement:

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of standard reimbursement ranges up to seventy-five percent, depending on the business location.

(2) The number of hours eligible for reimbursement varies by position, up to 1,040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at <http://onetonline.org>. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. The number of recommended hours for fiscal year 2019 (July 1, 2018 – June 30, 2019) is included in the table below. The JTIP board may uphold the FY2019 wage requirements beyond fiscal year 2019 under the following circumstances: 1) For companies that have engaged with the Economic

Development Department through a Local Economic Development Act (LEDA) agreement prior to December, 2019 for the length of the Project Participation Agreement (PPA) contract period, provided the company meets job creation requirements within that period and wages do not fall below the statewide minimum wage. 2) For companies that have engaged with the Economic Development Department prior to December, 2019 for consideration of business expansion or location and have been presented with a written incentive analysis based on the FY2019 wage requirements. JTIP applications must be submitted for consideration no later than November 13, 2020. FY2019 wage requirements may be upheld for the length of the LEDA PPA contract period provided the company meets job creation requirements within that period and wages do not fall below the statewide minimum wage.

Continued Next Page

General Guideline for Duration of Reimbursable Training Time/Wages for FY2019							
Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	11.00	9.50	40	8
2a	Some preparation needed	4.0 to < 6.0	480	12.50	10.00	60	12
2	Some preparation needed	4.0 to < 6.0	640	14.00	10.50	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	15.50	12.00	100	20
3	Medium preparation needed	6.0 to < 7.0	960	17.00	13.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	20.00	14.00	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

The number of recommended hours for fiscal years 2021, 2022, 2023 and 2024 are outlined in the tables below.

General Guideline for Duration of Reimbursable Training Time/Wages for FY2021 (July 1, 2020-June 30, 2021)							
Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	12.50	10.63	40	8
2a	Some preparation needed	4.0 to < 6.0	480	14.00	11.13	60	12
2	Some preparation needed	4.0 to < 6.0	640	15.50	11.63	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	17.00	13.13	100	20
3	Medium preparation needed	6.0 to < 7.0	960	18.50	14.13	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	21.50	15.13	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

General Guideline for Duration of Reimbursable Training Time/Wages for FY2022 (July 1, 2021-June 30, 2022)							
Job Zone	Definitions	SVP Range/Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks

1	<u>Little or no preparation needed</u>	<u>Below 4.0</u>	<u>320</u>	<u>14.00</u>	<u>11.90</u>	<u>40</u>	<u>8</u>
2a	<u>Some preparation needed</u>	<u>4.0 to < 6.0</u>	<u>480</u>	<u>15.50</u>	<u>12.40</u>	<u>60</u>	<u>12</u>
2	<u>Some preparation needed</u>	<u>4.0 to < 6.0</u>	<u>640</u>	<u>17.00</u>	<u>12.90</u>	<u>80</u>	<u>16</u>
3a	<u>Medium preparation needed</u>	<u>6.0 to < 7.0</u>	<u>800</u>	<u>18.50</u>	<u>14.40</u>	<u>100</u>	<u>20</u>
3	<u>Medium preparation needed</u>	<u>6.0 to < 7.0</u>	<u>960</u>	<u>20.00</u>	<u>15.40</u>	<u>120</u>	<u>24</u>
4	<u>Considerable preparation needed</u>	<u>7.0 to < 8.0</u>	<u>1,040</u>	<u>23.00</u>	<u>16.40</u>	<u>130</u>	<u>26</u>
	<u>Align with HWJTC</u>	<u>Additional five percent</u>		<u>28.85</u>	<u>19.23</u>		

General Guideline for Duration of Reimbursable Training Time/Wages for FY2023 (July 1, 2022-June 30, 2023)

<u>Job Zone</u>	<u>Definitions</u>	<u>SVP Range/Conversions</u>	<u>Hours</u>	<u>Min. Wage @ Hiring - Urban</u>	<u>Min. Wage @ Hiring - Rural</u>	<u>Days</u>	<u>Weeks</u>
1	<u>Little or no preparation needed</u>	<u>Below 4.0</u>	<u>320</u>	<u>15.00</u>	<u>12.75</u>	<u>40</u>	<u>8</u>
2a	<u>Some preparation needed</u>	<u>4.0 to < 6.0</u>	<u>480</u>	<u>16.50</u>	<u>13.25</u>	<u>60</u>	<u>12</u>
2	<u>Some preparation needed</u>	<u>4.0 to < 6.0</u>	<u>640</u>	<u>18.00</u>	<u>13.75</u>	<u>80</u>	<u>16</u>
3a	<u>Medium preparation needed</u>	<u>6.0 to < 7.0</u>	<u>800</u>	<u>19.50</u>	<u>15.25</u>	<u>100</u>	<u>20</u>
3	<u>Medium preparation needed</u>	<u>6.0 to < 7.0</u>	<u>960</u>	<u>21.00</u>	<u>16.75</u>	<u>120</u>	<u>24</u>
4	<u>Considerable preparation needed</u>	<u>7.0 to < 8.0</u>	<u>1,040</u>	<u>24.00</u>	<u>17.75</u>	<u>130</u>	<u>26</u>
	<u>Align with HWJTC</u>	<u>Additional five percent</u>		<u>28.85</u>	<u>19.23</u>		

General Guideline for Duration of Reimbursable Training Time/Wages for FY2024 (July 1, 2023-June 30, 2024)

<u>Job Zone</u>	<u>Definitions</u>	<u>SVP Range/Conversions</u>	<u>Hours</u>	<u>Min. Wage @ Hiring - Urban</u>	<u>Min. Wage @ Hiring - Rural</u>	<u>Days</u>	<u>Weeks</u>
1	<u>Little or no preparation needed</u>	<u>Below 4.0</u>	<u>320</u>	<u>15.50</u>	<u>13.18</u>	<u>40</u>	<u>8</u>
2a	<u>Some preparation needed</u>	<u>4.0 to < 6.0</u>	<u>480</u>	<u>17.00</u>	<u>13.68</u>	<u>60</u>	<u>12</u>
2	<u>Some preparation needed</u>	<u>4.0 to < 6.0</u>	<u>640</u>	<u>18.50</u>	<u>14.18</u>	<u>80</u>	<u>16</u>

3a	<u>Medium preparation needed</u>	<u>6.0 to < 7.0</u>	<u>800</u>	<u>20.00</u>	<u>15.68</u>	<u>100</u>	<u>20</u>
3	<u>Medium preparation needed</u>	<u>6.0 to < 7.0</u>	<u>960</u>	<u>21.50</u>	<u>16.68</u>	<u>120</u>	<u>24</u>
4	<u>Considerable preparation needed</u>	<u>7.0 to < 8.0</u>	<u>1,040</u>	<u>24.50</u>	<u>17.68</u>	<u>130</u>	<u>26</u>
	<u>Align with HWJTC</u>	<u>Additional five percent</u>		<u>28.85</u>	<u>19.23</u>		

(3) The JTIP staff will ensure that the O*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board may award training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the [table] tables above. If a company establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O*NET recommended hours as per criteria and procedures set forth by and at the discretion of the JTIP board, which may include consideration of the company benefits package. Generally, the hours are reduced to the hours allowed for the next lower job zone. The reimbursement percentages may be adjusted at the discretion of the board based on availability of funds or sufficient appropriations.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Companies located in urban areas (cities with population above 60,000 in the most recent federal decennial census) and Class H counties (i.e., Los Alamos) are reimbursed at up to fifty percent for all eligible training hours. Urban communities are: Albuquerque (545,852), Las Cruces (97,618), Rio Rancho (87,521), and Santa Fe (67,947).

(b) Companies located in rural areas, outside those listed above are reimbursed at up to sixty-five percent for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to seventy-five percent for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to seventy-five percent reimbursement. To receive up to seventy-five percent reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or

other factors.

(e) Companies located on Native American reservations are eligible for up to seventy-five percent reimbursement.

(f) Companies located in federally designated colonias in New Mexico are eligible for up to seventy-five percent reimbursement for all eligible training hours.

(6) JTIP eligible positions with starting wages eligible for the high wage job tax credit may be eligible for an additional five percent reimbursement. These requirements are a hiring salary of \$60,000 or higher in an urban or class H county and a hiring salary of \$40,000 or higher in a rural location or economically disadvantaged area. Trainee requirements are still factors for JTIP eligibility. The percentage of wages reimbursed for high-wage positions filled by trainees who do not meet the one-year residency requirement is unique and not subject to any additional wage reimbursement above the standard rate. Companies located in urban areas and Class H counties are reimbursed up to thirty percent for all eligible training hours. Companies located in rural areas are reimbursed up to forty percent for all eligible training hours. Companies located in frontier areas are reimbursed up to fifty percent for all eligible training hours.

(7) Companies that utilize the WorkKeys® program as part of their hiring process may be eligible for an additional five percent reimbursement.

(8) JTIP eligible positions filled by trainees who have graduated within the past 12 months from a post-secondary

training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent reimbursement.

(9) JTIP eligible positions filled by U.S. veterans may be eligible for an additional five percent reimbursement.

(10) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed 1,040 hours per trainee (six months) based on the company's scheduled workweek, not to exceed 40 hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, commission and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as WIOA, the combined reimbursement to the company may not exceed one hundred percent.

(f) Additional wage reimbursement may not exceed ten percent above the standard rates. Companies may combine the additional five percent wage reimbursement for high-wage jobs with one of the three following conditions for an additional five percent wage reimbursement provided the entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4: 1) the trainee has taken the WorkKeys® assessments as part of the hiring process; 2) the trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico

institution of higher education; 3) the trainee is a U.S. veteran. High-wage positions filled by trainees who do not meet the one-year residency requirement are not eligible for additional wage reimbursement above the standard rate.

E. Reimbursement for custom classroom training:

Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of \$35 per hour per trainee with a cap of \$1,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. No training equipment may be purchased or rented using JTIP funds.

[5.5.50.10 NMAC - Rp, 5.5.50.10 NMAC, 06/26/2018; A, 1/1/2020]

GENERAL SERVICES DEPARTMENT

The General Services Department reviewed at its 12/3/2019 hearing, 2.20.1 NMAC - Accounting And Control Of Fixed Assets Of State Government, Accounting For Acquisitions And Establishing Controls filed 9/16/199. The Department has decided to repeal 2.20.1 NMAC - Accounting And Control Of Fixed Assets Of State Government, Accounting For Acquisitions And Establishing Controls filed 9/16/199 and replace it with 2.20.1 NMAC - Accounting And Control Of Fixed Assets Of State Government, Accounting For Acquisitions And Establishing Controls, adopted 12/5/2019 and effective 12/31/2019.

GENERAL SERVICES DEPARTMENT

TITLE 2 PUBLIC FINANCE CHAPTER 20 ACCOUNTING BY GOVERNMENTAL ENTITIES PART 1 ACCOUNTING AND CONTROL OF FIXED ASSETS OF STATE GOVERNMENT, ACCOUNTING FOR ACQUISITIONS AND ESTABLISHING CONTROLS

2.20.1.1 ISSUING AGENCY: General Services Department, Administrative Services Division.

[2.20.1.1 NMAC - Rp, 2.20.1.1 NMAC, 12/31/2019]

2.20.1.2 SCOPE: This rule applies to all state government agencies as defined in the "Audit Act," Section 12-6-1 NMSA 1978.

A. The term "agency" is intended to be all-inclusive as used in the Audit Act, Section 12-6-2 NMSA 1978.

B. Fixed assets purchased or owned by agencies are included under the definition regardless of the method of acquisition or source of the funds used for purchased assets.

[2.20.1.2 NMAC - Rp, 2.20.1.2 NMAC, 12/31/2019]

2.20.1.3 STATUTORY AUTHORITY: Section 12-6-10 NMSA 1978 directs the general services department to promulgate regulations to state agencies for the accounting and control of fixed assets owned by government agencies.

[2.20.1.3 NMAC - Rp, 2.20.1.3 NMAC, 12/31/2019]

2.20.1.4 DURATION: Permanent.

[2.20.1.4 NMAC - Rp, 2.20.1.4 NMAC, 12/31/2019]

2.20.1.5 EFFECTIVE DATE: Effective December 31, 2019, unless a later date is cited at the end of a section or paragraph.

[2.20.1.5 NMAC - Rp, 2.20.1.5 NMAC, 12/31/2019]

2.20.1.6 OBJECTIVE:

A. The objective of Section 2.20.1 NMAC is to establish standards for the accounting for and the controlling of the fixed assets acquired and owned by state agencies as defined under article 2, and to define a uniform system for the classification of such assets.

B. To accomplish this, subsequent sections of this rule describe the procedures for the acquisition of fixed assets, the methods for assigning values to acquired assets (valuation), the methods of depreciating fixed assets whether required or optional, the establishment of internal controls on fixed assets, the procedures for conducting the annual inventory of fixed assets, and the allowable methods for the disposition of fixed assets.

[2.20.1.6 NMAC - Rp, 2.20.1.6 NMAC, 12/31/2019]

2.20.1.7 DEFINITIONS:

A. "Agency" means any governmental entity as defined in Section 13-6-2 NMSA 1978. This definition includes:

- (1) any department, institution, board, bureau, court, commission, district or committee of the government of the state;
- (2) district courts, magistrate courts, district attorneys;
- (3) charitable institutions for which appropriations are made by the legislature;
- (4) every political subdivision of the state, created under general or special act which receives or expends public money from whatever source derived, including but not limited to counties, county institutions, boards, bureaus or commissions, municipalities; drainage, conservancy, irrigation or other special districts;
- (5) every office or officer of any of these organizations.

B. "Betterment" means a replacement or major renovation of an existing asset or unit of an existing asset by an improved or superior asset or unit, the effect of which is to improve the efficiency of the primary asset or lengthen the remaining service life.

C. "Classification system" means the methods and designations used for identifying fixed assets. This should reflect the object code that was used to acquire the asset and its intended use. Section 2.20.1.9 NMAC of this rule specifies the classifications to be used.

D. "Component" means a separately identifiable part of an asset that is more meaningfully defined as an aggregate assembly.

E. "Depreciation" means the method applied to allocating the cost of a fixed asset over the duration of its useful life.

F. "Official or governing authority" means the person of highest authority within an agency.

G. "Fixed asset" means any property or equipment that has an initial value to an agency, whether in cash or trade value, of more than five thousand dollars (five thousand dollars (\$5,000)). It is not acquired for subsequent sale or consumption but for utilization in the course of an agency's normal operations in producing and distributing goods or rendering services. The asset is expected to be used or held beyond the fiscal year in which it was acquired without being consumed by its use. Fixed assets include those assets constructed by agency personnel. This five thousand dollars (\$5,000) threshold for capitalization is a statutory (Section 12-6-10 NMSA 1978) minimum and does not preclude agencies from controlling assets of lesser value through their fixed asset systems when such control is desirable or appropriate.

H. "Fixed asset coordinator" means the individual within an agency or a section of an agency who is responsible for controlling and accounting for the

fixed assets in the custody and use of the agency or section.

I. "General fixed assets" means those assets acquired by governmental funds, and not accounted for directly in the real accounts of such funds.

J. "General fixed asset account group" means those accounts used to record and track fixed assets acquired by "governmental funds." These "funds" include the general fund, the special revenue fund, and the capital project fund. Assets are recorded in these accounts, along with any betterments, impairments or depreciation. Assets are carried in this account group to recognize that they are not a component of fund balance available for appropriation.

K. "Object code" means the expenditure accounting code that indicates the category of benefits for which the money was spent.

L. "Physical inventory" means the process of verifying that fixed assets owned by the agency are present in their assigned custody and location, and evaluating their condition.

M. "Proprietary funds" means those funds used to account for the provision of services by a government entity to other government entities or to the public. The financial objective of such funds is to recover through user charges the full cost (including depreciation) of operations.

N. "Tag" means any label or marking that is permanently affixed to a fixed asset, including indelible ink or dyes, numbers physically stamped into the fixed asset, adhesive labels or barcodes, and metal tags.

[2.20.1.7 NMAC - Rp, 2.20.1.7 NMAC, 12/31/2019]

2.20.1.8 FIXED ASSET ACCOUNTING SYSTEM:

A. Agencies should implement systematic and well-documented methods for accounting for their fixed assets. A computerized system is recommended, with

appropriate controls on access and authorization of transactions.

