

# 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 XXXI, Issue 7

April 7, 2020

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## Notices of Rulemaking and Proposed Rules

### ECONOMIC DEVELOPMENT DEPARTMENT

#### NOTICE OF PROPOSED RULEMAKING

**Public Hearing.** The New Mexico Economic Development Department (EDD) hereby gives notice that it will conduct a public hearing at the CNM Workforce Training Center, 5600 Eagle Rock Ave. NE, Albuquerque, NM 87113 on Thursday, May 14, 2020 from 9:00am to 12:00pm (MDT). The purpose of the public hearing is to receive public input on the proposed amendment to 5.5.50 NMAC, Industrial Development Training Program (Job Training Incentive Program) and address additional changes that may have been suggested by the Industrial Training Board or other interested parties during the public comment period.

**Rule Change Information:** The purpose of this rule change is to consider further revisions to the wage requirements, to update the definition of “rural” community, to allow eligibility for individuals who have worked for the participating company previously through an Apprenticeship program with the NM Department of Workforce Solutions, and to expand the eligibility of non-production positions in certain instances, and to consider additional eligibility requirements related to health care benefits.

**Statutory Authorization:**

Section 21-19-7 NMSA 1978 grants the Industrial Training Board the authority to promulgate and enforce rules.

**Public comment:** Interested individuals are strongly encouraged to submit written comments regarding the proposed rulemaking relating to the Job Training Incentive Program to [patrick.gannon@state.nm.us](mailto:patrick.gannon@state.nm.us) or Patrick Gannon, JTIP Marketing

Coordinator, New Mexico Economic Development Department, P.O. Box 20003 Santa Fe, New Mexico 87504-5003. Written comments must be received no later than 5:00 pm on Tuesday, May 12, 2020. The EDD encourages the early submission of written comments. Individuals may also testify at the public hearing.

Copies of the proposed changes may be accessed through EDD’s website <https://gonm.biz/business-development/edd-programs-for-business/job-training-incentive-program/> or from Patrick Gannon at the contact above on April 7, 2020.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Sara Gutiérrez as soon as possible. The EDD requests at least ten days advanced notice to provide requested special accommodations.

### GAME AND FISH DEPARTMENT STATE GAME COMMISSION

#### MODIFICATION TO THE STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE Due to Executive Order 2020-004 Issued by Governor Michelle Lujan Grisham

The New Mexico State Game Commission (“Commission”) will be hosting a virtual meeting and rule hearing on Thursday April 30, 2020 beginning at 9:00 a.m. This will replace the previously scheduled meeting at the same time at the Grant County Administration Center, 1400 Highway 180 East, Silver City, NM 88061. For instructions on how to virtually attend this meeting, visit the Department’s website at: <http://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on the following:

presentation of proposed changes to the Hunting and Fishing - Manner and Method of Taking rule.

**Synopsis:**

The proposal is to amend the Hunting and Fishing - Manner and Method of Taking rule, 19.31.10 NMAC, which will become effective May 19, 2020. The current Hunting and Fishing - Manner and Method of Taking rule is a permanent rule.

The proposed new rule no longer allows traps and foot snares as a method of sport harvest for cougar. This proposed deletion is necessary to align with the recently approved Bear and Cougar rule, 19.31.11 NMAC. A full text of changes will be available on the Department’s website at: [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us).

Interested persons may submit comments on the proposed changes to the Hunting and Fishing - Manner and Method of Taking rule at: [DGF-Manner-and-Method-Rule@state.nm.us](mailto:DGF-Manner-and-Method-Rule@state.nm.us), or individuals may submit written comments to the physical address below. Comments are due by 1:00 p.m. on April 28, 2020. The final proposed rule will be voted on by the Commission during a virtual public meeting on April 30, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the virtual public rule hearing to be held on April 30, 2020.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department’s website at [www.wildlife.state.nm.us/commission/proposals-under-consideration/](http://www.wildlife.state.nm.us/commission/proposals-under-consideration/). This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director’s Office at (505) 476-8000, or the Department’s website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.



If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

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

## PUBLIC EDUCATION DEPARTMENT

### NOTICE OF PROPOSED RULEMAKING

**Public Hearing.** The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing on Tuesday, May 19, 2020 from 3 p.m. to 5 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The purpose of the public hearing is to receive public input on the proposed repeal of 6.30.12 NMAC, K-3 Plus Program to be replaced with 6.30.12 NMAC, K-5 Plus Program, repeal and replace of 6.31.2 NMAC, Children with Disabilities/Gifted Children, and amendment to 6.60.7 NMAC, Educator Licensure Application Fee. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

### Explanation of Purpose and Summary of Text

The purpose of the proposed repeal of **6.30.12, K-3 Plus Program** to be replaced with **6.30.12, K-5 Plus Program** is to provide criteria for the development and implementation of the K-5 plus program in order to maximize successful outcomes and to facilitate the transition from K-3 Plus to K-5 Plus.

The purpose of the proposed repeal and replace of **6.31.2 NMAC, Children with Disabilities/Gifted Children** is to provide public agencies with the requirements for serving students with disabilities, including composition of the individualized education program (IEP) team and providing information on the full continuum of services. The full continuum of services may include placement and educational services provided at the New Mexico School for the Deaf (NMSD) and the New Mexico School for the Blind and Visually Impaired (NMSBVI) or in conjunction between the public agency and NMSD or NMSBVI. The proposed repeal and replace also includes requirements a public agency, including NMSD and NMSBVI, is obliged to do if a student is deaf, blind, deafblind, or has a hearing or visual impairment.

The purpose of the proposed amendment of **6.60.7 NMAC, Educator Licensure Application Fee** is to establish the requirements for military member or veteran to obtain a licensure fee exemption.

#### Statutory Authorization(s):

Sections 22-2-1, 22-2-2, 22-8-44, 22-10A-3, 22-13-5, 22-13-6.1, and 22-13D-3 NMSA 1978.

No technical information served as a basis for this proposed rule change.

**Public Comment.** Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public

Education Department, 300 Don Gaspar Avenue, Room 121 Santa Fe, New Mexico 87501, by electronic mail to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520. All written comments must be received no later than 5 p.m. (MDT) on Tuesday, May 19, 2020. The PED encourages the early submission of written comments. The public comment period is from April 7, 2020 to May 19, 2020 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

## PUBLIC EDUCATION DEPARTMENT

### NOTICE OF PROPOSED RULEMAKING EXTENDING PUBLIC COMMENT PERIOD

**Extended Comment.** The Public Education Department (PED) hereby gives notice that the written comment period for the proposed repeal and replace of 6.35.2 NMAC, Implementing the Indian Education Act, and proposed repeal of 6.19.9 NMAC, Early Literacy



Remediation, Interventions, and Family Engagement is extended to the rescheduled hearing date of Tuesday, May 19, 2020. The public comment period is from January 28, 2020 to May 19, 2020 at 5:00 p.m. (MST).

### **Explanation of Purpose and Summary of Text.**

The purpose of the proposed repeal and replace of **6.35.2 NMAC, Implementing the Indian Education Act** is to require and implement the American Indian/Alaska Native student needs assessment, accountability tool, and systemic framework for improving educational outcomes for American Indian and Alaska Native students.

The purpose of the proposed repeal of **6.19.9 NMAC, Early Literacy Remediation, Interventions, and Family Engagement** is to repeal a rule that does not align to current best practices, including conflicts between the rule and the new Multi-Level System of Support, which allows for local education agencies to maintain local control. Additionally, the repeal of this rule allows school districts the flexibility to identify best practices for engaging parents, and enables local education agencies to provide ongoing interaction and communication throughout the school year.