B. The information to be recorded and maintained on its fixed assets, must include at a minimum the following:

- (1) agency name or commonly used initials used to identify the agency;
- (2) fixed asset number or fixed asset number plus component number;
- (3) a description using words meaningful for identification;
- (4) location, specifically a building and room number. If the asset is movable, the name and location of the fixed asset coordinator should be used;
- (5) manufacturer name (NOT the vendor's name, unless vendor is the manufacturer);
- (6) model number or model name;
- (7) serial number, or vehicle identification number (VIN) for vehicles in agency's use & possession. If the fixed asset has no serial number, e.g., a custom-built asset, absence should be acknowledged by coding this as "none";
- (8) estimated useful life or units expected to be produced;
- (9) date acquired (month and year);
- (10) cost (according to the valuation methods described in Section 2.20.1.10 NMAC;
- (11) fund and organization that purchased the asset, or to which it was transferred.

C. The system must be capable of generating lists of fixed assets in sequences useful for managing them. It must track all transactions including acquisitions, depreciation (if needed), betterments and dispositions. It must generate all necessary accounting entries to the agency's general ledger.

[2.20.1.8 NMAC - Rp, 2.20.1.8 NMAC, 12/31/2019]

2.20.1.9 CLASSIFICATION OF FIXED ASSETS:

A. The type of service that the asset was purchased for must be used to classify fixed assets. The object code under which it was purchased is usually a reliable indicator of the service for which it was purchased.

B. Object codes from the category for capital outlay may be used. Purchases from other categories may also be capitalized if appropriate. For example, certain types of repairs or maintenance may increase the useful life of the asset. These costs should be added to the cost of the asset.

C. The recommended classifications and definitions are:

(1) **"Land"**: Only real property is included in this category. Costs to be included that are not specifically stated in Subsection B of Section 2.20.1.10 NMAC include fees for appraisals, title searches, attorney's fees, demolition of structures (less any salvage) as part of site preparation, and agent's commissions.

(2) **"Land Improvements"**: Improvements subsequent to the acquisition of land are in this category. Such assets have a limited economic life. Examples are roadways, landscaping, utility infrastructure, and fencing. This category may also be used to record leasehold improvements. Leasehold improvements should be capitalized to recognize the allocation of the cost of the improvements for the duration of their useful lives.

(3) **"Buildings and Structures"**: This category shall be used for all buildings and structures that are permanently fixed to land.

(4) **"Furniture and Fixtures"**: These are assets that are not permanently fixed to land, but are the contents of a building.

(5) **"Information Technology Equipment"** (including software): This category of equipment includes

computers and peripherals, and all equipment related to electronic communications.

(6) **"Equipment and Machinery"**: Equipment that is related to industrial production, construction, land or grounds maintenance, food service, public safety should be recorded in this category.

(7) **"Farm Equipment"**: All equipment related to agricultural or ranch production should be recorded in this category.

(8) **"Livestock and Poultry"**: This category is only used for farm or ranch animals that are not purchased for immediate consumption or production of food.

(9) **"Library and Museum Acquisitions"**: Assets in this category only include holdings of libraries or museum collections. A publication that is available in a library but that is acquired by an agency for its private use would be appropriately categorized as furniture and fixtures. Similarly, a farm museum would use this classification for tractors and ploughs, even if they are used for their intended purpose.

(10) **"Motor Vehicles and Aircraft"**: This category is for all such vehicles that the agency owns. Vehicles and aircraft acquired under the terms of an operating lease should not be recorded as fixed assets.

D. Agencies may use these fixed asset classifications for the purpose of pooling assets for depreciation, for publication in financial statements, or other management objectives.

[2.20.1.9 NMAC - Rp, 2.20.1.9 NMAC, 12/31/2019]

2.20.1.10 VALUATION OF ASSETS:

A. All fixed assets should be acquired in compliance with the procurement ("Procurement Code Regulations") and applicable statutes.

B. Fixed assets acquired through purchase shall be recorded at cost. In most cases cost is equal to monetary value exchanged,

plus associated costs to prepare the asset for its intended use. These costs include freight or shipping, taxes, site preparation and installation, testing, reconditioning and other similar costs. If considerations other than cash are exchanged for the assets, the fair market value of such consideration at the time of the transaction is the proper measure of the cost of the assets so acquired.

C. Fixed assets include those assets constructed by agency personnel. Construction costs for such assets include direct labor (salary including overtime), materials, equipment usage (depreciation, rental, supplies, etc.), and overhead that can be distributed on the basis of direct labor such as employee benefits.

D. Fixed assets that are donated to the agency should be recorded at fair market value at the time of donation. Fair market value may require a professional appraisal of the property. If there is any doubt about the rights to the property, it should not be recorded until such rights are clearly established. Such doubts include any conditions or restrictions on the use or future disposition of the property. Should any restrictions adversely affect the value, they should be recognized in the final determination of the valuation to be recorded.

E. Fixed assets may also be acquired through governmental reorganization (including those that result in residual equity transfers), specific legislation, mutual agreement between agencies, or a capital project. These shall be placed in an agency's fixed asset inventory at the time the assets are transferred to the agency. The transfer will require the entity transferring the fixed asset to provide information that properly identifies the asset(s) being transferred. The information, in addition to the requirements of Section 2.20.1.9 NMAC above should include estimated service life and accumulated depreciation.

F. Agencies may acquire fixed assets through a capital project fund. Assets transferred may include land and new construction,

renovated or remodeled buildings, furniture, fixtures and equipment. If the assets are transferred from another agency, e.g., the facilities management division of the New Mexico general services department, the transferring agency will provide the capitalized costs to record in the receiving agency's books.

G. In certain instances agencies may enter into lease agreements that are properly classified as capital leases. In a capital lease, the result is that the agency either acquires or has the right to acquire the property at the end of the lease. In addition, for accounting purposes the property is considered to be purchased if:

- (1) the present value of the lease payments is ninety percent or more of the purchase price,
- (2) the lease extends for at least seventy-five percent of the asset's useful life,
- (3) the lease contains a bargain purchase clause, or
- (4) if title passes to the lessee at the end of the lease.

[2.20.1.10 NMAC - Rp, 2.20.1.10 NMAC, 12/31/2019]

2.20.1.11 GENERAL ACCOUNTING PROCEDURES:

A. Property, and equipment acquired by general, special revenue, and capital projects funds are brought under accounting control by the creation of a "general fixed asset account group." In accordance with generally accepted accounting principles, general fixed assets are recorded at acquisition cost. If the cost of fixed assets was not recorded when the assets were acquired and is unknown when accounting control over the assets is established, it is acceptable to record them at estimated cost. The offset to the fixed asset accounts is the set of equity accounts that indicate the sources from which the fixed assets were acquired.

B. Internal service funds account for all fixed assets similar to private sector business enterprises. That is, fixed assets

are used to generate revenues to be used in their operations; therefore, they are accounted for in the internal service fund in which they reside. Fixed assets are depreciated based on their cost and expected service life. Depreciation methodologies and charges to depreciation expense should be consistent with generally accepted accounting principles.

C. Fixed assets in nonexpendable trust funds are accounted for directly in their respective financial statements. [2.20.1.11 NMAC - Rp, 2.20.1.11 NMAC, 12/31/2019]

2.20.1.12 DEPRECIATION:

A. Depreciation is a set of methods for allocating the cost of an asset over its economic life. Assets owned by proprietary funds and nonexpendable trust funds are required to be depreciated. Assets held in the general fixed assets account group may, at the option of the fund's managers, be depreciated.

B. Depreciation normally should not be recorded until the asset is ready for use.

C. Depreciation reduces the net book value of an asset as its economic usefulness is consumed. Depreciation expense should normally be closed to fund balance at year-end.

D. The offset to the depreciation account is accumulated depreciation. This is a contra-account to assets, whose net value is historical cost less accumulated depreciation.

[2.20.1.12 NMAC - Rp, 2.20.1.12 NMAC, 12/31/2019]

2.20.1.13 BETTERMENTS AND REPLACEMENTS:

A. Betterments to assets should be capitalized. If the asset consists of identifiable and separately valued components, and a component is improved, the old component should be removed from the asset account, and the new component added to the asset account.

B. Replacements of components, which simply increase the useful life of the asset, should be substituted for the previous

component, and the useful life and amount then used for depreciation. The new component should be recorded inclusive of all costs as described in of Section 2.20.1.10 NMAC. For example, an aircraft has its engines replaced at a cost of three hundred thousand (\$300,000). The old engines should be removed from the books along with accumulated depreciation and the gain or loss on disposal. The new engines are then recorded, and added to the asset with a new useful life and basis for depreciation.

C. Reinstallation and rearrangement costs of machinery, rearrangement of partitions, renovation of buildings, and similar outlays on fixed assets purchased in used condition should be capitalized as part of the cost. Overhead items such as insurance, taxes, salaries and other incidentals directly related to the asset during a period of renovation also should be capitalized.
[2.20.1.13 NMAC - Rp, 2.20.1.13 NMAC, 12/31/2019]

2.20.1.14 EXPENDITURES FOR MAINTENANCE AND REPAIRS:

A. Repairs and maintenance on fixed assets, which are routine and necessary for continued safe and productive operation, should be charged to maintenance expense in the period in which they occur.

B. The expense should be recorded in the appropriate expenditure object code based on the nature of the expense. Repairs and maintenance do not increase the value of the asset, nor prolong its life, but the expenses should be matched to the benefits received.

[2.20.1.14 NMAC - Rp, 2.20.1.14 NMAC, 12/31/2019]

2.20.1.15 FIXED ASSET CONTROLS:

A. Each agency shall establish controls over its fixed assets for the primary purposes of safeguarding them and establishing accountability for their custody and use. Such controls will apply to:

(1) Authorization to acquire fixed assets: Controls on the acquisition of fixed assets shall include procedures for requesting their purchase, and a requirement for approval to purchase by a representative of agency management who can determine that the requested purchase is consistent with the business objectives of the agency and is economically reasonable.

(2) Receiving procedures: The delivery of goods or services should be accepted by an individual who can attest to such delivery and has no access to accounting system records.

(3) Tagging the assets and components: Newly received fixed assets shall be tagged at the time they are received. At the time that a request to purchase a fixed asset is approved, the purchase order shall be returned to the requester along with a tag or tags to identify the asset(s).

(4) Assigned location: A basic control over fixed assets is information about their physical location. Agencies shall record the original assigned location of fixed assets. When a fixed asset is reassigned, the new location and fixed asset coordinator should be updated in the fixed asset system records.

(5) Fund and organizational unit that originally purchased the asset: Fixed assets must be associated with the fund and governmental entity that purchased them for the purpose of accurately reporting financial performance. If an asset is transferred the fixed asset and accounting records should be updated.

(6) Individual(s) responsible for tracking their use and location: Agencies shall assign specific individuals within their organizational units to be responsible for tracking the fixed assets in their units.

B. All fixed assets shall be marked with tags. Each tag shall identify the agency owning the asset followed by a unique sequential fixed asset number so that each item may be positively identified.

An agency may establish blocks of numbers for its sub-units to improve controls and avoid duplication of numbers.
[2.20.1.15 NMAC - Rp, 2.20.1.15 NMAC, 12/31/2019]

2.20.1.16 ANNUAL INVENTORY:

A. At the end of the fiscal year, each agency shall conduct a physical inventory of its fixed assets consisting of those with a historical cost of five thousand dollars (\$5000) or more, under the control of the governing authority.

B. This inventory shall include all property procured through the capital projects fund which are assigned to the agency designated by the director of the property control division as the user agency.

C. All passenger vehicles must be included in the inventory process. This includes all vehicles leased from the transportation services division of the general services department as required by the "auditor's rule" Paragraph (8) of Subsection A of Section 2.2.2.12 NMAC.

D. The inventory process shall produce a list of the property and the date and cost of acquisition. The annual physical inventory checks against losses not previously revealed and brings to light errors in records of accountability, but more importantly, a systematic physical inventory of fixed assets provides an opportunity for surveying their physical condition, with respect to their need for repairs, maintenance or replacement.

E. The results of the physical inventory shall be recorded in a written inventory report, certified as to correctness and signed by the governing authority of the agency. In the process of conducting their fieldwork, the state auditor or independent public accountant under a contract approved by the state auditor may test the correctness of the inventory by generally accepted auditing procedures (Section 12-6-10A NMSA 1978).

[2.20.1.16 NMAC - Rp, 2.20.1.16 NMAC, 12/31/2019]

2.20.1.17 IMPAIRMENT:

A. An asset is considered impaired if its estimated life has been reduced, or its ability to generate revenue has been reduced.

B. On finding that an asset has been impaired, the accounts for the fund or group to which the asset belongs should be posted with the appropriate entries to adjust its value to the new estimate.

[2.20.1.17 NMAC - Rp, 2.20.1.17 NMAC, 12/31/2019]

2.20.1.18 DISPOSITION OF FIXED ASSETS:

A. Sections 13-6-1 through 13-6-2 NMSA 1978, and the procurement code govern the disposition of fixed assets.

B. For property whose fair market value is under five thousand dollars (\$5,000) and obsolete, or unusable, disposition may be made by:

- (1) negotiated sale to any governmental unit of an Indian nation, tribe or pueblo in New Mexico, or by negotiated sale or donation to other state agencies, local public bodies, school districts, state educational institutions or municipalities,
- (2) sale at public auction,
- (3) destruction,
- (4) disposal of hazardous materials in compliance with environmental regulations, and
- (5) sale through solicitation of written bids through the state purchasing division.

C. For property whose fair market value is over five thousand dollars (\$5,000), disposition may be made only through written approval by the state budget division.

D. As a prerequisite to the disposition of any items of personal property, state agencies shall designate a committee of at least three officials of the governing authority to approve and oversee the disposition. They must give notification at least

30 days prior to its action of making the deletion by sending a copy of its official finding and the proposed disposition of the property to the office of the state auditor (OSA).

E. All dispositions must be recorded in the fixed asset inventory records. Appropriate entries must also be made in the financial accounts to reflect the disposition of the property. Gains or losses on disposal must be recorded in funds where such accounting is required.

F. Dispositions of property whose method is found to be theft or embezzlement should be recorded in the inventory and financial accounts. Associated documentation such as police and insurance reports should be kept as part of the audit trail of the disposition.

[2.20.1.18 NMAC - Rp, 2.20.1.18 NMAC, 12/31/2019]

HISTORY OF 2.20.1 NMAC

Pre-NMAC History: The material in this sub-part is derived from that previously filed with the State Records Center and Archives under: GSD 86-507, Standard Fixed Asset Control And Accounting Regulation, 7/10/1986.

GSD 88-101, Standard Fixed Asset Control And Accounting 3/1/1988.

History of Repealed Material:

2.20.1 NMAC - Accounting And Control Of Fixed Assets Of State Government, Accounting For Acquisitions And Establishing Controls filed 9/16/199, Repealed 12/31/2019.

Other History: GSD 88-101, Standard Fixed Asset Control and Accounting (filed 3/1/88) renumbered, reformatted and replaced by 1 NMAC 1.2.1, Accounting and Control of Fixed Assets of State Government - Accounting for Acquisitions and Establishing Controls, effective 9/30/1999.

2.20.1 NMAC - Accounting And Control Of Fixed Assets Of State Government, Accounting For Acquisitions And Establishing

Controls was replaced by 2.20.1 NMAC - Accounting And Control Of Fixed Assets Of State Government, Accounting For Acquisitions And Establishing Controls effective 12/31/2019.

HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.4 NMAC, Section 4 effective 12/31/2019.

5.7.4.4 DURATION:

[December 31, 2019] Permanent.
[5.7.4.4 NMAC - N, 10/31/2013; A, 12/31/2019]

PERSONNEL OFFICE

At its December 6, 2019 meeting, the New Mexico State Personnel Board repealed its rule General Provisions, 1.7.1 NMAC, filed July 7, 2001, and replaced it with a new rule, General Provisions, 1.7.1 NMAC, adopted December 13, 2019, and effective January 1, 2020.

PERSONNEL OFFICE

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 7 STATE PERSONNEL ADMINISTRATION PART 1 GENERAL PROVISIONS

1.7.1.1 ISSUING

AGENCY: State Personnel Board.
[1.7.1.1 NMAC - Rp, 1 NMAC 7.1.1, 01/01/2020]

1.7.1.2 SCOPE: All state agencies in the classified service.

[1.7.1.2 NMAC - Rp, 1 NMAC 7.1.2, 01/01/2020]

1.7.1.3 STATUTORY

AUTHORITY: Sections 10-9-3, 10-9-7, 10-9-10, 10-9-12 through 10-9-14 and Section 14-2-1 NMSA 1978.
[1.7.1.3 NMAC - Rp, 1 NMAC 7.1.3, 01/01/2020]

1.7.1.4 DURATION:
Permanent.
[1.7.1.4 NMAC - Rp, 1 NMAC 7.1.4, 01/01/2020]

1.7.1.5 EFFECTIVE DATE: January 1, 2020 unless a later date is cited at the end of a section.
[1.7.1.5 NMAC - Rp, 1 NMAC 7.1.5, 01/01/2020]

1.7.1.6 OBJECTIVE:
The objective of Part 1 of Chapter 7 is: to define words and phrases used throughout Chapter 7, to cite provisions pertaining to different Parts of Chapter 7, to require maintenance of employment records, and to detail provisions that do not warrant a separate Part.
[1.7.1.6 NMAC - Rp, 1 NMAC 7.1.6, 01/01/2020]

1.7.1.7 DEFINITIONS:

A. "Agency" means any state department, bureau, division, branch or administrative group which is under the same employer.

B. "Anniversary date" means the date of appointment or reemployment and is changed as of the date of promotion, demotion, reduction, or transfer. The assignment of an employee to a new classification which best represents the job performed by the employee does not affect the employee's anniversary date. The director shall resolve disputes over how an anniversary date is derived.

C. "Applicant" means any person, who has applied for a position in the classified service.

D. "Appointment" means the assumption of job duties by a candidate who was offered and then accepted a classified position in a state agency.

E. "Audit" means an examination or inspection of an agency's personnel and human resources functions and activities, including but not limited to personnel transactions, recruitment, leave administration, collective bargaining agreement administration, and completion of personnel evaluations.

F. "Board" means the personnel board.

G. "Break in employment" means any period of time of at least one workday of not being in the classified service.

H. "Candidate" means any applicant who is on the employment list for a position.

I. "Classified service" means all positions in the executive branch of state government which are not exempt by law.

J. "Classification" means a job that is occupationally and quantifiably distinct.

K. "Compa-ratio" means pay expressed as a percentage of the midpoint of a pay band.

L. "Demotion" means an involuntary downward change for disciplinary reasons with a reduction in pay within an employee's pay band or from a classified position in one pay band to a classified position in a lower pay band with a reduction in pay, and/or removal of supervisory responsibilities and pay for disciplinary reasons.

M. "Director" means the state personnel director.

N. "Disciplinary action" means any action taken by an agency to influence change in an employee's performance or behavior to the expected standard, including letters of reprimand, suspensions, demotions and dismissals.

O. "Dismissal" means the involuntary separation from employment.

P. "Diversity in the workplace" means an acknowledgment of all people in the workplace equally, regardless of their differences. Agencies' management of diversity will ensure that efforts are made to adapt to and accept the importance of all individuals who fall within a group identified for protection under equal employment laws and regulations.

Q. "Domestic partner" means two individuals who have shared a common, primary residence for at least 12 consecutive months, sign an affidavit of domestic partnership, and meet all of the following criteria:

(1) Both domestic partners must be unmarried.

(2) Domestic partners must have been in a mutually exclusive relationship, intending to do so indefinitely, and the relationship is similar to a marriage relationship in the State of New Mexico.

(3) Domestic partners must meet the age requirements for marriage in New Mexico (18 years of age) and be mentally competent to consent to contract.

(4) Domestic partners must not be related by blood to the degree prohibited in a legal marriage in the State of New Mexico.

(5) Domestic partners must be jointly responsible for the common welfare of each other and share financial obligations.

(6) Domestic partner must not be married or a member of another domestic partnership; nor have been so during the past 12 months. If domestic partnership dissolves and the same two people want to become partners again, they must once again meet the 12-month requirements.

(7) Domestic partners must provide proof of one of the following: joint mortgage or lease; joint ownership of a motor vehicle; joint bank account; joint credit account; domestic partner named as beneficiary of life insurance; domestic partner named as beneficiary of retirement benefits; domestic partner named as primary beneficiary in the employee's will; domestic partner assigned durable property or health care power of attorney; or documentation of sharing of household expenses by both partners.

R. "Employee" means a person in a position in the classified service. [note: For purposes of brevity and consistency, this definition differs from Subsection I of Section 10-9-3 NMSA 1978, but in no way confers a greater right on certain persons than contemplated by Subsection I of Section 10-9-3 NMSA 1978.]

S. "Employer" means any authority having power to fill positions in an agency.

T. “Employment list” the list of names of candidates referred to a hiring manager by the agency’s Human Resources, from which a candidate may be selected for an interview, and from which a candidate may be selected for appointment.

U. “Employment records” means documents that contain information related to a person’s employment or application for employment.

V. “Examination” means ranked competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including tests.

W. “Exempt service” means all positions in the executive branch of state government exempt from the classified service by law.

X. “Filed” means received by the office.

Y. “Involuntary separation” means involuntary removal of an employee from the classified service without prejudice as provided for in 1.7.10.13 NMAC.

Z. “Line authority” means the assignment of activities or approval authority by the director to state personnel office staff or an agency in a manner that does not relinquish the director’s administrative oversight or authority.

AA. “Manager” means an employee in a position that manages internal staff or external staff, or who plans, organizes, integrates, coordinates, and controls the activities of others. A manager also is held accountable for the performance of people, services, systems, programs, projects and resources and can change their direction, objectives and assignments to meet performance and business needs.

BB. “Midpoint” means the salary midway between the minimum and maximum pay rates of a pay band for positions in the classified service. Midpoint represents a compa-ratio value of 1.00 or one hundred percent.

CC. “Minimum qualifications” means requirements

approved by the board that must be met to be considered for a position.

DD. “Office” means the state personnel office.

EE. “Pay band” means the range of pay rates, from minimum to maximum.

FF. “Probationer” means an employee in the classified service who has not completed the one-year probationary period.

GG. “Promotion” means the change of an employee from a classified position in one pay band to a classified position in a higher pay band.

HH. “Reduction” means a voluntary change without prejudice, within an employee’s pay band, or from a classified position in one pay band to a classified position in a lower pay band.

II. “Relation by blood or marriage within the third degree” includes spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, and great-grandparent.

JJ. “Resignation” means the voluntary separation of an employee from the classified service.

KK. “Rules” means the rules and regulations of the personnel board.

LL. “Signature” means handwritten or electronic signature(s), provided that the mechanism for electronic signatures is approved for use by the director, provides for authentication, and otherwise complies with the Uniform Electronic Transactions Act, Sections 14-16-1 to 21 NMSA 1978.

MM. “Status” means all of the rights and privileges of an appointment.

NN. “Supervisor” means an employee in a non-manager classification who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of two or more other employees and has

the authority in the interest of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively, but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

OO. “Suspension” means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days.

PP. “Transfer” means the movement of an employee from one position to another in the same pay band without a break in employment.

QQ. “Without prejudice” means a declaration that no rights or privileges of the employee concerned are waived or lost except as may be expressly conceded or decided.

RR. “Writing or written” means in the written form and/or an alternative format, where deemed appropriate, and when requested, including electronic records that comply with the Uniform Electronic Transactions Act, Sections 14-16-1 to 21 NMSA 1978.

[1.7.1.7 NMAC - Rp, 1 NMAC 7.1.7, 01/01/2020]

1.7.1.8 APPROVAL AUTHORITY:

A. Pursuant to the provision of Subsection A of Section 10-9-12 NMSA 1978, the director shall supervise all administrative and technical personnel activities of the state. The director may audit the administrative and technical personnel activities of the state. The director shall submit any findings of non-compliance with these rules to the board.

B. If it is established that an agency has violated the rules, an applicable collective bargaining agreement in place with the state,

or the agency's policies, and the agency is given adequate opportunity to correct violations and fails to do so, the director may suspend the agency's line authority or right to approve personnel actions, to approve employment lists, to advertise employment positions, to negotiate with or to make agreements with exclusive bargaining representatives, or to perform any activities related to the agency's violations and require director approval until the director rescinds the suspension.

C. The director reserves the right to assign line authority under these rules so long as such line authority maintains the director's administrative oversight and authority.

D. The director shall establish criteria governing the requirements which must be met to achieve and maintain line authority status.

E. The director may modify or withdraw line authority status.
[1.7.1.8 NMAC - Rp, 1 NMAC 7.1.8, 01/01/2020]

1.7.1.9

INTERPRETATIONS: The board shall establish a procedure for the issuance of interpretations of these rules.
[1.7.1.9 NMAC - Rp, 1 NMAC 7.1.9, 01/01/2020]

1.7.1.10 METHOD OF

SERVING NOTICE: Any notice required of an agency by these rules, except for 1.7.13 NMAC, shall be delivered by a method that provides proof of service or attempted service.
[1.7.1.10 NMAC - Rp, 1 NMAC 7.1.10, 01/01/2020]

1.7.1.11 COMPUTATION

OF TIME:

A. In computing any period of time prescribed or allowed by these rules, the day from which period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on

which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

B. Whenever an employee is permitted or required by these rules to respond or do some other act within a prescribed period after service of a notice or paper upon the employee and the notice or paper is served by mail or courier service, three calendar days shall be added to the prescribed period.

[1.7.1.11 NMAC - Rp, 1 NMAC 7.1.11, 01/01/2020]

1.7.1.12 EMPLOYMENT RECORDS:

A. Agencies shall maintain a record of each employee's employment history in accordance with operational necessity and applicable state and federal law requirements. Employees shall have access to review their own file. Employment-related confidential records shall be available for inspection by agencies during the process of interviewing for employment when the employee has provided a signed release. No materials shall be placed in an employee's employment history without providing the employee with a copy. Employees may submit written rebuttal to any material placed in their employment history. Agencies shall transfer the complete record of an employee's employment history upon inter-agency transfer.

B. Employment records, except confidential records, are subject to inspection by the general public. Confidential records may be inspected with the written permission of the employee or pursuant to a lawful court order or subpoena.

C. For the purpose of inspection of public records under Subsection B of 1.7.1.12 NMAC, the following material shall be regarded as confidential and exempted from public inspection: records and documentation pertaining to

physical or mental illness, injury or examinations, sick leave and medical treatment of persons; records and documentation maintained for purposes of the Americans with Disabilities Act [42 U.S.C. Section 12010 et seq.]; letters of reference concerning employment, licensing, or permits; records and documentation containing matters of opinion; interview notes; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be re-employed; college transcripts; military discharge; information on the race, color, religion, sex, national origin, political affiliation, age, and disability of employees; home address and personal telephone number unless related to public business; social security number; laboratory reports or test results generated according to the provisions of 1.7.8 NMAC; and as otherwise provided by state or federal law.

[1.7.1.12 NMAC - Rp, 1 NMAC 7.1.12, 01/01/2020]

1.7.1.13 SETTLEMENT

AGREEMENTS: Any settlement agreement reached by an agency and an employee to resolve a matter between them, that incorporates provisions covered by these rules, must conform to the provisions of these rules, unless otherwise approved by the director. If a potential offer of settlement relates to a personnel action covered by these rules, including, but not limited to, disciplinary appeals, grievance arbitrations, and prohibited practice complaints, or a collective bargaining agreement entered into by the state, an agency must secure approval from the director prior to extending the offer. If in the judgment of the director, the offer of settlement is in the best interest of the state, the director may authorize the agency to extend the offer of settlement to the employee. If such settlement also involves payment of monies by an agency, joint approval of the cabinet secretary of the department of the department of finance and administration and

administration signifying budget availability and the director is required.

[1.7.1.13 NMAC - Rp, 1 NMAC 7.1.13, 07/07/01, 01/01/2020]

1.7.1.14 AGENCY HUMAN RESOURCE POLICIES:

Each agency shall provide a copy of their human resource policies to the office and these policies must conform to the provisions of these rules and other statutory requirements as required by law and include, among other things, policies regarding diversity in the workplace.

[1.7.1.14 NMAC - Rp, 1 NMAC 7.1.14, 01/01/2020]

1.7.1.15 TRAINING AND DEVELOPMENT:

The director shall establish, pursuant to direction from the board, and maintain a training and development work plan. The board will review the training and development work plan on an annual basis.

[1.7.1.15 NMAC - Rp, 1 NMAC 7.1.15, 01/01/2020]

1.7.1.16 SEVERABILITY:

A determination by a court of competent jurisdiction that any provision of **1.7.1 NMAC** is unconstitutional or invalid shall not adversely affect the constitutionality, validity or enforceability of the remaining provisions.

[1.7.1.16 NMAC - Rp, 1 NMAC 7.1.16, 01/01/2020]

HISTORY OF 1.7.1 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

SPB Rule 1, Definitions, filed 05-22-80;

SPB Rule 1, Definitions, filed 06-03-81;

SPB Rule 1, Definitions, filed 07-22-82;

SPB Rule 1, Definitions, filed 10-21-82;

SPB Rule 1, Definitions, filed 06-28-83;

SPB Rule 1, Definitions, filed 03-07-86;

SPB Rule 1, Definitions, filed 10-17-86;

SPB Rule 1, Definitions, filed 07-30-87;

SPB-A, Glossary, filed 04-04-90;

SPB-A, Glossary, filed 10-19-90;

SPB 1, Definitions, filed 12-15-92;

SPB 1, Definitions, filed 02-10-94;

SPB Rule 2, General Provisions, filed 05-22-80;

SPB Rule 2, General Provisions, filed 06-03-81;

SPB Rule 2, General Provisions, filed 07-22-82;

SPB Rule 2, General Provisions, filed 10-21-82;

SPB Rule 2, General Provisions, filed 06-28-83;

SPB Rule 2, General Provisions, filed 03-07-86;

SPB Rule 2, General Provisions, filed 10-17-86;

SPB-1, General Applicability filed 04-04-90;

SPB-1, General Applicability filed 10-19-90;

SPB-1, General Applicability filed 12-24-91;

SPB 2, General Provisions, filed 12-15-92;

SPB 2, General Provisions, filed 02-10-94;

SPB 2, General Provisions, filed 12-29-94.

Other History:

1 NMAC 7.1, General Provisions, filed 01-12-96 replaced SPB 1, filed 02-14-94 and SPB 2, filed 12-29-94;

1 NMAC 7.1, General Provisions, filed 05-02-96;

1 NMAC 7.1, General Provisions, filed 06-13-97 replaced by 1.7.1

NMAC, General Provisions, effective 07/07/01.

History of Repealed Material:

1 NMAC 7.1, General Provisions, filed 06-13-97.

1.7.1 NMAC, General Provisions, filed 6/13/1997, replaced by 1.7.1

NMAC, General Provisions, effective 01/01/2020.

PERSONNEL OFFICE

These are amendments to Title 1, Chapter 7, Part 7 NMAC, Sections 7, 10, 12, 14, 15 and 16, effective 01/10/2020.

1.7.7.7 DEFINITIONS:

A. "Child" or "Children" means a person or persons 18 years of age or younger who is enrolled in School, and who is or are the biological child(ren), legally adopted child(ren), foster child(ren), stepchild(ren), or legal ward(s) of an employee.

B. "Covered active duty or call to covered active duty status" means duty during the deployment of a regular member or reservist to a foreign country.

C. "Covered servicemember" means a current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or a covered veteran (member of the Armed Forces, including a member of the National Guard or Reserves, who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the employee takes FMLA leave to care for the covered veteran) who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

D. "Extra-curricular activities" means events or appointments not falling within the normal school curriculum, including but not limited to sporting events, orientations, ceremonies, field trips, registrations.