### **Statutory Authorization(s):**

Sections 9-24-8, 22-2-1, 22-1-1.2, 22-2-2, 22-2C-1 through 22-2C-13, 22-13-1, and 22-23A-1 et seq. NMSA 1978.

**Public Comment.** Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 121, Santa Fe, New Mexico 87501, by electronic mail to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520. All written comments must be received no later than 5:00 p.m. (MST) on Tuesday, May 19, 2020. The public comment period is from January 28, 2020 to May 19, 2020 at 5:00 p.m. (MST).

The PED will review all feedback received during the public comment period and issue communication regarding the final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact the Policy Division at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least ten (10) calendar days' advance notice to provide any special accommodations requested.

## **REGULATION AND LICENSING DEPARTMENT COUNSELING AND THERAPY PRACTICE BOARD**

### **PUBLIC RULE HEARING AND REGULAR BOARD MEETING**

The New Mexico Counseling and Therapy Practice Board ("Board") will hold a rule hearing on Friday, May 8, 2020, at 9:00 a.m. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held at the New Mexico Regulation and Licensing Department at 5500 San Antonio Dr., NE, Albuquerque, New Mexico, in the Sandia Room.

The purpose of the rule hearing is to consider proposed amendments to the following New Mexico Administrative Code (NMAC) rules:

16.27.1 – General Provisions;  
16.27.2 – Mental Health Core Curriculum Requirements;  
16.27.3 – Application Procedures, Initial Licenses, and License Period;  
16.27.4 – Requirements for Licensure as a Professional Clinical Mental Health Counselor;  
16.27.6 – Requirements for Licensure and a Marriage and Family Therapist;  
16.27.7 – Requirements for Licensure as a Professional Art Therapist;  
16.27.9 – Requirements for Licensure as a Mental Health Counselor;  
16.27.11 – Requirements for Licensure with examination as an Alcohol and Drug Abuse Counselor;  
16.27.13 – Requirements for Licensure as a Substance Abuse Associate;  
16.27.14 – Temporary License;  
16.27.15 – Examinations;  
16.27.16 – Continuing Education;  
16.27.17 – Fees;  
16.27.18 – Code of Ethics;  
16.27.19 – Approved Supervision;  
16.27.20 – Parental Responsibility Act Compliance;  
16.27.21 – Emergency Licensure;  
16.27.22 – Requirements for Licensure as an Associate Marriage and Family Therapist;  
16.27.23 – Licensure as an Alcohol and Drug Abuse Counselor (LADAC) for Current Credential Alcohol and Drug Abuse Counselor (CADAC); and  
16.27.24 – Licensure for Military Service Members, Spouses, and Veterans

To obtain and review copies of the proposed changes you may go to the Board's website at: [http://www.rld.state.nm.us/boards/Counseling\\_and\\_Therapy\\_Practice\\_Members\\_and\\_Meetings.aspx](http://www.rld.state.nm.us/boards/Counseling_and_Therapy_Practice_Members_and_Meetings.aspx), or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Lori Sciacca, Board Administrator,



via electronic mail at counseling.board@state.nm.us or by regular mail at PO Box 25101, Santa Fe, NM 87504, no later than Thursday, May 7, 2020. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board's website at: [http://www.rld.state.nm.us/boards/Counseling\\_and\\_Therapy\\_Practice\\_Rules\\_and\\_Laws.aspx](http://www.rld.state.nm.us/boards/Counseling_and_Therapy_Practice_Rules_and_Laws.aspx), no more than three business days following receipt to allow for public view.

The agenda for the Regular Board Meeting following the Rules Hearing will be posted and available at least 72 hours before the meeting on the Board's website at: [http://www.rld.state.nm.us/boards/Counseling\\_and\\_Therapy\\_Practice.aspx](http://www.rld.state.nm.us/boards/Counseling_and_Therapy_Practice.aspx). Copies may also be obtained by contacting Lori Sciacca, Board Administrator at (505) 476-4622.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Lori Sciacca, Board Administrator at (505) 476-4622.

**Statutory Authority:** The Counseling and Therapy Practice Act, Sections 61-9A-1 to -30, NMSA 1978, among other provisions, specifically authorizes the Board to "adopt and file rules necessary to carry out the provisions of the Counseling and Therapy Practice Act."

**Summary of Proposed Changes:** The purpose of the amendments is to revise and update the Counseling and Therapy Practice rules to better reflect changes within the profession. The amendments are intended to clarify licensing, supervision requirements and continuing education requirements, adds definitions and repeals and replaces the rules of ethics. The amendments are also intended to clean up language and statutory authority citations, statutory and rule citations and grammar

currently existing in the rules to ensure uniformity in the application of the rules. In addition to making minor clarification changes, the proposed rules are summarized as follows:

#### **16.27.1 – General Provisions**

The amendments to Part 1 correct typographical and grammatical errors, amends definitions for institutions of higher education, human family studies, the practice of alcohol abuse and drug abuse counseling, guidance counseling, mental health-community counselor, cultural competency, courses hours for LPCC, contact hours, group supervision, face-to-face supervision, virtual conferencing, non-public records, and postgraduate. Amendments also delete the definition of substance abuse related field, and requires license number and license designation appear on licensee's website if a website is maintained, changes the number of required meetings per year to twice annually, and reduces requirements for appointed committee members to subcommittees.

#### **16.27.2 – Mental Health Core Curriculum Requirements**

The amendments to Part 2 correct typographical and grammatical errors.

#### **16.27.3 – Application Procedures, Initial Licenses, and License Period**

The amendments to Part 3 correct typographical and grammatical errors, revises submission of application procedures, changes the period of time an application for license is valid from six months to twelve months and deletes the automatic expiration of inactive statute licenses.

#### **16.27.4 – Requirements for Licensure as a Professional Clinical Mental Health Counselor**

The amendments to Part 4 correct typographical and grammatical errors, deletes appropriate supervision adding language making supervision unnecessary for independently licensed counselors.

#### **16.27.6 – Requirements for Licensure and a Marriage and Family Therapist**

The amendments to Part 6 correct typographical and grammatical errors, changes the core curriculum requirements, clarifies how electives are applied, deletes appropriated supervision requirements, deletes PES and adds "national" to modify examination, deletes option of submitting affidavits when a supervisor's statement is not available, and modifies procedures when submitting graduate course work with a license application.

#### **16.27.7 – Requirements for Licensure as a Professional Art Therapist**

The amendments to Part 7 correct typographical and grammatical errors, deletes appropriated supervision requirements and deletes requirement for inclusion of the syllabus with the application and repeals and replaces the core curriculum for the art therapy license.

#### **16.27.9 – Requirements for Licensure as a Mental Health Counselor**

The amendments to Part 7 correct typographical and grammatical errors, adds hours to the core curriculum, invalidates supervised contact hours after two years following a limited license for new applicants, modifies appropriated supervision requirements and replaces professional clinical mental health counselor with marriage and family therapist.

#### **16.27.11 – Requirements for Licensure with examination as an Alcohol and Drug Abuse Counselor**

The amendments to Part 11 correct typographical and grammatical errors, deletes appropriated supervision requirements for LADACs with an independent license and amends the number of training hours required in professional ethics.