E. "Fall semester" means August through December.

F. "Family member" means an individual who is the spouse or domestic partner of or is by blood, marriage or legal adoption a parent, grandparent, great-grandparent, child, foster child, grandchild, great-grandchild, brother, sister, niece,

nephew, aunt or uncle, or is living in the household of an employee.

G. “Health care provider” means a physician, dentist, podiatrist, clinical psychologist, or optometrist who is authorized to practice medicine or surgery in the state in which the individual practices. In cases limited to treatment consisting of manual manipulation of the spine to correct a subluxation, medical certification may be provided by a chiropractor. Others capable of providing health care services include podiatrists, dentists, clinical psychologists, optometrists, nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized to practice in the state; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; any health care provider from whom an employer or the employer’s group health plan’s benefits manager will accept certification for the existence of a serious health condition to substantiate a claim for benefits, including a foreign physician.

H. “Medical emergency” means a medical condition of an employee or a family member of such employee that is likely to require an employee’s absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

I. “School” means a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either a licensed child care center, preschool, elementary, middle, junior high, or high school, or any combination of those, including charter schools, state institutions, and private schools, but not including home schools.

J. “Serious health condition” means an illness or injury that involves an overnight stay in a health care facility and any subsequent treatment in connection with such stay; or, continuing treatment by a health care provider

including any one or more of the following:

(1) a period of incapacity of more than three consecutive, full calendar days and subsequent treatment by a health care provider in-person two or more times within 30 days of the first day of incapacity;

(2) treatment by a health care provider in-person on at least one occasion which results in a regimen of continuing treatment;

(3) pregnancy and prenatal care;

(4) chronic condition which requires visits at least twice a year for treatment by a health care provider over an extended period of time and may cause episodic rather than a continuing period of incapacity;

(5) permanent or long-term conditions; and

(6) conditions requiring multiple treatments by a health care provider including recovery time.

K. “Serious illness or injury” means an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces, or existed before the beginning of the servicemember’s active duty and was aggravated by service in the line of duty in the Armed Forces, and that may render the covered servicemember medically unfit to perform the duties of the servicemember’s office grade, rank or rating. In the case of a veteran who was a covered servicemember, “serious illness or injury” means the same as above but the injury or illness manifested itself before or after the member become a veteran.

L. “Son” or “Daughter” means a biological, adopted, or foster child, a step child, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and “incapable of self-care” because of a mental or physical disability at the time that FMLA leave is to commence.

M. “Spring semester” means January through May.

N. “Spouse” is defined in the Family and Medical Leave Act regulations [29 CFR 825.122(b)]. [1.7.7.7 NMAC - Rp, 1 NMAC 7.7.7, 07/07/01; A, 01/01/2020]

1.7.7.10 SICK LEAVE:

A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay, shall accrue sick leave at the rate of [3-69] 4.00 hours per pay period.

B. Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall accrue sick leave on a prorated basis.

C. Sick leave may not be used before it is accrued and must be authorized or denied according to agency policy.

D. An employee may use sick leave for personal medical treatment or illness or for medical treatment or illness of a [relation by blood or marriage within the third-degree] family member, or of a person residing in the employee’s household. Employees affected by pregnancy, childbirth, and related medical conditions must be treated the same as persons affected by other medical conditions.

E. There is no limit to the amount of sick leave that may be accrued.

F. No payment shall be made for accrued sick leave at the time of separation from the classified service except as provided by law.

G. Former employees who were laid off and are returned to work in accordance with the provisions of 1.7.10.10 NMAC shall have restored the sick leave they had accrued as of the date of layoff.

H. An agency may authorize an employee to use accrued sick leave to attend the funeral of a relation by blood or marriage within the third degree, or of a person residing in the employee’s household.

I. Payment for Accumulated Sick Leave:

(1) In accordance with the provisions of Section 10-7-10, NMSA 1978 employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent (50%) of their hourly rate of pay for up to 120 hours of sick leave. Payment for unused sick leave may be made only once per fiscal year on either the payday immediately following the first full pay period in January or the first full pay period in July.

(2) Immediately prior to retirement from the classified service, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent (50%) of their hourly rate for up to 400 hours of sick leave.

J. An agency shall not discharge or threaten to discharge, demote, suspend or retaliate or discriminate against an employee because that employee requests or uses sick leave for medical treatment or illness of a family member in accordance with the agency's sick leave policy, files an appeal alleging violation of the Public Employee Caregiver Leave Act, Section 10-16H-1, et seq. NMSA 1978, cooperates in an investigation or prosecution of an alleged violation of that act or opposes any policy or practice established pursuant to that act.

K. Denials of an employee's request for sick leave related to medical treatment or illness of a family member, or alleged violations of the Public Employee Caregiver Leave Act by an agency directly impacting an employee, may be appealed to the director through the agency's chain-of-command. Appeals to the director must be in writing and include the agency's analysis of the reasons for the appeal. The director's decision is final and binding.

[1.7.7.10 NMAC - Rp, 1 NMAC 7.7.10, 07/07/01; A, 11/14/02; A, 01/01/2020]

1.7.7.12 FAMILY AND MEDICAL LEAVE:

A. In addition to other leave provided for in 1.7.7 NMAC eligible employees are entitled to leave in accordance with the Family and Medical Leave Act (FMLA) of 1993 [29 U.S.C. Section 2601 et seq.], as amended. Employees who have been in the classified service for at least 12 months (which need not be consecutive) and who have worked, as defined by Section 7 of the Fair Labor Standards Act [29 U.S.C. Section 201 et seq.], at least 1250 hours during the 12 month period immediately preceding the start of FMLA leave are "eligible employees". In addition, employment in the exempt service, legislative or judicial branch, shall count as classified employment for purposes of this rule.

B. Eligible employees are entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period, at the time of a birth [or], placement through adoption or foster care, bonding, or serious health condition of a child of the employee or the employee's spouse, [or] at the time of a serious health condition for the employee, or family members, or any other qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call or order to active duty status, in support of a contingency operation as defined in the FMLA, including family preparations resulting from a short-notice of deployment, military events and related activities, childcare on an urgent basis or for school activities, financial and legal arrangements, counseling, spending time with the servicemember while on short-term leave, post-deployment activities, and other activities in accordance with the FMLA regulations [29 CFR 825.12]. An employee whose family member is on active duty or called to active duty status in support of a contingency operation as a member of the Armed Forces is not eligible to take leave because of qualifying exigency. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

C. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of unpaid FMLA leave in a single 12-month period to care for the servicemember. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

D. An employee may elect, or an agency may require the employee, to substitute any of the employee's accrued annual leave, accrued sick leave, personal leave day, accrued compensatory time, or donated leave for any part of unpaid FMLA leave.

E. If a paid holiday occurs within a week of FMLA leave, the holiday is counted towards the FMLA entitlement. However, if an employee is using FMLA in increments less than one week, the holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

F. Employees shall not accrue annual and sick leave while on unpaid FMLA leave.

G. Agencies shall post the required FMLA notices, maintain the required employee records, and implement agency policies in accordance with the FMLA. All medical records and correspondence relating to employees and/or their families shall be considered confidential in accordance with 1.7.1.12 NMAC.

H. Disputes over the administration of this rule shall be forwarded to the director for resolution.

I. As a condition for restoring an employee whose own serious health condition required FMLA leave, an agency may require

the employee to provide certification from their health care provider that the employee is able to resume work. The fitness-for-duty certification may only pertain to the specific health condition that required FMLA leave. [1.7.7.12 NMAC - Rp, 1 NMAC 7.7.12, 07/07/01; A, 11/14/02; A, 6-30-06; A, 10-15-08; A/E, 1/27/09; A, 5-14-09; A, 01/01/2020]

1.7.7.14

ADMINISTRATIVE LEAVE:

A. An agency may authorize employees leave with pay for up to five consecutive work days when it is in the best interests of the agency to do so. Administrative leave in excess of five consecutive work days must have the prior written approval of the director except for administrative leave granted in accordance with the provisions of Paragraph (2) of Subsection B of 1.7.8.19 NMAC or Paragraph (2) of Subsection D of 1.7.8.19 NMAC or 1.7.11.12 NMAC.

B. Employees who are members of a state board or commission may be entitled to leave with pay to attend meetings or transact business of the board or commission.

C. Employees who are registered voters may absent themselves from work for two hours for the purpose of voting between the time of the opening and the time of the closing of the polls. The employer may specify the hours during the period in which the voter may be absent. This leave is not available to employees whose work day begins more than two hours subsequent to the time of opening the polls or ends more than three hours prior to the time of closing the polls. This leave is only available for those elections listed in Subsection A of Sections 1-12-42 and 1-1-19 NMSA 1978, and does not apply to absentee or early voting.

D. Employees shall be entitled to administrative leave when appearing during regularly scheduled work hours in obedience to a subpoena as a witness before a grand jury or court or before a federal

or state agency in which the state of New Mexico or one of its agencies is a party or the employee is a party related to the employee's employment with the State of New Mexico. Fees received as a witness, excluding reimbursement for travel, shall be remitted to the employee's agency.

E. Employees shall be entitled to leave with pay for serving on a grand or petit jury during regularly scheduled work hours. Fees received as a juror, excluding reimbursement for travel, shall be remitted to the employee's agency.

F. Employees with a child or children enrolled in a school shall be entitled to the following amounts of paid administrative leave for parent-teacher conferences, provided that the express purpose of the leave is to attend a parent-teacher conference during the employee's normal work day; provided that the leave is not being requested for parental participation or assistance in extra-curricular school activities; provided that the employee follows any procedures required by the office or agency to request paid administrative leave for the parent-teacher conference; and, provided that the employee provides reasonable notice to the agency in an effort to avoid disruption to operational needs:

(1) Employees with three or more children may be granted up to four hours of paid administrative leave during the spring semester, and up to four hours of paid administrative leave during the fall semester for parent-teacher conferences; and

(2) Employees with one child or two children may be granted up to two hours of paid administrative leave during the spring semester, and up to two hours of paid administrative leave during the fall semester for parent-teacher conferences.

(3) Two employees may request available leave to attend the same scheduled parent-teacher conference for their children.

[1.7.7.14 NMAC - Rp, 1 NMAC 7.7.14, 07/07/01; A, 11/14/02; A, 7-15-05; A, 01/01/2020]

1.7.7.15 EDUCATIONAL LEAVE:

A. An agency may grant employees educational leave with or without pay to pursue [special] training related to their employment that is of immediate or potential value to the agency, including new ideas and innovation that could result from an employee's education on a variety of subjects, expansion of employee skill sets for later promotional or leadership opportunities, and retention. "Educational leave" means time away from work, paid or unpaid, for approved coursework at an academic institution, including participation in classes and travel between an employee's normal work site and the academic institution. Educational leave may be requested as part-time administrative leave with pay or full-time Educational Leave without pay.

B. Employees on full-time educational leave with pay shall not accrue annual or sick leave.

C. Employees who are working part-time while on educational leave shall accrue annual and sick leave in accordance with the provisions of Subsection D of 1.7.7.8 NMAC and Subsection B of 1.7.7.10 NMAC.

D. Employees who are granted paid educational leave [for training in excess of 100 work-hours in a calendar year shall agree in writing to continue with the agency for a period of time equal to three times the period of the training] and who leave the employ of the agency within one year of the conclusion of the educational leave, must reimburse the agency for any tuition, expenses, or costs that the agency paid on behalf of the employee. Employees who are granted paid educational leave and who fail to complete any coursework, testing, or requirements of the educational program must reimburse the agency for any tuition, expenses, or costs that the agency paid on behalf of the employee.

[1.7.7.15 NMAC - Rp, 1 NMAC 7.7.15, 07/07/01; A, 01/01/2020]

1.7.7.16 MILITARY LEAVE:

A. Members of organized reserve units or the national guard ordered to ~~[active duty]~~ training shall be given up to 15 workdays of paid military leave per federal fiscal year. These 15 workdays are in addition to other authorized leave.

B. The governor may grant members of the national guard ~~ordered to training up to 15 days of paid military leave [for active duty training]~~, in addition to that already given by law. Such additional leave must not exceed 15 workdays per federal fiscal year.

C. Members of the state defense force shall be granted paid military leave to attend officially authorized training or instruction courses. Such leave applies only to full-time employees and must not exceed ~~[+5]~~ 30 workdays per federal fiscal year.

D. Members of the civil air patrol shall be granted military leave not to exceed ~~[+5]~~ 30 workdays per calendar year for search and rescue missions.

E. Employees on military leave with pay shall accrue annual and sick leave.

F. Employees who are members of a reserve component of the United States armed forces shall, upon request, be granted unpaid leave for the period required to perform active duty for training or inactive duty training in the United States armed forces.

G. This rule does not apply to employees in temporary or emergency status.
[1.7.7.16 NMAC - Rp, 1 NMAC 7.7.16, 07/07/01; A, 11/14/02; A, 7-15-05; A, 01/01/2020]

PUBLIC SAFETY, DEPARTMENT OF

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 2 DEPARTMENT OF PUBLIC SAFETY
PART 200 EXPUNGEMENT OF ARREST RECORDS AND RELATED PUBLIC RECORDS**

10.2.200.1 ISSUING AGENCY: Department of Public Safety.
[10.2.200.1 NMAC - N, 1/1/2020]

10.2.200.2 SCOPE: All persons who seek to expunge arrest and public records in accordance with the Criminal Records Expungement Act.
[10.2.200.2 NMAC - N, 1/1/2020]

10.2.200.3 STATUTORY AUTHORITY: Sections 29-3A-1 through 29-3A-7 NMSA 1978 of the Criminal Records Expungement Act require the Department to develop rules and procedures to implement the Criminal Record Expungement Act.
[10.2.200.3 NMAC - N, 1/1/2020]

10.2.200.4 DURATION: Permanent.
[10.2.200.4 NMAC - N, 1/1/2020]

10.2.200.5 EFFECTIVE DATE: January 1, 2020.
[10.2.200.5 NMAC - N, 1/1/2020]

10.2.200.6 OBJECTIVE: The objective of the rule is to provide a procedure whereby persons who seek to expunge arrest records and public records related thereto, may request a DPS RAP sheet, and be informed of the need to obtain the Petitioner's United States Department of Justice Federal Bureau of Investigations FBI RAP sheet.
[10.2.200.6 NMAC - N, 1/1/2020]

10.2.200.7 DEFINITIONS: For purposes of this rule, the following terms have the following meaning:

A. Arrest records are records of identification of

a person under arrest or under investigation for a crime taken or gathered by an official, including information gathered from the national crime information center or another criminal record database, photographs, fingerprints and booking sheets. Arrest records do not include: 1) citations for driving while intoxicated maintained by the New Mexico Department of Taxation and Revenue; 2) computer-aided dispatch information; or 3) log books relating to breath alcohol testing equipment.

B. Department is the Department of Public Safety.

C. DPS RAP sheet is the record of a Petitioner's arrests and prosecutions throughout the State of New Mexico, which is maintained by the Department.

D. Expungement is the removal from access to the general public of a notation of an arrest, complaint, indictment, information, plea of guilty, conviction, acquittal, dismissal or discharge record, including a record posted on a publicly accessible court, corrections, or law enforcement internet website.

E. FBI RAP sheet is the record of a person's fingerprint-based arrests maintained by the United States Department of Justice Federal Bureau of Investigation. The FBI RAP sheet includes the name of the agency that submitted the fingerprints to the FBI, the date of the arrest, the arrest charge, and the disposition of the arrest, if known. The FBI Rap sheet is also known as a person's Identity History Summary.

F. Petition to Expunge Arrest Records and Public Records or Petition officially begins the expungement of records process in state district court.

G. Petitioner is the person seeking to have his or her personal records expunged in the Petition to Expunge Arrest Records and Public Records.

H. Public records are documents relating to a person's arrest, indictment, proceeding, finding or plea of guilty, conviction, acquittal, dismissal or discharge, including information posted on a court or law

enforcement website, except those records excluded from the definition of public records in Section 29-3A-2C NMSA 1978.
[10.2.200.7 NMAC - N, 1/1/2020]

10.2.200.8 NEED FOR STATE AND FEDERAL RECORD OF ARRESTS AND PROSECUTIONS:

A. If in order to complete the Petition, or otherwise to obtain the expungement of records, a Petitioner is required by a court to obtain Petitioner’s DPS RAP sheet or Petitioner’s FBI RAP sheet, Petitioner may follow the procedure set forth herein.

B. The DPS RAP sheet may be obtained by completing the Authorization for Release of Information and signing it before a notary public, then submitting the completed and notarized original Authorization for Release of Information, together with the required fee, to the Department. The Authorization for Release of Information form and information regarding the appropriate fee are available on the department’s website at <https://www.dps.nm.gov/top-links-for-nm-residents/fingerprinting-and-background-checks> or by calling the Department Law Enforcement Records Bureau at (505) 827-9181.

C. The FBI RAP sheet must be obtained directly from the FBI. Instructions on how to obtain the FBI RAP Sheet may be found at <https://www.fbi.gov/services/cjis/identity-history-summary-checks> and <https://www.edo.cjis.gov/#/>.
[10.2.200.8 NMAC - N, 1/1/2020]

10.2.200.9 SERVICE ON DEPARTMENT:

A. Service of the Petition may be made on the Department by any method permitted by Rule 1-004 H of the New Mexico Rules of Civil Procedure.

B. Service by mail or commercial courier service shall be made by certified mail, return receipt requested or commercial courier service which requires delivery signature by a department employee.

Service is complete on the date of the required signature.

C. Service by mail or commercial courier service shall be addressed to “LERB, New Mexico Department of Public Safety” at either P.O. Box 1628 Santa Fe, N.M., 87504-1628 or 4491 Cerrillos Rd., Santa Fe, N.M., 87507.
[10.2.200.9 NMAC - N, 1/1/2020]

HISTORY OF 10.2.200 NMAC: [RESERVED]

REGULATION AND LICENSING DEPARTMENT SPEECH-LANGUAGE, PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.2 NMAC, Section 11, effective 1/10/2020.

Explanatory Statement: Corrections were made through out the rule to conform to gender neutral language as per current legislative styles.

16.26.2.11 QUALIFICATIONS AND APPLICATION FOR LICENSURE AS A SPEECH-LANGUAGE

PATHOLOGIST: An application for licensure as a speech-language pathologist must be accompanied by the following documents:

A. official transcripts verifying at least a master’s degree in speech-language pathology, speech-language and hearing science, communication disorders or equivalent degree regardless of degree name; or

B. a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution; and

C. ~~[a certified copy of a certificate of clinical competency]~~ proof of having earned a certificate in speech-language pathology from a board recognized national speech-

language association or proof of completion of the clinical fellowship year or equivalent; and

D. proof of having passed a nationally recognized standard examination in speech-language pathology;

E. proof of having passed the jurisprudence examination with a grade of no less than seventy percent; and

F. if currently or previously licensed in another state a verification of licensure must be sent directly to the board by the issuing jurisdiction.

[16.26.2.11 NMAC - Rp, 16 NMAC 26.2.11, 2/3/2006; A, 11/29/2008; A, 4/6/2016; A, 1/10/2020]

REGULATION AND LICENSING DEPARTMENT SPEECH-LANGUAGE, PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.4 NMAC, Sections 8, 9 and 10 effective 1/10/2020.

16.26.4.8 RENEWAL OF LICENSES:

A. All licensees except clinical fellows and apprentices shall apply for license renewal biennially on or before January 30 of the renewal year, on the renewal forms supplied by the board office. The renewal requirements for clinical fellows and apprentices are set forth in Sections 9 and 10 of Part 4.

B. Licensees shall assume the total responsibility for:

- (1) filing a current mailing address and electronic mail (email) with the board office;
- (2) completing the renewal form and ensuring its delivery to the board office on or before January 30 of the renewal year;
- (3) enclosing the appropriate fee; and

(a) initial licenses issued prior to the month of renewal will be granted a license term of the balance of the

remainder of the current license year, plus one license year;

(b) no license shall be issued for longer than 24 months;

(4) enclosing documentation of meeting continuing education requirements.

C. To assist in the renewal process, the board office will:

(1) send renewal notices and the appropriate forms to the licensee's email address of record on or before December 15 prior to the expiration of the current license; and

(2) mail renewed and reinstated licenses no later than 30 days from day of receipt of application, fees and appropriate documentation.

D. Expiration: All speech-language pathology, audiology and hearing aid dispensing licenses expire on January 30 of the renewal year and renewal forms must be complete and postmarked, if submitted by mail no later than the expiration date or a late fee will be assessed without exception.

E. Grace period: There is a grace period permitting renewal of expired licenses which ends March 31 of the intended licensure year. However the license shall be considered expired during the grace period and the licensee must refrain from practicing.

F. Renewal of license during the grace period ending March 31 of the intended license year will require payment of a late fee.

G. If a licensee fails to renew within the grace period, the licensee must reapply as a new applicant, meet all applicable requirements, meet CEU requirements and pay the application fee [~~renewal fee and late penalty fee~~] and renewal fee.

H. Licensees shall be notified by the board office of all license expirations 10 days after the close of the grace period.

I. Timely renewal of license(s) is the full and complete responsibility of the licensee, Pursuant to Subsection C of 16.26.4.8

NMAC of these regulations. Non-receipt of the renewal notification by the licensee will not exempt licensure expiration or late penalty fees.

[12/21/1971; 2/5/1980; 4/5/1983; 11/9/1996; 11/7/1998; 11/27/1999; 16.26.4.8 NMAC - Rn & A, 16 NMAC 26.4.8, 2/3/2006; A, 11/29/2008; A, 6/7/2010; A, 1/29/2015; A, 11/28/2017; A, 1/10/2020]

16.26.4.9 RENEWAL OF CLINICAL FELLOW LICENSE:

The CFY must be completed within a maximum period of 36 consecutive months. Prior to or during the first 12 months of clinical fellow licensure, the clinical fellow must take and pass a nationally recognized examination in the clinical fellow's field. Proof of passing this exam is required for renewing the CFY license.

A. The clinical fellowship license shall be renewed annually on a form supplied by the board office and shall expire annually one year after the date of initial licensure. The renewal must be postmarked no later than the expiration date.

B. A late penalty fee will be assessed if the license is not renewed by the expiration date.

C. If a licensee fails to renew within 60 days of expiration of the license, the licensee must reapply, meet all applicable requirements, meet CEU requirements and pay the application fee [~~renewal fee and late penalty fee~~].

[11/7/1998; 16.26.4.9 NMAC - Rn & A, 16 NMAC 26.4.9, 2/3/2006; A, 1/29/2015; A, 11/28/2017; A, 1/10/2020]

16.26.4.10 RENEWAL OF TEMPORARY PARAPROFESSIONAL LICENSE (APPRENTICE IN SPEECH-LANGUAGE PATHOLOGY):

A. All temporary paraprofessional licensees shall apply for license renewal annually on or before August 30th and are required to provide the following documentation to the board each year:

- (1) a completed renewal form;
- (2) the required license renewal fee; and
- (3) a completed board approved verification of employment form verifying:
 - (a) licensee's employment;
 - (b) performance responsibilities of the apprentice in speech-language;
 - (c) imitations on employment practices of the apprentice in speech-language license holder (apprentice in speech-language);
 - (d) provision for supervision by an SLP licensed according to this act;
- (4) a completed board approved verification of education form verifying:
 - (a) course work completed in communication disorders or other courses as outlined in the degree plan with a minimum GPA of 3.0;
 - (b) current degree plan once the licensee is admitted to a master's degree program; and
 - (c) copy of transcripts from college or university.
- B. Expiration: All temporary paraprofessional licenses expire on August 30th of each year and renewal of licenses must be postmarked no later than the expiration date of the license or a late fee will be assessed without exception.
- C. A temporary paraprofessional license may not be renewed if the licensee has not been accepted into a master's degree program within two years of initial licensure.
- D. If a licensee fails to renew within 60 days of expiration of the license, the licensee must reapply, meet all applicable requirements, meet CEU requirements and pay the application fee [~~renewal fee and late penalty fee~~] and renewal fee.

E. Temporary paraprofessional license as an apprentice in speech-language is a terminal license and as such may be renewed no more than four times total.
 [11/7/1998; 11/27/1999; 16.26.4.10 NMAC - Rn & A, 16 NMAC 26.4.10, 2/3/2006; A, 11/29/2008; A, 11/28/2017; A, 1/10/2020]

**REGULATION AND LICENSING DEPARTMENT
 SPEECH-LANGUAGE, PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES
 BOARD**

This is an amendment to 16.26.6 NMAC, Section 8 effective 1/10/2020.

16.26.6.8 FEES: All fees are payable to the board and are non-refundable. Fees are as follows:

	Initial fee	Renewal fee
A. Hearing aid dispenser trainee temporary permits	\$175.00	
B. Temporary paraprofessional license (apprentice)	\$50.00	\$50.00
C. Clinical fellow license	\$50.00	\$50.00
D. Speech-language pathologist [and] or audiologist license	\$100.00	[\$170.00] \$200.00
E. Hearing aid dispensers	\$175.00	\$360.00
F. Hearing aid practical exam	\$200.00	
G. Endorsement to dispense hearing aids	\$100.00	\$190.00
H. Processing continuing education offerings per offering	\$50.00	
I. Bilingual-Multicultural Endorsement	\$50.00	
J. Late renewal fee	\$75.00	
K. All application packet fees	\$10.00	
[L.] Dual licensure (SLP/audiology)	[\$200.00]	[\$150.00]
[M.] L. Verification of licensure	\$15.00	
[N.] M. Paper list	\$125.00	
[O.] N. Mailing labels	\$150.00	
[P.] O. Electronic list	\$175.00	
[Q.] P. Duplicate license	\$10.00	
[R.] Q. Insufficient funds	\$25.00	

[10/25/1991; 11/09/1996; 11/7/1998; 11/27/1999; 16.26.6.8 NMAC - Rn & A, 16 NMAC 26.6.8, 2/3/2006; A, 6/7/2010; A, 1/29/2015; A, 11/28/2017; A, 1/10/2020]

**REGULATION AND
 LICENSING DEPARTMENT
 SPEECH-LANGUAGE,
 PATHOLOGY, AUDIOLOGY AND
 HEARING AID DISPENSING
 PRACTICES BOARD**

This is an amendment to 16.26.9 NMAC, Section 8 effective 1/10/2020.

Explanatory Statement:
 Corrections were made in Sections 6 and 8 of this rule to eliminate the use of 'and/or' per current

legislative styles.

16.26.9.8 CODE OF ETHICS:

A. The purpose of the Code of Ethics is to preserve high standards of integrity and ethical principles in the discharge of obligations to the public by the professions of speech-language pathologists, audiologists and hearing aid dispensers. Every individual who practices as a licensed speech-language pathologist, audiologist or hearing aid dispenser shall abide

by the Code of Ethics. Any action that violates the Code of Ethics is to be considered unethical and subject to disciplinary action by the board. Failure of the code to specify any particular responsibility or practice is not to be construed as a denial of the existence of a responsibility or practice in that area. The rules of ethics are specific statements of minimally acceptable professional conduct or of prohibitions and are applicable to all licensed individuals. The fundamental rules of ethical conduct as they relate to responsibility

to the public are described in three categories, principles of ethics, ethical proscriptions and matters of professional propriety.

(1) Principles of ethics: Six principles serve as a basis for the ethical evaluation of professional conduct and form the underlying moral basis for the Code of Ethics. Licensed individuals subscribing to this code shall observe these principles as affirmative obligations under all conditions of professional activity.

(2) Ethical proscriptions: Ethical proscriptions are formal statements of prohibitions that are derived from the principles of ethics.

(3) Matters of professional propriety: Matters of professional propriety represent guidelines of conduct designed to promote the public interest and thereby better inform the public and particularly the persons in need of service by the speech-language pathologist, audiologist and hearing aid dispenser as to the availability and the rules governing the delivery of these services.

B. Principles of ethics I: Individuals shall honor their responsibility to hold paramount the welfare of the persons they serve professionally.

(1) Licensed individuals shall use every resource including referral to other specialists as needed, to ensure that high quality service is provided.

(2) Licensed individuals shall fully inform the persons they serve of the nature and possible effects of the services rendered and products dispensed.

(3) Licensed individuals shall fully inform subjects participating in research or teaching activities of the nature and possible effects of these activities.

(4) Licensed individuals shall evaluate the effectiveness of services rendered and of products dispensed and shall provide services or dispense products only when benefit can reasonably be expected.

(5) Licensed individuals shall maintain adequate records of professional services rendered and products dispensed and shall provide access to those records when appropriately authorized.

(6) Licensed individuals shall use persons in research or as subjects of teaching demonstrations only with their fully informed consent.

(7) Licensed individuals' fees shall be commensurate with services rendered.

(8) Licensed individuals shall take all reasonable precautions to avoid injury to persons in the delivery of professional services.

(9) Licensed individuals whose services are adversely affected by substance abuse or other health-related conditions shall seek professional assistance and, where appropriate, withdraw from the affected area of practice.

C. Ethical proscriptions:

(1) Licensed individuals shall not discriminate in the delivery of professional services on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

(2) Licensed individuals shall not guarantee the results of any treatment, procedure, or product, directly or by implication: however, they may make a reasonable statement of prognosis. Caution must be exercised not to mislead any person served professionally to expect results that cannot be predicted from sound evidence.

(3) Licensed individuals must not evaluate, treat, or dispense except in a professional relationship.

(4) Licensed individuals shall not evaluate, treat, or dispense solely by correspondence. This does not preclude follow-up correspondence with persons previously served, nor providing them with general information of an educational nature.

(5) Licensed individuals shall not reveal, without

proper authorization any professional or personal information about the person served professionally, unless required to do so, or unless doing so is necessary to protect the welfare of the person or of the community.

(6) Licensed individuals must not charge for services not rendered.

(7) Licensed individuals must not exploit any person in the delivery of professional services, including accepting persons for treatment when benefit cannot reasonably be expected or continuing treatment when it is no longer necessary.

D. Principles of ethics II: Licensed individuals shall maintain high standards of professional competence.

(1) Licensed individuals shall engage in those aspects of the professions that are within the scope of their licensed professional competence.

(2) Licensed individuals shall identify competent, dependable referral sources for persons served professionally.

(3) Licensed individuals shall insure that all equipment used in the provision of services is in proper working order and is properly calibrated.

(4) Licensed individuals shall continue their professional development.

(5) Licensed individuals shall possess appropriate qualifications for services provided.

E. Ethical proscriptions:

(1) Licensed individuals must not provide services by prescriptions from anyone who is not licensed pursuant to these regulations.

(2) Licensed individuals shall prohibit any of their staff from providing services that they are not licensed or qualified to perform.

(3) Licensed individuals must not require or delegate any service requiring professional competence and licensure of/to anyone who is not

competent and licensed to engage in any practice that is a violation of the Code of Ethics.

(4) Licensed individuals must not offer clinical services by supportive personnel for whom they do not provide appropriate supervision and assume full responsibility.

(5) Licensed individuals shall not provide professional services without exercising independent professional judgement, regardless of referral source or prescription.

F. Principles of ethics III:

(1) Licensed individuals shall honor their responsibility to the public by providing accurate information in all communications involving any aspect of professional service rendered.

(2) Licensed individuals' statements to the public - advertising, announcing, and marketing their professional services and products - shall adhere to prevailing and acceptable professional standards.

(3) Licensed individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, the products dispensed thereof, about the professions and about professional services.

G. Ethical proscriptions:

(1) Licensed individuals shall not misrepresent their credentials, competence, education, training, title, or experience.

(2) Licensed individuals shall not misrepresent diagnostic information, services rendered, or products dispensed, or artifice to defraud in connection with obtaining payment or reimbursement for such services or products.

(3) Licensed individuals must not make public statements regarding professional services and products that contain representations or claims that are false, deceptive or misleading.

(4) Licensed individuals must not use professional or commercial affiliations in any way that would mislead or limit services to persons served professionally.

H. Matters of professional propriety: Licensed individuals should announce services in a manner consistent with highest professional standards in the community.

I. Principles of ethics IV:

(1) Licensed individuals shall maintain objectivity in all matters concerning the welfare of persons served professionally. Licensees who dispense products to the public shall observe the following standards.

(a) Products associated with professional practice must be dispensed as a part of a program of comprehensive rehabilitative care.