#### **16.27.13 – Requirements for Licensure as a Substance Abuse Associate**

The amendments to Part 13 correct



typographical and grammatical errors and adds the requirement for applicants holding an unrelated field degree to complete two three semester credit hours specific to substance abuse and two three semester credit courses to counseling addition in addition to the 90 clock hours of education and training to qualify for a license.

#### **16.27.14 – Temporary License**

The amendments to Part 14 correct typographical and grammatical errors, amends temporary license procedures, deletes tutorial class requirements, clarifying language concerning qualifications for temporary license, restricting issuance of temporary licenses to three per application and prohibits prior clinical supervision or clinical hours from being applied toward the reapplication for license.

#### **16.27.15 – Examinations**

The amendments to Part 15 correct typographical and grammatical errors, adds clarifying language that the applicant must hold a valid license from another jurisdiction and may retest as long as the applicant currently holds a valid license and deletes language concerning applicants who fail the examination from having to reapply for a license.

#### **16.27.16 – Continuing Education**

The amendments to Part 16 correct typographical and grammatical errors. They also increase the number of required hours for continuing education in ethics, defines how to calculate continuing education units, adds psychiatric nurse specialist as an approved presenter for continuing education courses, revises the registration process for continuing education providers and allows continuing education credits through pro bono work. Additionally, it deletes the approval of continuing education courses from certain international, national, regional, state mental health associations, social work associations, substance abuse government agencies, and online and home study credits. Other changes amend the requirement that continuing education sponsors

be certified by the board, or certain identified organizations; amends notification by the board of approval or denial of credits; and amends the one time extension for completing continuing education requirements.

#### **16.27.17 – Fees**

The amendments to Part 17 deletes renewal extension penalty and adds a continuing education unit extension fee, and adds a continuing education administrative late fee and a fee for incorrectly issuing continuing education credits by continuing education provider.

#### **16.27.18 – Code of Ethics**

Part 18 is repealed and replaced to bring the rule current and reflect changes within the profession.

#### **16.27.19 – Approved Supervision**

The amendments to Part 19 correct typographical and grammatical errors, redefines supervisor, and clarifies who may provide supervision. Amendments also add a subsection permitting electronic and telephonic supervision that may be used toward supervised hours, requires supervisors to monitor qualifications of supervisees, clarifies the three years of experience is calculated from the initial licensing of the licensee, and requires supervisors to be independently licensed and complete supervisor continuing education units prior to supervising. An amendment also restricts supervised contact hours to forty hours or less a week.

#### **16.27.20 – Parental Responsibility Act Compliance**

The amendments to Part 20 correct typographical and grammatical errors and grants RLD the authority to enforce the Act on behalf to the board.

#### **16.27.21 – Emergency Licensure**

The amendments to Part 21 correct typographical and grammatical errors and deletes professional mental health counselor from emergency licensure.

#### **16.27.22 – Requirements for Licensure as an Associate Marriage and Family Therapist**

The amendments to Part 22 correct typographical and grammatical error, amends examination and reapplication requirements and prohibits clinical supervision or clinical hours from being applied toward the reapplication for license.

#### **16.27.23 – Licensure as an Alcohol and Drug Abuse Counselor (LADAC) for Current Credential Alcohol and Drug Abuse Counselor (CADAC)**

Part 23 is repealed.

#### **16.27.24 – Licensure for Military Service Members, Spouses, and Veterans**

The amendments to Part 24 deletes statutory definitions for military service member and recent veteran.

## **RETIREMENT HEALTHCARE AUTHORITY**

### **NOTICE OF PROPOSED RULEMAKING AMENDMENT AND PUBLIC RULE HEARING**

The New Mexico Retiree Health Care Authority (NMRHCA) is considering amending the effective date of existing rule 2.81.11 NMAC - ESTABLISHING SUBSIDY LEVELS ON THE BASIS OF AGE AND CREDITABLE SERVICE, amending sections 6 through 10 to July 31, 2021. The purpose of the amendment of existing sections of the rule is to delay the effective date of the minimum age and years of service requirement to coincide with the school year. A summary of the full text of the proposed rule follows:

Section 6 of the existing rule 2.81.11.6 NMAC establishes subsidy levels commensurate with a retiree's year of credited service with a participating employer for employees who become eligible for enrollment into the NMRHCA health care program on or after July 1, 2001, and their dependents, and subject to a minimum retiree age for employees who become eligible for enrollment



into the NMRHCA health care program on or after January 1, 2021. The amendment changes the effective date to July 31, 2021.

Section 7 of the existing rule 2.81.11.7 NMAC provides definitions of credited service, disabled retiree, member of an enhanced retirement plan, the authority, state retirement agency, and subsidy effective January 1, 2021. The amendment changes the effective date to July 31, 2021.

Section 8 of the existing rule 2.81.8 NMAC provides for the NMRHCA to pay a percentage of the subsidy to monthly premiums of eligible retirees, which percentage is dependent on the years of credited service of the retiree and is 100% at 20 years of credited service. The amendment changes the years at which 100% is paid to 25 and changes the percentages for fewer years of credited service for retirees who are not members of an enhanced retirement plan and become eligible for participation on or after January 1, 2020. The amendment changes the effective date to July 31, 2021.

Section 9 of the existing rule 2.81.11.9 established subsidies for duty disability and non-duty disability retirees effective January 1, 2021. The amendment changes the effective date to July 31, 2021.

Section 10 requires that eligible retirees who are not members of an enhanced retirement plan and become eligible for participation on or after January 1, 2020 be 55 years of age to receive subsidies. Section 9 is amended to clarify that disabled retirees receive a 100% subsidy regardless of years of service or age. Section 6 is amended to clarify that the objective of the part includes that subsidies will have a minimum age requirement for those retiring on or after January 1, 2020. The amendment changes the effective date to July 31, 2021.

The NMRHCA is authorized to promulgate rules to implement the Retiree Health Care Act, NMSA

1978, Sections 10-7C-1 to -16 (1990, as amended through 2009) ("Act") by NMSA 1978, Section 10-7C-7 (1998). By resolution dated May 8, 2018, the NMRHCA resolved to undertake the rulemaking in conformity with the Act, the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 (1967, as amended through 2017), the Default Procedural Rule for Rulemaking, 1.24.25 NMAC (4/10/2018) and the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013).

The NMRHCA is amending the effective date of minimum years of service and age requirements to receive the maximum subsidy provided by the program to from January 1, 2021 to July 31, 2021 in order to coincide with the school year. A study of NMRHCA's long-term solvency projections, NMRHCA 2017 Long-Term Solvency Model, is available at its website, <http://www.nmrhca.org/rule-change-proposal.aspx>.

The full text of the proposed rule may be obtained by contacting Greg Archuleta, Director of Communication and Member Engagement, New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107; telephone 505-222-6403, to request a copy of the rule. The full text and this notice are also available on NMRHCA's website: <http://www.nmrhca.org/>.

A person may submit, by mail or electronic form, written comments on the proposed rule through the end of the public comment period, which ends May 8, 2020. Written comments should be submitted to Greg Archuleta, Director of Communication and Member Engagement, New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107. Written comments also will be accepted by email: [gregoryr.archuleta@state.nm.us](mailto:gregoryr.archuleta@state.nm.us) or by fax: (505) 884-8611. All written comments received by the

agency will be posted on <http://www.nmrhca.org/> no more than 3 business days following receipt to allow for public review. Written comments will also be available for public inspection at New Mexico Retiree Health Care Authority, 4308 Carlisle Blvd. NE, Suite 104, Albuquerque, New Mexico 87107.