(b) Fees established for professional services must be independent of whether a product is dispensed.

(c) Persons served shall be provided freedom of choice for the source of services and products.

(d) Price information about professional services rendered and products dispensed must be disclosed by providing or posting a complete schedule of fees and charges in advance of rendering services, which differentiates between fees for professional services and charges for products dispensed.

(e) Products dispensed to the person served must be evaluated to determine effectiveness.

(2) Any person who practices the sale or fitting of hearing aids shall deliver to any person supplied with a hearing aid, a receipt that shall contain:

(a) the licensee's signature, [the] address of the [licensee's] regular place of business and [the number of his-
heense] license number; it shall also show the make and model of the

hearing aid furnished along with the full terms of the sale clearly stated; if the hearing aid is not new, the receipt must clearly show whether the hearing aid is used or reconditioned, whichever is applicable in terms of any guarantee; the receipt shall also show that the purchaser was advised that the licensee was not a licensed physician and that the examination and recommendation was made as a hearing aid dispenser or fitter and not as a medical diagnosis or prescription; the receipt shall also include language stating that each prospective purchaser was informed at the time of the initial examination for possible sale and fitting of a hearing aid about hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems in accordance with the latest standards for accessible design adopted by the United States department of justice in accordance with the federal Americans with Disabilities Act of 1990, as amended. Each licensee and purchaser must initial acknowledging that counseling for the above-mentioned options took place and that the purchaser was informed concerning these options, and whether the hearing aid(s) contain(s) a tele-coil or t-switch;

(b) the information regarding the trial period which shall be a minimum of 45 consecutive days; if the 45th day falls on a holiday, weekend, or a day the business is not open, the effective date shall be the first day the business reopens; full disclosure of the conditions of any offer of a trial period with a money back guarantee or partial refund; a trial period shall not include any time that the hearing aid is in the possession of the dispenser or the manufacturer; any extension of the 45-day refund period must be in writing and submitted to the client;

(c) shall also include the name, address, and telephone number of the speech language pathology, audiology and hearing aid dispensing practices board in the event a complaint needs to be filed.

(3) Any purchaser of a hearing instrument shall be entitled to a refund of the purchase price advanced by purchaser for the hearing instrument, less the agreed-upon amount associated with the trial period, upon return of the instrument to the licensee in good working order within the trial period. Should the order be canceled by purchaser prior to the delivery of the instrument, the licensee may retain the agreed-upon charges and fees as specified in the written contract. The purchaser shall receive the refund due no later than the 30th day after the date on which the purchaser cancels the order or returns the hearing instrument to the licensee.

J. Ethical
proscriptions:
(1) Licensed individuals must not participate in activities that constitute a conflict of interest.

(2) Licensed individuals must not directly or indirectly give or offer to give money or anything of value to any person who advises another person in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by the licensee, or to refrain from dealing in the products of competitors.

K. Matters of professional propriety:
(1) Licensed individuals should not accept compensation for supervision or sponsorship from a supervised or sponsored individual.

(2) Individuals should present products they have developed to their colleagues in a manner consonant with highest professional standards.

L. Principles of ethics V: Licensed individuals shall honor their responsibilities to the professions and their relationships with members of allied professions.

M. Matters of professional propriety:
(1) Licensed individuals should seek

to provide and expand services to persons with speech, language and hearing handicaps as well as assist in establishing high professional standards for such programs.

(2) Licensed individuals should educate the public about speech, language and hearing processes and handicaps, and matters related to professional competence.

(3) Licensed individuals should strive to increase knowledge within the professions and share research with colleagues.

(4) Licensed individuals should establish harmonious relations with colleagues and members of other professions and endeavor to inform members of the related professions of services provided by speech-language pathologists, audiologists and hearing aid dispensers.

(5) Licensed individuals should assign credit to those who have contributed to a publication in proportion to their contribution.

N. Principles of ethics VI:

(1) Licensed individuals shall uphold the dignity of the professions and freely accept the professional self imposed standards.

(2) Licensed individuals who have reason to believe that the Code of Ethics has been violated shall inform the board.

(3) Licensed individuals shall cooperate fully with the board in any investigation and adjudication of matters of professional conduct related to this Code of Ethics.

O. Principles of Ethics VII: Licensed audiologists and hearing aid dispensers shall, at the time of the initial examination for possible sale and fitting of a hearing aid if a hearing loss is determined, inform each prospective purchaser about hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems in accordance with the latest standards for accessible design adopted by the United States department of justice in accordance with the federal Americans with

Disabilities Act of 1990, as amended [8/4/1981; 8/4/1996; 11/9/1996; 11/7/1998; 16.26.9.8 NMAC - Rn & A, 16 NMAC 26.9.8, 2/3/2006; A, 06/07/2010; A, 1/10/2020]

**REGULATION AND LICENSING DEPARTMENT
SPEECH-LANGUAGE,
PATHOLOGY, AUDIOLOGY AND
HEARING AID DISPENSING
PRACTICES BOARD**

This is an amendment to 16.26.11 NMAC, Section 8 effective 1/10/2020.

16.26.11.8 APPLICATION REQUIREMENTS:

A. Applications for registration shall be completed on a form provided by the board.

B. A completed application shall include:

(1) The required fee as outlined in 16.26.6 NMAC;

(a) initial licenses issued prior to the month of renewal will be granted a license term of the balance of the remainder of the current license year, plus one license year;

(b) no license shall be issued for longer than 24 months.

(2) Satisfactory evidence that the applicant for licensure for a military service member, spouse or veteran from another state holds a current license in good standing with no pending disciplinary action, provided the requirements for the current license held meet or exceed requirements for licensure for speech language pathology, audiology or hearing aid dispensing in the state of New Mexico; and

(3) Proof of honorable discharge (DD214), military ID card, or other recognized proof of military spouse status. [16.26.11.8 NMAC - N, 1/29/2015; A, 11/28/2017; A, 1/10/2020]

WORKFORCE SOLUTIONS, DEPARTMENT OF

At its public hearing on December 5, 2019, the Department of Workforce Solutions repealed its rule 9.1.1 NMAC entitled Labor and Workers Compensation; Human Rights General Provisions; Administrative Procedures for Human Rights Bureau/ Commission, adopted December 19, 2019 and effective January 1, 2020.

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, 1/1/2020]

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, 1/1/2020]

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, 1/1/2020]

9.1.1.4 DURATION:
Permanent.
[9.1.1.4 NMAC - Rp, 9.1.1.4 NMAC, 1/1/2020]

9.1.1.5 EFFECTIVE DATE: January 1, 2020 unless a later date is cited at the end of a section.
[9.1.1.5 NMAC - Rp, 9.1.1.5 NMAC, 1/1/2020]

9.1.1.6 OBJECTIVE:
These rules and regulations govern procedure for 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, 1/1/2020]

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, 28-2-3, 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" means a charge of discrimination signed by the complainant on a human rights bureau 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 bureau.

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. "Director" means the director of the human rights bureau of the labor relations division, or other bureau leadership designated by the director to carry out the mission of the bureau.

M. "Good cause" means a substantial reason, one that affords a legal excuse, or a legally sufficient ground or reason. The

bureau may consider any relevant factors to determine if good cause exists.

N. “Hearing clerk” means the person designated by the bureau to maintain the official record of the hearing proceedings.

O. “Hearing officer” means the person conducting a hearing of a matter brought before the bureau; 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. The hearing officer may also be referred to as an Administrative Law Judge (ALJ).

P. “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.

Q. “Major life activities” means functions such as caring for oneself, 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.

R. “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.

S. “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 the individual:

(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.

T. “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.

U. “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.

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

W. “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.

X. “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.

Y. “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.

Z. “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.

AA. “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 that individual:

(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.

BB. “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;” means 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.

CC. “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, 1/1/2020]

9.1.1.8 FILING A COMPLAINT:

A. Persons who may file a complaint: Any person claiming to be aggrieved by an unlawful discriminatory practice may make, sign and file a written complaint with the bureau individually or through a legally authorized representative.

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. The bureau does not have jurisdiction over complaints that are filed more than 300 days after the last alleged act of discrimination.

C. Form of complaint: (1) The complaint of any person claiming to be aggrieved shall be in writing

on a human rights bureau charge of discrimination 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 a 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 that the complainant alleges. 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 state or federal statute or of these regulations upon which the complainant bases the 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 of 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 the perfected complaint is received by the bureau office. A perfected complaint contains all the information required in Subsection D of this section. If the

complaint is missing any of the listed requirements, it shall be returned to the complainant for completion before the complaint will be deemed perfected.

(2) 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.

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

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 perfected 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 by submitting a written request or by completing the withdrawal form provided by the bureau at any time prior to the issuance of a determination.

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

(3) Requests for reopening a case will be made to the bureau. 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 established 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) After the bureau's receipt of a complaint, a complainant who seeks to remove the complaint from the bureau and pursue the complaint in district court may submit a written request, to the director, and shall receive an order of nondetermination.

(2) The director's order of nondetermination shall be deemed a final order of the bureau for purposes of exhausting administrative remedy, affording the complainant the opportunity to proceed in district court, pursuant to Section 28-1-13 NMSA 1978. [9.1.1.8 NMAC - Rp, 9.1.1.8 NMAC, 1/1/2020]

9.1.1.9 INVESTIGATIONS AND ALTERNATIVE DISPUTE RESOLUTION (ADR):

A. Investigation deadlines:

(1) The bureau shall send the respondent a request for information and the respondent will be required to answer and submit documents within 30 days from the date of the request. Any requests for additional time beyond that must be made in writing, to the director, detailing the reason for the request, and may only be granted for good cause.

(2) When the respondent answers the complaint, the bureau shall provide the response without the exhibits to the complainant. The complainant will be required to provide a rebuttal to the response within 30 days of the bureau's correspondence. Any requests for additional time beyond that must be made in writing, to the director, detailing the reason for the request, and may only be granted for good cause.

(3) 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. Mediation: Throughout the investigation, the bureau will provide opportunity for

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, 1/1/2020]

9.1.1.10 DIRECTOR'S DETERMINATION OF PROBABLE CAUSE OR NO PROBABLE CAUSE AND NOTICE OF HEARING:

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 the 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. Such determination will also notify the parties of the date, time, and location of the hearing, and advise the parties that failure to appear may result in the entry of a judgment or order against the party that failed to appear.

D. Conciliation: The bureau will attempt to conciliate the matter. If conciliation attempts fail, the matter will be set for hearing before the commission or hearing

officer, 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, 1/1/2020]

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, 1/1/2020]

9.1.1.12 MEDIATION AND CONCILIATION PROCESSES

A. Mediation prior to issuance of a determination:

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

(2) If mediation attempts are successful, the parties shall prepare and sign a written settlement agreement. If the complainant and the respondent execute a written and signed settlement agreement, they shall provide the bureau 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) Following its deliberation, 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, 1/1/2020]

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 shall 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 hearing:

(1) Case presentation: Each party is responsible for preparing its case for presentation to the commission or hearing officer. Each party may self-represent at the hearing or may be represented by an attorney or another qualified representative. If represented by an attorney or other qualified representative, the party must notify the bureau of such representation no less than 10 days prior to the hearing.

(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 or hearing officer 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 or hearing officer may issue subpoenas commanding the appearance and testimony of witnesses at the hearing. The commission or hearing officer 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 or hearing officer 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 or hearing officer 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. HRB 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 an 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 or hearing officer and all parties of record before the hearing or at the hearing.

[9.1.1.13 NMAC - Rp, 9.1.1.12 NMAC, 1/1/2020]

9.1.1.14 HEARING PROCEDURES:

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 days 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, or an attorney representative from the Office of the Attorney General, 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.

(3)

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.

(4) 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.

(5) Matters of

proof:

(a)

Burden of proof: complainant has the burden of proof.

(b)

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

(6)

Evidentiary matters at hearing:

(a)

Formal rules of evidence not binding on the commission or hearing officer: 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 or hearing officer. 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.

(7)

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.

(8) Improper

conduct: The commission or hearing officer may exclude from the hearing room any person who engages in improper conduct.

(9) 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 or hearing officer 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 affidavit setting forth the attorney 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.

(10) 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, 1/1/2020]

9.1.1.15 RULING AND FINAL ORDER:

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

B. Where a hearing is before a three-member panel of commissioners, the commission will announce its decision and final order orally at a public meeting within 90 days, 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 or to the party's attorney, if any, at the attorney's address of record.

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, 1/1/2020]

9.1.1.16 TRANSCRIPTS:

A. Upon receipt of a notice of appeal, the bureau 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, 1/1/2020]

9.1.1.17 CONFIDENTIALITY AND PUBLIC RECORDS:

A. The commission complaint, decision and 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 or hearing officer 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 bureau.

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 Subsection 8 of Section 14-2-1 NMSA 1978.

[9.1.1.17 NMAC - Rp, 9.1.1.15 NMAC, 1/1/2020]

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 3/11/1970;
- HRC 72-1 Rules and Regulations for Implementation of the Human Rights Act, filed 7/11/1972;
- HRC 74-1, Rules and Regulations, filed 3/26/1974;
- HRC 77-1, Rules and Regulations, filed 6/10/1977;
- HRC-I, Definitions, filed 5/26/1980;
- HRC-II, Filing a Complaint, filed 5/26/1980;
- HRC-III, Investigations, filed 5/26/1980;
- HRC-IV, Pre-Determination Procedures, filed 5/26/1980;
- HRC-V, Dismissal, filed 5/26/1980;
- HRC-VI, Review Hearing by Commission, filed 5/26/1980;
- HRC-VII, Conciliation and Persuasion, filed 5/26/1980;
- HRC-VIII, Confidentiality, filed 5/26/1980;
- HRC-IX, Hearing, filed 5/26/1980;
- HRC-X, Subpoenas and Subpoenas Duces Tecum, filed 5/26/1980;
- HRC-XI, Final Order, filed 5/26/1980;
- HRC-XII, Transcripts, filed 5/26/1980;
- HRC-XIII, Affirmative Action Definition, filed 5/26/1980;
- HRC-XIV, Procedures for Filing an Affirmative Action Plan with the Human Rights Commission, filed 5/26/1980;
- HRC-XV, Affirmative Action Plan Contents, filed 5/26/1980;
- FEPC 68-1, Rules and Regulations for the State of New Mexico, Fair Employment Practices Commission, filed 5/31/1968;
- HRC 83-1, Rules and Regulations, filed 11/10/83 and HRC 88-1, Rules and Regulations, filed 10/13/1988.

History of Repealed Material:

- 9.1.1 NMAC filed 9/1/1998 and recompiled 10/1/2001, repealed effective 11/14/2017.
- 9.1.1 NMAC filed 11/2/2017, repealed and replaced with 9.1.1 NMAC, Administrative Procedures for the Human Rights Bureau/Commission, effective 1/1/2020.

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to 11.1.2 NMAC, Sections 20 and 21, effective 1/1/2020.

11.1.2.20 PREVAILING WAGE AND FRINGE BENEFIT AND APPRENTICESHIP CONTRIBUTION

RATES: Pursuant to 11.1.2.13 NMAC, the director of the labor relations division of the department of workforce solutions hereby publishes the proposed 2020 prevailing wage and fringe benefit rates and apprenticeship contributions that will apply to all wage rate decisions issued from January 1, 2020 through December 31, 2020.