A public rule hearing on the proposed rule will be held before Greg Archuleta, Director of Communication and Member Engagement, NMRHCA, on May 8, 2020 from 2:30-4:30 p.m. at the NMRHCA office's Alfredo R. Santistevan Board Room, located at 4308 Carlisle Blvd. NE, Suite 207 in Albuquerque, NM, 87107. Individuals may submit data, views or arguments orally or in writing to the proposed rule at the public rule hearing. Persons offering written comments at the hearing must have 2 copies for the hearing officer.

Any individual with a disability in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Greg Archuleta at 505-222-6403 at least 10 days before the hearing.

## 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.

### CHILDREN, YOUTH AND FAMILIES DEPARTMENT

**This is an emergency amendment to 8.15.2 NMAC Sections 10, 13, and 17, effective March 16, 2020.**

#### 8.15.2.10 APPLICATION PROCESS:

**A.** Clients apply for child care assistance benefits by presenting the following documents to establish eligibility in person at the local child care office. Upon a need or request by the client, the department may approve a client to submit their initial application by fax, email, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation:

- (1) a completed signed application form;
- (2) current proof of earned income or participation in the temporary assistance to needy families (TANF) program; social security numbers or assigned TANF identification numbers may be used to verify TANF participation or receipt of child care support;
- (3) school schedule or verification of educational activity, if applicable;
- (4) verification of birth for all applicant's household children;
- (5) proof of unearned income;
- (6) proof of New Mexico home address; and
- (7) CYFD approved provider.

**B.** Assistance is provided effective the first day of the month of application if all of the following apply:

- (1) the client is utilizing child care services;
  - (2) the client is employed, attending school or a training program. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and
  - (3) the eligible provider to be paid was providing care from the first day of the month forward.
- [8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/2016; A/E, 03/16/2020]

#### 8.15.2.13 CLIENT RESPONSIBILITIES:

Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training or educational program.

**A.** Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for CPS child care, at-risk child care, and qualified grandparents or legal guardians as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC. In the case of a public health emergency, the department secretary may waive co-payments for families receiving child care. The department will pay providers the client's approved rate, to include required co-payments, during the time of the public health emergency. Co-payments are determined by income and household size. The co-payment schedule is published yearly at <https://cyfd.org/child-care-services>.

**B.** Co-payments

described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible child. The formula for calculating the co-payment for the first full time child is (low end of the monthly income bracket on the co-payment schedule ÷ 200 percent of annual federal poverty level for household size) X (low end of the monthly income bracket on the co-payment schedule) X 1.1 = monthly copayment for first full time child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

(1) The first child is identified as the child requiring the most hours of child care.

(2) Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

**C.** Each child's co-payment will be adjusted based on the units of services described in Subsection E of 8.15.2.17 NMAC, as follows:

(1) full time care will be based on one hundred percent of the base co-payment;

(2) part time 1 care will be based on seventy-five percent of the base co-payment;

(3) part time 2 care will be based on fifty percent of the base co-payment; and

(4) part time 3 care will be based on twenty-five percent of the base co-payment.

**D.** Clients pay co-payments directly to their child care provider and must remain current in their payments. A client who does not pay co-payments may be subject to sanctions.

**E.** The co-payment for a child shall not exceed the monthly provider reimbursement rate. If this situation arises, the co-payment may



be reduced in the amount by which it exceeds the monthly provider reimbursement rate.

**F. In-home providers:**

Parents who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment of all federal and state employment taxes and the provision of wage information. Any parent who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent.

**G. Notification of changes:** Clients must notify the department of changes that affect the need for care, which include but are not limited to any non-temporary change in activity, or household members moving in or out, within five business days of the change. Clients who do not comply with this requirement may be sanctioned.

**H. Required**

application with New Mexico human services department's child support enforcement division (CSED):

**(1) When**

one or both of the child's parents are absent from the home, the client shall apply for child support through CSED within 12 months of initial application with the child care assistance program.

**(2) The**

following exceptions include but are not limited to: the client is receiving TANF; the client is already receiving child support; the client is receiving financial support, including but not limited to housing, clothing, food, transportation and funds, from the non-resident parent; there is a joint custody agreement and neither parent is ordered to pay support; parental rights have been terminated; the parent is a foster parent to the child; the parent is an adoptive parent and provides proof of a single parent adoption; at-risk child care; a parent is temporarily out of the home and is still considered part of the household;

the client is a teen parent; the client is a grandparent; guardian; parent is deceased or when good cause exists.

**(3) Good**

cause for refusal to apply may be granted when such application is not in the best interest of the child or parent, including but not limited to the following circumstances:

**(a)**

there is possible physical or emotional harm to the child, parent or guardian;

**(b)**

the child was conceived as a result of incest or rape;

**(c)**

legal proceedings for adoption of the child are pending before a court; or

**(d)**

the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

**(4) The**

applicant or recipient who makes a claim for good cause shall supply written documentation to establish the claim. The caseworker shall not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause if the applicant or recipient has complied with the requirements to furnish information.

**(5) If the client**

is not exempted from applying with CSED and has not applied within the required timeframe, the client's case will be closed.

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020]

**8.15.2.17 PAYMENT FOR**

**SERVICES:** The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances

when placements may be closed and payment discontinued at a time other than the end of the month:

**A. When the child**

care placement agreement expires during the month, or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

**B. Upon a change**

of provider the client and former provider have three days after the fifth day of nonattendance to notify the department. If this requirement for notification was met, the provider will be paid through the 14th day following the first date of nonattendance. If notification requirement is not met, the provider will be paid through the last date of attendance. The agreement with the new provider shall become effective when payment to the previous provider ceases. If the client notifies the department of the change in providers fewer than 14 days before the change will take place or after the change has taken place, the client is responsible for payment to the new provider beginning on the start date at the new provider and continuing up until the final date of payment to the former provider, as described above. Payment to the former provider will be made through the last day that care is provided if the child is withdrawn from the provider because the health, safety or welfare of the child is at risk, as determined by a substantiated complaint against the child care facility.

**C. The department**

shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care. The registration/educational fee will discontinue when a placement closes as a result of a client changing providers, a provider discontinuing services, a child care placement agreement expiring, or a provider's license being suspended or expiring.



**D.** The amount of the payment is based upon the age of the child and average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

**E.** The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2 (only for split custody or in cases where a child may have two providers)	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of 8-19 hours per week per month	Care provided for an average of 7 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

**F.** Hours of care shall be rounded to the nearest whole number.

**G.** Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$720.64	\$589.55	\$490.61	\$436.27
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$586.07	\$487.11	\$427.13	\$422.74
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$566.98	\$463.50	\$411.62	\$406.83
Registered homes and in-home child care			
Infant	Toddler	Pre-school	School-age
\$289.89	\$274.56	\$251.68	\$251.68

**H.** The department pays a differential rate according to the license or registration status of the provider, national accreditation status of the provider if applicable, and star level status of the provider if applicable. In the case of a public health emergency, the department secretary may approve a differential rate be paid to licensed providers.

**I.** Providers holding and maintaining CYFD approved national accreditation status will receive the differential rate listed in Subsection I. below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain CYFD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement.

**(1)** Providers who receive national accreditation on or before December 31, 2014 from an accrediting body that is no longer approved by CYFD will no longer have national accreditation status, but will remain eligible to receive an additional \$150 per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child until December 31, 2017.