A. TYPE A: STREET, HIGHWAY, UTILITY AND LIGHT ENGINEERING			
Trade Classification	Base Rate	Fringe Rate	Apprenticeship
Bricklayer / block layer/ stonemason	[23.78] <u>24.46</u>	[9.08] <u>8.81</u>	
Carpenter / lather	[24.08] <u>24.63</u>	[10.84] <u>11.24</u>	
<u>Carpenter – Los Alamos County</u>	<u>27.80</u>	<u>13.19</u>	
Cement mason	17.42	[6.61] <u>6.81</u>	
Ironworker	[26.50] <u>27.00</u>	[16.20] <u>15.75</u>	
Painter [(brush/roller/spray)] - Commercial	17.00	[6.78] <u>6.88</u>	
Plumber / pipefitter	[29.45] <u>30.76</u>	[12.37] <u>11.62</u>	
Electricians - outside classifications: <u>Zone 1</u>			
Ground man	[22.81] <u>23.27</u>	[11.93] <u>12.67</u>	
Equipment operator	[32.73] <u>33.39</u>	[14.51] <u>15.35</u>	

Lineman / [wireman-or-tech] technician	[38.51] 39.28	[16.02] 16.91	
Cable splicer	[42.36] 43.21	[17.01] 17.95	
<u>Electricians - outside classifications: Zone 2</u>			
Ground man	23.27	12.67	
Equipment operator	33.39	15.35	
Lineman/ technician	39.28	16.91	
Cable splicer	43.21	17.95	
<u>Electricians – outside classifications: Los Alamos</u>			
Ground man	23.94	12.85	
Equipment Operator	34.35	15.60	
Lineman/Technician	40.41	17.21	
Cable Splicer	44.45	18.28	
Laborers			
Group I [-Unskilled]	[11.81] 12.26	[5.88] 6.22	
Group II [- Semi-Skilled]	[12.11] 12.56	[5.88] 6.22	
Group III [-Skilled]	[12.51] 12.96	[5.88] 6.22	
Group IV [-Specialty]	[12.76] 13.21	[5.88] 6.22	
Operators			
Group I	[18.60] 18.79	[5.94] 6.34	
Group II	[19.52] 19.72	[5.94] 6.34	
Group III	[19.62] 19.82	[5.94] 6.34	
Group IV	[19.73] 19.93	[5.94] 6.34	
Group V	[19.83] 20.03	[5.94] 6.34	
Group VI	[20.01] 20.21	[5.94] 6.34	
Group VII	[20.17] 20.37	[5.94] 6.34	
Group VIII	[20.46] 20.66	[5.94] 6.34	
Group IX	[27.88] 28.16	[5.94] 6.34	
Group X	[31.10] 31.41	[5.94] 6.34	
Truck drivers			
Group I - IX	[16.15] 16.45	[7.52] 7.87	
[Group-II]	[16.15]	[7.52]	
[Group-III]	[16.15]	[7.52]	
[Group-IV]	[16.15]	[7.52]	
[Group-V]	[16.15]	[7.52]	
[Group-VI]	[16.15]	[7.52]	
[Group-VII]	[16.15]	[7.52]	
[Group-VIII]	[16.21]	[7.52]	
[Group-IX]	[18.15]	[7.52]	
B. TYPE B: GENERAL BUILDING			

Trade Classification	Base Rate	Fringe Rate	Apprenticeship
Asbestos workers/heat & frost insulators	[32.04] 32.26	[11.11] 12.06	.60
<u>Asbestos workers/heat & frost insulators: Los Alamos County</u>	34.69	12.06	.60
<u>Boilermaker / blacksmith</u>	34.97	[27.35] 28.85	.60
<u>Bricklayer / block layer / stonemason</u>	[23.78] 24.46	[8.34] 8.81	.60
<u>Carpenter / lather</u>	[24.08] 24.63	[10.34] 11.24	.60
<u>Carpenter – Los Alamos County</u>	27.80	13.19	.60
<u>Millwright / pile driver</u>	33.16	25.24	.60
<u>Cement mason</u>	[20.71] 21.07	[9.78] 10.33	.60
<u>Electricians - outside classifications: Zone 1</u>			
Ground man	[22.81] 23.27	[11.93] 12.67	.60
Equipment operator	[32.73] 33.39	[14.51] 15.35	.60
Lineman/ technician	[38.51] 39.28	[16.02] 16.91	.60
Cable splicer	[42.36] 43.21	[17.01] 17.95	.60
<u>Electricians - outside classifications : Zone 2</u>			
Ground man	23.27	12.67	.60
Equipment operator	33.39	15.35	.60
Lineman / technician	39.28	16.91	.60
Cable splicer	43.21	17.95	.60
<u>Electricians – outside classifications: Los Alamos</u>			
Ground man	23.94	12.85	.60
Equipment operator	34.35	15.60	.60
Lineman / technician	40.41	17.21	.60
Cable splicer	44.45	18.28	.60
<u>Electricians - inside classifications: Zone 1</u>			
Wireman / low voltage technician	32.70	11.18	.60
Cable splicer	35.97	11.28	.60
<u>Electricians - inside classifications: Zone 2</u>			
Wireman / low voltage technician	35.64	11.27	.60
Cable splicer	38.91	11.37	.60
<u>Electricians - inside classifications: Zone 3</u>			
Wireman / low voltage technician	37.61	11.33	.60
Cable splicer	40.88	11.43	.60
<u>Electricians - inside classifications: Zone 4</u>			
Wireman / low voltage technician	41.20	11.44	.60
Cable splicer	44.47	11.53	.60
<u>Electricians - inside classifications: Los Alamos</u>			
Wireman / low voltage technician	37.61	13.21	.60
Cable splicer	40.88	13.47	.60
<u>Elevator constructor</u>	[42.41] 43.80	[33.51] 35.25	.60
<u>Elevator constructor helper</u>	[33.93] 35.04	[33.51] 35.25	.60
<u>Glazier</u>			

<u>Journeyman / Fabricator</u>	<u>20.25</u>	<u>5.35</u>	<u>.60</u>
<u>Delivery driver</u>	<u>9.00</u>	<u>5.35</u>	<u>.60</u>
Ironworker	[26.50] <u>27.00</u>	[15.56] <u>15.75</u>	.60
Painter (brush/roller/spray)	<u>17.00</u>	[6.38] <u>6.88</u>	.60
Paper hanger	<u>17.00</u>	[6.38] <u>6.88</u>	.60
<u>Drywall – Light commercial & residential</u>			
<u>Ames tool operator</u>	<u>25.08</u>	<u>7.10</u>	<u>.60</u>
<u>Hand finisher/machine texture</u>	<u>24.08</u>	<u>7.10</u>	<u>.60</u>
Plasterer	[22.42] <u>23.17</u>	[8.16] <u>8.99</u>	.60
Plumber / pipefitter	[29.45] <u>30.76</u>	[11.52] <u>11.62</u>	.60
Roofer	[24.49] <u>25.23</u>	[7.80] <u>7.97</u>	.60
Sheet metal worker	[30.28]	[16.60]	[.60]
<u>Zone 1</u>	<u>31.03</u>	<u>17.26</u>	<u>.60</u>
<u>Zone 2 – Industrial</u>	<u>32.03</u>	<u>17.26</u>	<u>.60</u>
<u>Zone 3 – Los Alamos</u>	<u>33.03</u>	<u>7.70</u>	<u>.60</u>
Soft floor layer	[20.71] <u>19.94</u>	[9.78] <u>7.70</u>	.60
Sprinkler fitter	<u>30.90</u>	[20.47] <u>22.29</u>	.60
Tile setter	[23.52] <u>24.46</u>	[8.10] <u>8.81</u>	.60
Tile setter helper / finisher	[15.85] <u>16.53</u>	[8.34] <u>8.81</u>	.60
Laborers			
Group I – Unskilled and Semi-Skilled	[16.09] <u>17.50</u>	[5.93] <u>6.27</u>	.60
Group II – Skilled	[17.25] <u>18.50</u>	[5.93] <u>6.27</u>	.60
Group III - Specialty	[18.25] <u>20.75</u>	[5.93] <u>6.27</u>	.60
[Group IV]	[20.25]	[5.93]	[.60]
<u>Masonry Laborers</u>			
<u>Group I – Unskilled and Semi-Skilled</u>	<u>18.00</u>	<u>6.27</u>	<u>.60</u>
<u>Group II - Skilled</u>	<u>19.75</u>	<u>6.27</u>	<u>.60</u>
<u>Group III - Specialty</u>	<u>20.25</u>	<u>6.27</u>	<u>.60</u>
<u>Reinforcing iron workers and post tension</u>	<u>24.00</u>	<u>6.27</u>	<u>.60</u>
Operators			
Group I	[20.63] <u>20.95</u>	[6.87] <u>7.27</u>	.60
Group II	[22.74] <u>23.11</u>	[6.87] <u>7.27</u>	.60
Group III	[23.19] <u>23.57</u>	[6.87] <u>7.27</u>	.60
Group IV	[23.62] <u>24.01</u>	[6.87] <u>7.27</u>	.60
Group V	[23.80] <u>24.20</u>	[6.87] <u>7.27</u>	.60
Group VI	[24.01] <u>24.41</u>	[6.87] <u>7.27</u>	.60
Group VII	[24.12] <u>24.52</u>	[6.87] <u>7.27</u>	.60
Group VIII	[27.08] <u>27.56</u>	[6.87] <u>7.27</u>	.60
Group IX	[29.41] <u>29.95</u>	[6.87] <u>7.27</u>	.60
Group X	[32.73] <u>33.35</u>	[6.87] <u>7.27</u>	.60
Truck drivers			
Group I - VII	[14.76] <u>16.45</u>	[6.25] <u>7.87</u>	.60
[Group H]	[15.00]	[6.25]	[.60]

[Group III]	[15.50]	[6.25]	[-.60]
[Group IV]	[15.51]	[6.25]	[-.60]
[Group V]	[15.60]	[6.25]	[-.60]
[Group VI]	[15.75]	[6.25]	[-.60]
[Group VII]	[15.90]	[6.25]	[-.60]
Group VIII	[16.11]16.51	[6.25] 7.87	.60
Group IX	[16.32]18.45	[6.25]7.87	.60
C. TYPE C: RESIDENTIAL			
Trade classification	Base rate	Fringe rate	Apprenticeship
Asbestos workers/heat & frost insulators	[32.01] 32.26	[11.11] 12.06	.60
<u>Asbestos workers/heat & frost insulators – Los Alamos County</u>	34.69	12.06	.60
Boilermaker	21.77	3.98	.60
Bricklayer / block layer / stonemason	[213.78] 24.46	[8.34] 8.81	.60
Carpenter / lather	[24.08] 24.63	[10.34] 11.24	.60
<u>Carpenter – Los Alamos County</u>	27.80	13.19	.60
Cement mason	17.96	[9.23] 9.73	.60
Electricians - outside classifications: Zone 1			
Ground man	[22.81] 23.27	[11.93] 12.67	.60
Equipment operator	[32.73] 33.39	[14.51] 15.35	.60
Lineman / technician	[38.51] 39.28	[16.02] 16.91	.60
Cable splicer	[42.36] 42.21	[17.01] 17.95	.60
Electricians - outside classifications: Zone 2			
Ground man	23.27	12.67	.60
Equipment operator	33.39	15.35	.60
Lineman / technician	39.28	16.91	.60
Cable splicer	42.21	17.95	.60
Electricians – outside classifications: Los Alamos			
Ground man	23.94	12.85	.60
Equipment operator	34.35	15.60	.60
Lineman / technician	40.41	17.21	.60
Cable splicer	44.45	18.28	.60
Electricians - inside classifications: Zone 1			
Wireman / [technician] low voltage technician	[31.55] 32.70	[10.75] 11.18	.60
Cable splicer	[34.71] 35.97	[10.84] 11.28	.60
[low-voltage installer technician]	[28.95]	[7.52]	[-.60]
Electricians - inside classifications: Zone 2			
Wireman / low voltage technician	35.64	11.27	.60
Cable splicer	38.91	11.37	.60
Electricians - inside classifications: Zone 3			
Wireman / low voltage technician	37.61	11.33	.60
Cable splicer	40.88	11.43	.60

Electricians - inside classifications: Zone 4			
<u>Wireman / low voltage technician</u>	<u>41.20</u>	<u>11.44</u>	<u>.60</u>
<u>Cable splicer</u>	<u>44.47</u>	<u>11.53</u>	<u>.60</u>
Electricians - inside classifications: Los Alamos			
<u>Wireman / low voltage technician</u>	<u>37.61</u>	<u>13.21</u>	<u>.60</u>
<u>Cable splicer</u>	<u>40.88</u>	<u>13.47</u>	<u>.60</u>
Elevator constructor	[42.41] <u>43.80</u>	[33.51] <u>35.25</u>	.60
Elevator constructor helper	[33.93] <u>35.04</u>	[33.51] <u>35.25</u>	.60
Glazier	[20.25]	[5.05]	[-.60]
<u>Glazier / Fabricator</u>	<u>20.25</u>	<u>5.35</u>	<u>.60</u>
<u>Driver</u>	<u>9.00</u>	<u>5.35</u>	<u>.60</u>
Ironworker	[26.50] <u>27.00</u>	[15.56] <u>15.75</u>	.60
Painter [brush/roller/spray] - Residential	12.00	[6.38] <u>6.88</u>	.60
Drywall [finisher/taper] - Light commercial & residential	[24.08]	[10.34]	[-.60]
<u>Ames tool operator</u>	<u>21.87</u>	<u>7.10</u>	<u>.60</u>
<u>Hand finisher/machine texture</u>	<u>20.87</u>	<u>7.10</u>	<u>.60</u>
Paper hanger	13.00	[6.38] <u>6.88</u>	.60
Plasterer	[18.65] <u>19.75</u>	[7.03] <u>7.92</u>	.60
Plumber / pipefitter	[29.45] <u>30.76</u>	[7.80] <u>11.62</u>	.60
Roofer	[24.49] <u>25.23</u>	[7.80] <u>7.97</u>	.60
Sheet metal worker	[30.28]	[16.60]	[-.60]
<u>Zone 1</u>	<u>31.03</u>	<u>17.26</u>	<u>.60</u>
<u>Zone 2 - Industrial</u>	<u>32.03</u>	<u>17.26</u>	<u>.60</u>
<u>Zone 3 - Los Alamos</u>	<u>33.03</u>	<u>7.70</u>	<u>.60</u>
Soft floor layer	[24.08] <u>19.94</u>	[10.34] <u>7.70</u>	.60
Sprinkler fitter	30.90	[20.47] <u>22.29</u>	.60
Tile setter	[23.78] <u>24.46</u>	[8.34] <u>8.81</u>	.60
Tile setter help / finisher	[15.85] <u>16.53</u>	[8.34] <u>8.81</u>	.60
Laborers			
Group I - Unskilled and Semi-Skilled	[14.55] <u>15.75</u>	5.93	.60
Group II - Skilled	[15.75] <u>16.75</u>	5.93	.60
Group III - Specialty	[16.75] <u>17.75</u>	5.93	.60
[Group IV]	[17.75]	[5.93]	[-.60]
Operators			
Group I	[12.18] <u>12.33</u>	[5.25] <u>6.60</u>	.60
Group V	[13.43] <u>13.62</u>	[5.25] <u>6.60</u>	.60
Group VII	[16.48] <u>16.74</u>	[5.25] <u>6.60</u>	.60
Group VIII	[18.00] <u>18.30</u>	[5.25] <u>6.60</u>	.60
Truck drivers			
Group I - IX	[14.88] <u>20.75</u>	[0.00] <u>6.27</u>	.60
[Group H]	15.00	0.00	-.60
[Group HH]	15.08	0.00	-.60

[Group IV]	15.20	0.00	.60
[Group V]	15.25	0.00	.60
[Group VI]	15.35	0.00	.60
[Group VII]	15.45	0.00	.60
[Group VIII]	15.59	0.00	.60
[Group IX]	15.74	0.00	.60
D. TYPE H: HEAVY ENGINEERING			
Trade Classification	Base Rate	Fringe Rate	Apprenticeship
Asbestos workers/heat & frost insulators	[32.01] 32.26	[11.11] 12.06	.60
<u>Asbestos workers/heat & frost insulators: Los Alamos County</u>	34.69	12.06	.60
Boilermaker	34.97	27.35	.60
Bricklayer / block layer / stonemason	[23.78] 25.54	[8.34] 8.81	.60
Carpenter / lather	[24.08] 24.63	[10.34] 11.24	.60
<u>Carpenter – Los Alamos County</u>	27.80	13.19	.60
Millwright / pile driver	[39.72] 33.16	[16.68] 25.24	.60
Cement mason	21.00	9.38	.60
Electricians - outside classifications: <u>Zone 1</u>			
Ground man	[22.81] 23.27	[11.93] 12.67	.60
Equipment operator	[32.73] 33.39	[14.51] 15.35	.60
Lineman/ technician	[38.51] 39.28	[16.02] 16.91	.60
Cable splicer	[42.36] 43.21	[17.01] 17.95	.60
Electricians - outside classifications: <u>Zone 2</u>			
Ground man	23.94	12.85	.60
Equipment operator	34.35	15.60	.60
Lineman/ technician	40.41	17.21	.60
Cable splicer	44.45	18.28	.60
Electricians – outside classifications: <u>Los Alamos</u>			
Ground man	23.94	12.85	.60
Equipment operator	34.35	15.60	.60
Lineman / technician	40.41	17.21	.60
Cable splicer	44.45	18.28	.60
Electricians – inside classifications: <u>Zone 1</u>			
Wireman / low voltage technician	[31.55] 32.70	[10.75] 11.18	.60
Cable splicer	[34.71] 35.97	[10.84] 11.28	.60
Electricians - inside classifications: <u>Zone 2</u>			
Wireman / low voltage technician	35.64	11.27	.60
Cable splicer	38.91	11.37	.60
Electricians - inside classifications: <u>Zone 3</u>			
Wireman / low voltage technician	37.61	11.33	.60
Cable splicer	40.88	11.43	.60
Electricians - inside classifications: <u>Zone 4</u>			

<u>Wireman / low voltage technician</u>	<u>41.20</u>	<u>11.44</u>	<u>.60</u>
<u>Cable splicer</u>	<u>44.47</u>	<u>11.53</u>	<u>.60</u>
Electricians - inside classifications: Los Alamos			
<u>Wireman / low voltage technician</u>	<u>37.61</u>	<u>13.21</u>	<u>.60</u>
<u>Cable splicer</u>	<u>40.88</u>	<u>13.47</u>	<u>.60</u>
Glazier	[20.25]	[5.05]	[-.60]
<u>Glazier / Fabricator</u>	<u>20.25</u>	<u>5.35</u>	<u>.60</u>
<u>Delivery driver</u>	<u>9.00</u>	<u>5.35</u>	<u>.60</u>
Ironworker	[26.50] <u>27.00</u>	[15.56] <u>15.75</u>	.60
Painter [brush/roller/spray] - Industrial	21.25	[8.82] <u>9.17</u>	.60
Paperhanger	<u>18.75</u>	<u>9.17</u>	<u>.60</u>
Drywall - Industrial			
<u>Ames tool operator</u>	<u>25.93</u>	<u>7.10</u>	<u>.60</u>
<u>Hand finisher/machine texture</u>	<u>24.93</u>	<u>7.10</u>	<u>.60</u>
Plumber / pipefitter	[32.40] <u>30.76</u>	[12.45] <u>11.62</u>	.60
Roofer	[24.49] <u>25.23</u>	[7.80] <u>7.97</u>	.60
Sheet metal worker	[30.28] <u>31.03</u>	[16.60] <u>17.26</u>	.60
Operators			
Group I	[20.35] <u>20.55</u>	<u>6.34</u>	.60
Group II	[20.54] <u>20.75</u>	<u>6.34</u>	.60
Group III	[20.73] <u>20.94</u>	<u>6.34</u>	.60
Group IV	[20.87] <u>21.08</u>	<u>6.34</u>	.60
Group V	[20.98] <u>21.19</u>	[5.94] <u>6.34</u>	.60
Group VI	[21.16] <u>21.37</u>	[5.94] <u>6.34</u>	.60
Group VII	[21.18] <u>21.39</u>	[5.94] <u>6.34</u>	.60
Group VIII	[23.06] <u>23.29</u>	[5.94] <u>6.34</u>	.60
Group IX	[28.67] <u>28.96</u>	[5.94] <u>6.34</u>	.60
Group X	[31.87] <u>32.19</u>	[5.94] <u>6.34</u>	.60
Laborers			
Group I - Unskilled	[16.86] <u>17.06</u>	[5.63] <u>6.22</u>	.60
Group II - Semi-Skilled	[17.61] <u>17.81</u>	[5.63] <u>6.22</u>	.60
Group III - Skilled	[19.12] <u>19.32</u>	[5.63] <u>6.22</u>	.60
Group IV- Specialty	[19.52] <u>19.72</u>	[5.63] <u>6.22</u>	.60
Laborers - Underground			
<u>Group I</u>	<u>18.97</u>	<u>6.22</u>	<u>.60</u>
<u>Group II</u>	<u>19.34</u>	<u>6.22</u>	<u>.60</u>
<u>Group III</u>	<u>19.69</u>	<u>6.22</u>	<u>.60</u>
Truck drivers			
Group I - VII	[16.15] <u>16.45</u>	[17.52] <u>7.87</u>	.60
[Group II]	[16.15]	[17.52]	[-.60]
[Group III]	[16.15]	[17.52]	[-.60]
[Group IV]	[16.15]	[17.52]	[-.60]
[Group V]	[16.15]	[17.52]	[-.60]

[Group VI]	[+6.15]	[+7.52]	[-60]
[Group VII]	[+6.15]	[+7.52]	[-60]
Group VIII	[+6.21] 16.51	[+7.52] 7.87	.60
Group IX	[+8.15] 18.45	[+7.52] 7.87	.60

[11.1.2.20 NMAC - N, 02-29-2016; Rp, 1/1/2017; A, 1/1/2018, A, 1/1/2019; A, 1/1/2020]

11.1.2.21 [2019] 2020
 Subsistence, zone, and incentive pay rates. All contractors are required to pay subsistence, zone, and incentive pay according to the particular trade.

A. Asbestos workers or heat and frost insulators:

(1) For travel more than 80 miles from Albuquerque City Hall or El Paso City Hall, \$70 per day if overnight travel is required.

(2) For travel more than 80 miles from Albuquerque City Hall or El Paso City Hall, \$40 per day if overnight travel is not required.

B. Boilermakers:

(1) From city hall of the dispatch city or the employee's home address, whichever is closer to the job location, \$55.00 per day for travel between 70 and 120 miles.

(2)

For employers based outside of Albuquerque, employees traveling more than 50 miles from the employer's main office, \$30 per day.

C. Bricklayers:

(1) Between 70 and 120 miles, \$55. per day

(2) 121 or more miles, \$70 per day

[C:] **D.** Cement Masons:

(1) For employees who travel to Santa Fe from Albuquerque or vice versa, \$20 per day.

(2) In all other work performed more than 50 miles from the employer's main office, \$50 per day.

(3) Mutually agreed-upon lodging or transportation paid for by the employer will substitute for subsistence pay.

[D] **E.** Drywall Finishers and Tapers:

(1) \$40 per day (\$5 per hour for eight hours work) for over sixty miles over the

most typically traveled route, or other mutually agreed upon suitable lodging or transportation.

(2)

Special provision for Santa Fe and Albuquerque: Employees who travel to Santa Fe from Albuquerque or Albuquerque to Santa Fe will be paid \$15 per day or other mutually agreed upon lodging or transportation.

[E] **F.** Electricians (inside classifications):

(1) For Albuquerque only:

(a) Zone 1 is classified as being within 40 miles from the main post office.

(b) Zone 2 shall extend up to 10 miles beyond zone 1. Work performed within zone 2 shall be compensated nine percent above the journeyman rate for zone 1.

(c) Zone 3 shall extend up to 20 miles beyond zone 1. Work performed within zone 3 shall be compensated fifteen percent above the journeyman rate for zone 1.

(d) Zone 4 shall extend 20 miles or more beyond zone 1. Work performed within zone 4 shall be compensated twenty six percent above the journeyman rate for zone 1.

(2) For Los Alamos County only: work performed within the county shall be compensated fifteen percent above the zone 1 journeyman rate. In addition to base and zone rates of pay, workers shall be compensated for personal or sick time (PTO)

(3) For all other counties:

(a) Zone 1 is: within six miles from the main post office for Raton, Tucumcari, and Farmington.

(ii) within eight miles from the main post office for Las Vegas.

(iii) within ten miles from the main post office for Santa Fe and Gallup.

(iv) within twelve miles from the main post office for Belen, Carrizozo, Clovis, Los Lunas, Portales, Roswell, Ruidoso, Artesia, Carlsbad, Hobbs, and Lovington.

(v) within fourteen miles from the main post office for Espanola.

(b) Zone 2 shall extend up to 20 miles beyond zone 1. Work performed within zone 2 shall be compensated nine percent above the journeyman rate for zone 1.

(c) Zone 3 shall extend up to 30 miles from zone 1. Work performed within zone 3 shall be compensated fifteen percent above the journeyman rate for zone 1.

(d) Zone 4 shall extend beyond 30 miles from zone 1. Work performed within zone 4 shall be compensated twenty six percent above the journeyman rate for zone 1.

[F] **G.** Electricians (outside classification): \$50 per diem to be paid for work 30 miles outside of Santa Fe and 60 miles outside of Albuquerque.

[G] **H.** Glaziers:
 (1) When out-of-town travel is required, the employer shall pay the employee for suitable lodging with no more than two people per room and \$20.00 per night for food.

(2) Employees required to use a personal vehicle for travel to a jobsite beyond a 30 mile radius of the main post office in town where the employer's shop is located shall be compensated at the current

Internal Revenue Service (IRS) rate for actual mileage incurred beyond the 30 mile radius, plus their regular rate of pay for travel time.

[H] **I.** Ironworkers:

(1) Travel more than 50 miles from the interchange of Interstate 40 and Interstate 25 or from the employee's home should be paid at \$6.00 per hour.

(2) If travel is within Santa Fe county, travel should be paid at \$3.00 per hour above scale.

[H] **J.** Laborers:

(1) Type A (a)

Work travel between 50 and 85 miles from the employer's primary address should be compensated at \$3.50 per hour.

(b)

Work travel 86 miles or greater from the employer's primary address should be compensated at \$5.00 per hour.

(2) Types B

and C - work travel over 50 miles from the employer's primary address should be compensated at \$5.00 per hour.

(3) Type H -

no zone subsistence pay.

(4) If an

employer provides the employee transportation and mutually agreeable, suitable lodging in areas where overnight stays are necessary, subsistence rates do not apply.

[J] **K.** Millwrights:

(1) Work travel between 76 and 150 miles should be compensated at \$50.00 per day.

(2) Work travel 151 miles or greater should be compensated at \$75.00 per day.

[K] **L.** Operating Engineers:

(1) Type A [~~and C~~] operators should be compensated for zone and subsistence as follows:

(a)

Work travel between 50 and 85 miles from the interchange of Interstate 25 and Interstate 40 in Albuquerque, or from the Farmington City Hall in

Farmington, should be compensated at \$2.50 per hour.

(b)

Work travel 86 miles or more from the interchange of Interstate 25 and Interstate 40 in Albuquerque or from the Farmington City Hall in Farmington, should be compensated at \$4.00 per hour.

(2) Type B and

C operators:

(a)

Base points for operators are 30 miles and beyond:

(i)

Bernalillo county courthouse in Albuquerque:

(ii)

State capital building in Santa Fe:

(iii)

City hall in Farmington.

(b)

Zone and subsistence for Albuquerque and Santa Fe are as follows:

(i)

work travel between 30 and 50 miles from the base point compensated at \$20 per day;

(ii)

work travel between 51 and 100 miles from the base point compensated at \$45 per day;

(iii)

work travel over 100 miles from the base point that involves an overnight stay compensated at \$75 per day.

(c)

Zone and subsistence for Los Alamos county, \$50 per day.

(d)

If an employer provides the employee transportation and mutually agreeable, suitable lodging in areas where overnight stays are necessary, subsistence rates do not apply.

(3) Type [B-

and] H operators are not eligible for zone and subsistence pay.

[E] **M.** Painters:

(1) Work travel between 30 and 75 miles from the main post office in town where an employee resides shall be compensated at \$1.00 per hour.

(2) Work

travel 76 miles or more from the main post office in the town when an employee resides shall be

compensated at \$2.50 per hour.

(3) When

the employee is required to stay overnight, the employer should provide and pay for suitable lodging.

[M] **N.** Paper hangers:

(1) Work

travel between 30 and 75 miles from the main post office in town where an employee resides shall be compensated at \$1.00 per hour.

(2) Work

travel 76 miles or more from the main post office in the town where an employee resides shall be compensated at \$2.50 per hour.

(3) When

the employee is required to stay overnight, the employer should provide and pay for suitable lodging.

[N] **O.** Plasterers:

(1) Employees

who travel from Albuquerque to Santa Fe should be compensated at \$15.00 per day.

(2) Except for

employees who travel from Santa Fe to Albuquerque, work travel 60 miles or more from the employer's office over the most typically traveled route should be compensated at \$5.00 per hour and capped at \$40.00 per day.

[O] **P.** Plumbers and

pipefitters:

(1) Work

travel for Type H workers only 90 or more miles from an employee's primary residence, and involving an overnight stay, should be compensated at \$50.00 per day.

(2) No zone or

subsistence pay is required should the employer elect to cover the room cost.

[P] **Q.** Roofers - work

travel requiring an overnight stay should be compensated at \$35 per day for food. Employer should provide and pay for a suitable hotel. When employees are assigned to jobs located 60 or more miles from the employer's place of business, transportation to and from the job site must be provided.

[Q] **R.** Sheet metal

workers:

(1) Work

travel 90 miles or more from the main post office in the municipality

of the employer’s primary place of business, and where an overnight stay is required, should be paid at \$45.00 per day.

(2) No zone or subsistence pay is required where an employer pays for lodging at a suitable location with no more than two employees per room.

[R] S. Sprinkler fitters:

(1) Work travel between 60 and 80 miles from the employee’s primary residence should be compensated at \$19.00 per day.

(2) Work travel between 81 and 100 miles from the employee’s primary residence should be compensated at \$29.00 per day.

(3) Work travel of 101 miles or more from the employee’s primary residence should be compensated at \$105.00 per day, plus \$.54 per mile when driving directly from home to the job site, and directly from job site to home or next job site, as assigned by the employer.

(4) No zone or subsistence pay shall be paid when the employer provides daily transportation and the employee elects to travel back and forth from home. [11.1.2.21 NMAC - N, 1/1/2019; A, 1/1/2020]

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to 11.2.3 NMAC, Section 29, effective January 1, 2020.

11.2.3.29 ENERGY TRANSITION ACT COMPLIANCE:

A. The construction of New Mexico facilities that generate electricity for New Mexico retail customers, and that are not located on the customer side of an electricity meter, shall be subject to the requirements of Subsection B of Section 62-13-16 NMSA 1978 if the facilities are built as a result of competitive solicitations.

B. Subject to availability of qualified applicants, the construction of facilities that generate electricity for New Mexico retail customers shall employ apprentices from an apprenticeship program registered with NMDWS during the construction phase of a project at a minimum level as outlined in Subsection B of 62-13-16 NMSA 1978 for all persons employed for the project.

(1) A “project” for the purposes of this Section means any construction of a facility that generates electricity or transmits electricity for New Mexico retail customers.

(2) The number of apprentices required applies to each occupation or trade performing services during the project.

C. NMDWS shall be responsible for monitoring the project for the appropriate level of apprentices on the project and ensuring compliance.

(1) Upon receiving a notice to proceed for construction of such a project, the general contractor shall submit a compliance plan including an outline for how the contractor and subcontractors of any tier will meet the required number of apprentices for the project and a list of subcontractors to NMDWS within 10 days of the award. The list of subcontractors shall be updated quarterly.

(2) Once a quarter, the general contractor and all subcontractors of any tier shall provide a report to NMDWS of payroll records for all construction craft employees including name, address, employee classification, hours worked and wage and fringe benefits paid to the employee.

(3) If it is determined by NMDWS that a contractor or subcontractor is not compliant with these provisions, NMDWS shall issue a notice of non-compliance. The contractor or subcontractor shall have 10 days to become compliant.

(4) Failure of a contractor to comply with the requirement for utilizing the required apprenticeship percentage will result in a referral to the public regulatory commission advising the commission that the project is not in compliance with the provisions of the Energy Transition Act.

D. NMDWS will continue to encourage diversity among apprenticeship program participants, participation by the underrepresented in the industry associated with that apprenticeship program and participation from disadvantaged communities.
[11.2.3.28 NMAC – N, 1/1/2020]

End of Adopted Rules

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Submittal Deadlines and Publication Dates

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

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