**(a)** In order to continue at this reimbursement rate until December 31, 2017 a provider holding accreditation from accrediting bodies no longer approved by CYFD must maintain licensing standards and maintain accreditation without a lapse.

**(b)** If the provider fails to maintain their accreditation, the provider reimbursement will revert to the base reimbursement rate unless they have achieved a FOCUS star level or regain national accreditation status approved by CYFD.

**(2)** The licensee shall notify the licensing authority within 48 hours of any adverse action by the



national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

**J.** The department will pay a differential rate per child per month for full time care above the base reimbursement rate to providers achieving higher Star levels by meeting FOCUS essential elements of quality as follows:

2+ Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$88.00	\$88.00	\$88.00	\$88.00
3 Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$180.00	\$180.00	\$180.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$250.00	\$250.00	\$250.00	\$250.00
4 Star FOCUS Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$280.00	\$280.00	\$250.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$550.00	\$550.00	\$350.00	\$250.00

**K.** In order to continue at the FOCUS reimbursement rates, a provider must meet and maintain the most recent FOCUS eligibility requirements and star level criteria. If the provider fails to meet the FOCUS eligibility requirements and star level criteria the provider reimbursement will revert to the FOCUS criteria level demonstrated.

**L.** Differential rates determined by achieving higher star levels determined by AIM HIGH essential elements of quality will be discontinued effective December 31, 2017. The department will pay a differential rate to providers achieving higher star levels determined by the AIM HIGH essential elements of quality until December 31, 2017 as follows: 3-Star at \$88.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$150.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent AIM HIGH star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the base reimbursement rate.

**M.** The department pays a differential rate equivalent to five percent, ten percent or fifteen percent of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

**N.** If a significant change occurs in the client's circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

**O.** The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

**P.** Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds.



[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/2016; A, 10/1/2019, A/E, 03/16/2020]

## ENVIRONMENT DEPARTMENT

The Environmental Improvement Board ("EIB") approved and adopted at its 4/28/2020 hearing, to repeal its rule 20.7.11 NMAC, Liquid Waste Treatment and Disposal Fees- (filed 2/01/2002) and replace it with 20.7.11 NMAC, Liquid Waste Treatment and Disposal Fees, effective 7/1/2020.

## ENVIRONMENT DEPARTMENT

### TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 7 LIQUID WASTE PART 11 LIQUID WASTE TREATMENT AND DISPOSAL FEES

#### 20.7.11.1 ISSUING

**AGENCY:** Environmental Improvement Board.  
[20.7.11.1 NMAC - Rp, 20.7.11.1 NMAC, 7/1/2020]

**20.7.11.2 SCOPE:** All persons required under 20.7.3 NMAC to obtain a:

- A.** Permit;
- B.** Modification to a permit;
- C.** Registration;
- D.** Septage pump truck registration;
- E.** Certificate of qualification for:
  - (1)** Homeowner certification,
  - (2)** Third-party evaluator certification,
  - (3)** Maintenance service provider certification,
  - (4)** Septage pumper certification, or
  - (5)** Installer specialist certification
- F.** Septic Tank Certification; or

#### **G.** Re-inspection.

[20.7.11.2 NMAC - Rp, 20.7.11.2 NMAC, 7/1/2020]

#### **20.7.11.3 STATUTORY**

**AUTHORITY:** Environmental Improvement Act, Section 74-1-1 through 74 -1-10 NMSA 1978.  
[20.7.11.3 NMAC - Rp, 20.7.11.3 NMAC, 7/1/2020]

#### **20.7.11.4 DURATION:**

Permanent.  
[20.7.11.4 NMAC - Rp, 20.7.11.4 NMAC, 7/1/2020]

#### **20.7.11.5 EFFECTIVE**

**DATE:** July 1, 2020, unless a later date is cited at the end of a section.  
[20.7.11.5 NMAC - Rp, 20.7.11.5 NMAC, 7/1/2020]

**20.7.11.6 OBJECTIVE:** The objective of this rule is to provide for liquid waste treatment and disposal fees for the administration of the state liquid waste regulations. The purpose of the state liquid waste treatment and disposal program is to protect the health and welfare of present and future citizens of New Mexico by providing for the prevention and abatement of public health hazards and surface and ground water contamination from on-site liquid waste disposal practices.  
[20.7.11.6 NMAC - Rp, 20.7.11.6 NMAC, 7/1/2020]

#### **20.7.11.7 DEFINITIONS:**

- A.** Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in 20.7.3.7 NMAC, Liquid Waste Disposal.
- B.** As used in this part:
  - (1) "advanced treatment"** means any process of wastewater treatment that removes a greater amount of contaminants than is accomplished through primary treatment. Advanced treatment may include physical or chemical processes;
  - (2) "advanced treatment system"** means a method or technology implemented to achieve advanced treatment;

#### **(3)**

**"alternative disposal"** means any approved, on-site liquid waste disposal method used in lieu of, including modifications to, a conventional disposal method;

#### **(4)**

**"alternative disposal system"** means a method or technology implemented to achieve alternative disposal;

#### **(5)**

**"alternative system"** means any on-site liquid waste system utilizing a method of liquid waste treatment and disposal used in lieu of a conventional system, including modifications that are recognized and allowed by Liquid Waste Disposal and Treatment, 20.7.3 NMAC (9/1/13 as amended through 9/15/14).

#### **(6)**

**"commercial unit"** means a structure that is not a residential unit but which has sewage producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and clothes-washers, or floor drains for receiving liquid waste including but not limited to uses included in Subsection Q of 20.7.3.201 NMAC, Table 201.1;

#### **(7)**

**"conventional system"** means an on-site liquid waste system consisting of a septic tank or a subsurface soil absorption system with gravity distribution of the effluent constructed in accordance with the standards set forth in 20.7.3 NMAC including privies, holding tanks and vaults;

#### **(8) "gpd"**

means gallons-per-day;

#### **(9) "hazard**

**to public health"** means the indicated presence in water or soil of biological, chemical, or other contaminants under such conditions that could adversely impact human health, including without limitation, surfacing liquid waste, damage to a domestic water supply source, presence of a cesspool or an open tank, or exposure of liquid waste or septage in a manner that allows possible transmission of disease;

#### **(10) "large**

**system"** means any liquid waste treatment or disposal system that receives, or is designed to receive,



more than 2,000 gpd but not more than 5,000 gpd;

(11) **“notice of non-approval”** means notification that inspection of a permitted liquid waste system is not in compliance with 20.7.3 NMAC;

(12) **“on-site liquid waste system”** means a liquid waste system, or part thereof, serving a dwelling, establishment, or group, and using a liquid waste treatment unit designed to receive liquid waste followed by either a soil treatment or other type of disposal system; on-site liquid waste systems include enclosed systems and privies but do not include systems or facilities designed to receive or treat mine or mill tailings or wastes;

(13) **“septic tank”** means liquid waste treatment units designed to provide primary treatment and anaerobic treatment prior to disposal;

(14) **“small system”** means any liquid waste treatment and disposal system that receives, or is designed to receive, no more than 2,000 gpd.  
[20.7.11.7 NMAC - Rp, 20.7.11.7 NMAC, 7/1/2020]

**20.7.11.8 PERMIT FEES:** Payment of permit fees are due prior to the issuance of a permit meeting all the requirements of 20.7.3 NMAC.

**A. Fees for permits to register, construct, or modify a conventional system of a specified design flow.** The fee for a system designed for:

- (1) zero gpd up to 1,000 gpd is \$225.00;
- (2) 1,001 gpd up to 2,000 gpd is \$325.00;
- (3) 2,001 gpd up to 5,000 gpd is \$500.00;

**B. Fees for permits to register, construct or modify an alternative system or advanced treatment system of a specified design flow.** The fee for a system designed for:

- (1) zero gpd up to 1,000 gpd is \$450.00;
- (2) 1,001 gpd up to 2,000 gpd is \$550.00;

- (3) 2,001 gpd up to 5,000 gpd is \$750.00;

**C. Annual operating permit renewal fees:**

(1) The annual operating permit renewal fee for:

(a) an alternative system or advanced treatment system is \$50.00;

(b) a holding tank system or, a split flow system with a holding tank, excluding alternative systems and advanced treatment systems is \$30.00.

**D. Application of annual operating permit fees:** The annual operating permit fees will apply to the following:

(1) alternative disposal systems, advanced treatment systems, and holding tank systems installed after the effective date of this rule;

(2) alternative disposal systems, advanced treatment systems, and holding tank systems modified after the effective date of this rule; and

(3) alternative disposal systems, advanced treatment systems, and holding tank systems subject to transfer of ownership after the effective date of this rule.

**E. Term of annual operating permits and renewals; non-transferability:**

(1) Annual operating permits are issued upon final approval of the most recent permit to register, construct, or modify an alternative system or advanced treatment system, a holding tank system, or a split flow system with a holding tank. Annual operating permits are granted for a period of 12 consecutive months from the date of issuance and expire on the last day of the anniversary month in which the operating permit was issued.

(2) Annual operating permit renewals are due 12 months after the system owner is granted permission to operate the system and are issued for a period of 12 consecutive months from the date of issuance and expire on the last day of the anniversary month in which the operating permit was issued or renewed.

(3) Annual Operating permits and their renewals will be issued upon all appropriate fees being paid and demonstration that the system meets all applicable requirements of 20.7.3 NMAC. A property owner that fails to renew their annual operating permit in a timely manner may be subject to enforcement action by the department.

(4) Annual operating permits are non-transferrable.  
[20.7.11.8 NMAC - Rp, 20.7.11.8 NMAC, 7/1/2020]

**20.7.11.9 QUALIFICATION CERTIFICATE FEES:** If a

qualification certificate is requested as provided for in 20.7.3.904 NMAC, a fee as indicated in subsections A through F of this section shall be submitted upon issuance of the qualification certificate in addition to any associated permit fee required in 20.7.11 NMAC. The fee for a qualification certificate for:

- A.** a qualified homeowner is \$170.00;
  - B.** a third-party evaluator is \$50.00;
  - C.** a maintenance service provider is \$50.00;
  - D.** a septage pumper is \$30.00;
  - E.** an installer specialist is \$150.00;
  - F.** renewal for an installer specialist is \$75.00
- [20.7.11.9 NMAC - N, 7/1/2020]

**20.7.11.10 SEPTAGE PUMPING TRUCK ANNUAL REGISTRATION FEE:** Effective July 1, 2021, the annual fee for registration of a septage pumping truck is \$30.00.

[20.7.11.10 NMAC - N, 7/1/2020]

**20.7.11.11 PROPERTY TRANSFER REPORT FILING FEE:** The fee for filing a property transfer report is \$50.00.  
[20.7.11.11 NMAC - N, 7/1/2020]

**20.7.11.12 SEPTIC TANK MANUFACTURER CERTIFICATION FEE:** The



annual fee for the certification/re-certification of septic tank designs as required in 20.7.3 NMAC is \$150.00. [20.7.11.12 NMAC - Rp, 20.7.11.9 NMAC, 7/1/2020]

#### **20.7.11.13 RE-INSPECTION**

**FEE:** If a site inspection results in an issuance of a notice of non-approval, a fee of \$125.00 shall be assessed for the re-inspection of the system. The re-inspection fee shall be remitted to the department prior to a subsequent inspection being conducted.

[20.7.11.13 NMAC - Rp, 20.7.11.10 NMAC, 7/1/2020]

#### **20.7.11.14 UNPERMITTED SYSTEM INSPECTION FEE:**

If a property owner requests that the department conduct an unpermitted system inspection, the fee is \$250.00. [20.7.11.14 NMAC – N, 7/1/2020]

#### **20.7.11.15 VARIANCE FEE:**

If a variance is requested as provided for in 20.7.3 NMAC, a fee of \$100.00 for small systems and \$250.00 for large systems shall be submitted upon issuance of the variance in addition to the permit fee required in 20.7.11.8 NMAC above.

[20.7.11.15 NMAC - Rp, 20.7.11.11 NMAC, 7/1/2020]

#### **20.7.11.16 PAYMENT OF FEES:**

**A.** The department shall not issue a permit, variance or tank design certification until payment is received by the department. The fees required in this part are non-refundable.

**B.** All fees shall be remitted to the department, payable to the environment department liquid waste fund. All fees collected pursuant to this part shall be transmitted to the state treasurer for deposit in the liquid waste fund.

[20.7.11.16 NMAC - Rp, 20.7.11.12 NMAC, 7/1/2020]

#### **20.7.11.17 LIQUID WASTE DISPOSAL SYSTEM**

**ASSISTANCE FUND:** Pursuant to Section 74-1-15.1 NMSA 1978, the liquid waste disposal system

assistance fund will be funded annually with \$40.00 from each permit issued pursuant to subsections A and B of Section 8 of this part, up to a maximum of \$200,000.00. Money from the fund will be used for the sole purpose of assisting indigent individuals or households that qualify for funding to accomplish one of the following purposes where there is a real or potential negative impact to public health or water quality from on-site liquid waste disposal system effluent:

**A.** to pay for a liquid waste disposal system to replace a cesspool or other failed or improper on-site liquid waste disposal system;

**B.** to purchase, install, or maintain an advanced treatment system as required by the Environmental Improvement Act or regulations issued pursuant to that act;

**C.** to pay for the decommissioning and removal of a cesspool or other failed or improper on-site liquid waste disposal system; or

**D.** to pay for all or a portion of the connection fees in order to connect an individual or household to a centralized wastewater collection and treatment system.

[20.7.11.17 NMAC - N, 7/1/2020]

#### **20.7.11.18 APPLICABILITY:**

**A.** The requirement for payment of the permit application fee shall apply only to those applications received on or after the effective date of this part.

**B.** The annual tank certification fee shall apply on or after the effective date of this part. The annual fee shall be received by the department no later than January 1 of each year.

**C.** The requirements concerning payment of a re-inspection fee shall apply only to those re-inspections occurring on or after the effective date of this part.

[20.7.11.18 NMAC - Rp, 20.7.11.13 NMAC, 7/1/2020]

#### **20.7.11.19 PERIODIC**

**REVIEW:** In order for the environmental improvement board to

fulfill its obligation to establish onsite liquid system fees in accordance with Paragraph 3 of Subsection A of Section 74-1-8 NMSA 1978, the department shall provide information by January 15th of each year to the environmental improvement board as follows:

**A.** liquid waste fund revenues for the previous fiscal year;

**B.** liquid waste fund expenditures for the previous fiscal year:

**(1)** personal services and benefits;

**(2)** contracts;

**(3)** other costs;

**(4)** indirect;

**C.** external audit report for the previous fiscal year;

**D.** current fiscal year budget for field operations bureau approved by the department of finance and administration and the legislative finance committee;

**E.** report on contiguous states' fees:

**(1)** for Arizona, Oklahoma and Texas: report of state program fee schedules (although some Texas counties have their own fee schedules);

**(2)** Colorado and Utah: report of fee schedule for each county or health district;

**F.** performance measures report for previous fiscal year;

**G.** copy of liquid waste annual strategic plan;

**H.** copy of training plan, if any, for the upcoming year.

[20.7.11.19 NMAC - Rp, 20.7.11.14 NMAC, 7/1/2020]

#### **20.7.11.20 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person of the obligation to comply with other applicable state and federal regulations.

[20.7.11.20 NMAC - Rp, 20.7.11.15 NMAC, 7/1/2020]

#### **20.7.11.21**

**CONSTRUCTION:** This part shall be liberally construed to implement the purpose of the act.



[20.7.11.21 NMAC - Rp, 20.7.11.16 NMAC, 7/1/2020]

**20.7.11.22 SEVERABILITY:** If any provision or application of this part is held invalid, the remainder shall not be affected.

[20.7.11.22 NMAC - Rp, 20.7.11.17 NMAC, 7/1/2020]

#### **HISTORY of 20.7.11 NMAC:**

#### **History of Repealed Material:**

20.7.11 NMAC, Liquid Waste Treatment and Disposal Fees (filed 12/20/2001) replaced by 20.7.11 NMAC, Liquid Waste Treatment and Disposal Fees, effective 7/1/2020.

## **HEALTH, DEPARTMENT OF**

### **TITLE 7 HEALTH CHAPTER 1 HEALTH – GENERAL PROVISIONS PART 30**

### **ADMINISTRATIVE HEARINGS FOR CIVIL MONETARY PENALTIES ISSUED PURSUANT TO PHERA**

#### **7.1.30.1 ISSUING**

**AGENCY:** New Mexico department of health.

[7.1.30.1 NMAC – N/E, 3/20/2020]

#### **7.1.30.2 SCOPE:**

This rule applies to all persons who receive a notice of contemplated action for imposition of a civil monetary penalty pursuant to the Public Health Emergency Response Act (“Act”), Section 12-10A-19 NMSA 1978.

[7.1.30.2 NMAC – N/E, 3/20/2020]

#### **7.1.30.3 STATUTORY**

**AUTHORITY:** Public Health Emergency Response Act (“Act”), Section 12-10A-1 et seq. NMSA 1978; and Subsection E of Section 9-7-6, NMSA 1978.

[7.1.30.3 NMAC – N/E, 3/20/2020]

#### **7.1.30.4 DURATION:**

Permanent.

[7.1.30.4 NMAC – N/E, 3/20/2020]

#### **7.1.30.5 EFFECTIVE**

**DATE:** March 20, 2020, unless a later date is cited at the end of a section.

[7.1.30.5 NMAC – N/E, 3/20/2020]

#### **7.1.30.6 OBJECTIVE:**

The objective of this rule is to provide administrative procedural rules to govern the appeal of a civil monetary penalty that is assessed by the department under the Act.

[7.1.30.6 NMAC – N/E, 3/20/2020]

#### **7.1.30.7 DEFINITIONS:**

**A. “Appellant”** means a person who is served a notice of contemplated action for imposition of a civil monetary penalty pursuant to the Act at Section 12-10A-19 NMSA 1978, who timely submits a request for hearing, in accordance with this rule, to contest the proposed penalty.

**B. “Department”** means the New Mexico department of health.

**C. “Notice of contemplated action”** means a notice that is issued by the department to a person pursuant to the Section 12-10A-19 NMSA 1978.

**D. “Person”** means a living person or a legal entity.

**E. “Recipient”** means a recipient of a notice of contemplated action.

**F. “Secretary”** means the cabinet secretary of the New Mexico department of health.

[7.1.30.7 NMAC – N, 3/20/2020]

#### **7.1.30.8 HEARINGS PURSUANT TO THE PUBLIC HEALTH EMERGENCY RESPONSE ACT:**

**A. Right to hearing:** A person may request an administrative hearing before a hearing officer appointed by the secretary or his or her designee, to appeal the proposed imposition of a civil monetary penalty pursuant to the Act at Section 12-10A-19 NMSA 1978. An appellant may request the hearing by mailing a certified letter, return receipt requested, to the New Mexico department of health at the mailing address that is specified on

the notice of contemplated action within five days after service of the notice of the contemplated action. If the recipient fails to request a hearing in the time and manner required by this section, the recipient shall forfeit the right to a hearing, and the proposed action shall become final.

#### **B. Scheduling the hearing:**

**(1)**

#### **Appointment of hearing officer:**

Upon the department’s receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing.

**(2) Hearing**

**date:** The hearing shall be held not more than 60 days and not less than 12 days from the date of service of the notice of the hearing.

**(3) Notice**

**of hearing:** The department shall notify the appellant of the date, time, and place of the hearing and the identity of the hearing officer, within five days of the department’s timely receipt of the request for hearing.

**(4) Hearing**

**venue:** The hearing shall be held in Santa Fe, NM; provided that the hearing officer may, with the agreement of the parties, hold the hearing in another location within the state of New Mexico. Hearings may be held in whole or in part via telephone or live video, with the agreement of the parties.

#### **C. Method of service:**

Any notice or decision required to be served under this section may be served either personally or by certified mail, return receipt requested, directed to the appellant at the appellant’s last known mailing address; provided that, if the appellant is a company registered with the New Mexico secretary of state, the notice shall be served upon the company’s duly registered agent. If the notice or decision is served personally, service shall be made in the same manner allowed by the rules of civil procedure for the state district courts of New Mexico. Where the notice or decision is served by certified



mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery, or the date of the last attempted delivery of the notice or decision, or the date of the addressee's refusal to accept delivery.

**D. Hearing officer duties:** The hearing officer shall conduct the hearing, rule on any motions or other matters that arise prior to the hearing, and issue a written report and recommendation(s) to the secretary following the close of the hearing.

**E. Official file:** Upon appointment, the hearing officer shall establish an official file which shall contain all notices, hearing requests, pleadings, motions, written stipulations, evidence, briefs, and correspondence received in the case. The official file shall also contain proffered items not admitted into evidence, which shall be so identified and shall be separately maintained. Upon conclusion of the proceeding and following issuance of the final decision, the hearing officer shall tender the complete official file to the department for its retention as an official record of the proceedings.

**F. Powers of hearing officer:** The hearing officer shall have all the powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of a clear and complete record, including but not limited to the power to: administer oaths or affirmations; schedule continuances; direct discovery; examine witnesses and direct witnesses to testify; subpoena witnesses and relevant books, papers, documents, and other evidence; limit repetitious and cumulative testimony; set reasonable limits on the amount of time a witness may testify; decide objections to the admissibility of evidence or receive the evidence subject to later ruling; receive offers of proof for the record; take notice of judicially cognizable facts; direct parties to appear and confer for the settlement or simplification of issues, and otherwise conduct pre-hearing conferences; impose appropriate

evidentiary sanctions against a party who fails to provide discovery or who fails to comply with a subpoena; dispose of procedural requests or similar matters; and enter proposed findings of fact and conclusions of law, orders, reports and recommendations. The hearing officer may utilize his or her experience, technical competence, or specialized knowledge in the evaluation of evidence presented.

**G. Minimum discovery; inspection and copying of documents:** Upon written request to another party, any party shall have access to documents in the possession of the other party that are relevant to the subject matter of the appeal, except confidential or privileged documents.

**H. Minimum discovery; witnesses:** The parties shall each disclose to each other and to the hearing officer, either orally or in writing, the names of witnesses to be called, together with a brief summary of the testimony of each witness, by a deadline established by the hearing officer. In situations where written statements will be offered into evidence in lieu of a witness's oral testimony, the names of the persons making the statements and a brief summary of the statements shall be disclosed.

**I. Pre-hearing disposition:** The subject matter of any hearing may be disposed of by stipulation, settlement or consent order, unless otherwise precluded by law. Any stipulation, settlement, or consent order reached between the parties shall be written and shall be signed by the hearing officer and the parties or their attorneys.

**J. Postponement or continuance:** The hearing officer, at his or her discretion, may postpone or continue a hearing upon his or her own motion, or upon the motion of a party, for good cause shown. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the previously scheduled hearing date.

**K. Conduct of hearing:** Pursuant to the Open Meetings Act, Section 10-15-1, *et seq.*, NMSA 1978, hearings shall be open to the public; provided, however, that hearings may be closed in part to prevent the disclosure of confidential information, including but not limited to health information protected by state and federal laws.

**L. Telephonic testimony:** Upon timely notice to the opposing party and the hearing officer, and with the approval of the hearing officer, the parties may present witnesses by telephone or live video (if available).

**M. Legal representation:** An appellant may be represented by an attorney licensed to practice in New Mexico, by a non-attorney representative, or by both. The department may be represented by an attorney licensed to practice in New Mexico, a department employee, or by both.

**N. Recording:** The hearing officer or a designee shall record the hearing by means of a mechanical sound recording device provided by the department for a record of the hearing. Such recording need not be transcribed, unless requested by a party who shall arrange and pay for the transcription.

**O. Burden of proof:** Except as otherwise provided in this rule, the department has the burden of proving by a preponderance of the evidence the basis for the proposed action.

**P. Order of presentation; general rule:** Except as provided in this rule, the order of presentation for hearings in all cases shall be:

(1)

**appearances:** opening of proceeding and taking of appearances by the hearing officer;

(2) **pending**

**matters:** disposition by the hearing officer of preliminary and pending matters;

(3) **opening**

**statements:** the opening statement of



the department, if any; and then the opening statement of the appellant, if any;

(4) **cases:** the department's case-in-chief, and then the case-in-chief of the appellant;

(5) **rebuttal:** the department's case-in-rebuttal, if any;

(6) **closing argument:** the department's closing statement, if any, which may include legal argument; and then the closing statement of the party opposing the department's action or proposed action, if any, which may include legal argument; and

(7) **close:** close of proceedings by the hearing officer.

**Q. Admissible evidence; rules of evidence not applicable:** The hearing officer may admit evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs. Rules of evidence, such as the New Mexico rules of evidence for the district courts, shall not apply but may be considered in determining the weight to be given any item of evidence. The hearing officer may at his or her discretion, upon his or her motion or the motion of a party or a party's representative, exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence, including testimony, and may exclude confidential or privileged evidence.

**R. Objections:** A party may timely object to evidentiary offers by stating the objection together with a succinct statement of the grounds for the objection. The hearing officer may rule on the admissibility of evidence at the time an objection is made or may receive the evidence subject to later ruling.

**S. Official notice:** The hearing officer may take notice of any facts of which judicial notice may be taken. When the hearing officer takes notice of a fact, the parties shall be notified either before or during the hearing of the fact so noticed and

its source, and the parties shall be afforded an opportunity to contest the fact so noticed.

**T. Record content:** The record of a hearing shall include all documents contained in the official file maintained by the hearing officer, including all evidence received during the course of the hearing, proposed findings of fact and conclusions of law, the recommendations of the hearing officer, and the final decision of the secretary.

**U Written evidence from witnesses:** The hearing officer may admit evidence in the form of a written statement made by a witness, when doing so will serve to expedite the hearing and will not substantially prejudice the interests of the parties.

**V. Failure to appear:** If a party who has requested a hearing or a party's representative fails to appear on the date, time, or location announced for a hearing, and if no continuance was previously granted, the party shall be deemed to be in default; the hearing officer shall issue his or her report, noting the default; and the secretary may subsequently render a final decision adopting the proposed action. Where a person fails to appear at a hearing because of accident, sickness, or other cause, the person may within a reasonable time apply to the hearing officer to reopen the proceeding, and the hearing officer may, upon finding sufficient cause, fix a time and place for a hearing and give notice to the parties.

**W. Hearing officer written report and recommendation(s):** The hearing officer shall submit a written report and recommendation(s) to the secretary that contains a statement of the issues raised at the hearing, proposed findings of fact and conclusions of law, and a recommended determination. Proposed findings of fact shall be based upon the evidence presented at the hearing or known to all parties, including matters officially noticed by the hearing officer. The hearing officer's recommended decision is a recommendation to the secretary of

the New Mexico department of health and is not a final order.

**X. Submission for final decision:** The hearing officer's report and recommendation(s) shall be submitted together with the complete official file to the secretary of the New Mexico department of health for a final decision no later than 30 days after the hearing.

**Y. Secretary's final decision:** The secretary shall render a final decision within 45 calendar days of the submission of the hearing officer's written report. A copy of the final decision shall be mailed to the appealing party by certified mail, return receipt requested, within 15 days after the final decision is rendered and signed.

[7.1.30.8 NMAC – N/E, 3/20/2020]

**History of 7.1.30 NMAC:**  
[RESERVED]

## HEALTH, DEPARTMENT OF

**This is an emergency amendment to 7.8.2 NMAC, Section 16, effective 3/26/2020**

**Numbers were changed throughout the rule to conform to correct legislative style.**

**7.8.2.16 STAFF QUALIFICATIONS:** A facility shall employ staff with the following qualifications.

**A. Administrator, director, operator:** an assisted living facility shall be supervised by a full-time administrator. Multiple facilities that are located within a 40 mile radius may have one full-time administrator. The administrator shall:

- (1) be at least 21 years of age;
- (2) have a high school diploma or its equivalent;
- (3) comply with the requirements of the New Mexico Caregivers Criminal History Screening Act, 7.1.9 NMAC;



(4) complete a state approved certification program for assisted living administrators;

(5) be able to communicate with the residents in the language spoken by the majority of the residents;

(6) not work while under the influence of alcohol or illegal drugs;

(7) have evidence of education and experience to prove the ability to administer, direct and operate an assisted living facility; the evidence of education and experience shall be directly related to the services that are provided at the facility;

(8) provide three notarized letters of reference from persons unrelated to the applicant; and

(9) comply with the pre-employment requirements pursuant to the Employee Abuse Registry, 7.1.12 NMAC.

**B. Direct care staff:**

(1) shall be at least [eighteen (18)] 17 years of age;

(2) shall have adequate education, relevant training, or experience to provide for the needs of the residents;

(3) shall comply with the pre-employment requirements pursuant to the Employee Abuse Registry, 7.1.12 NMAC; and

(4) shall comply with the current requirements of reporting and investigating incidents pursuant to Incident Reporting, Intake Processing and Training Requirements, 7.1.13 NMAC;

(5) if a facility provides transportation for residents, the employees of the facility who drive vehicles and transport residents shall have copies of the following documents on file at the facility:

(a) a valid New Mexico driver's license with the appropriate classification for the vehicle that is used to transport residents;

(b) documentation of training in transportation safety for the elderly and disabled, including safe vehicle operation;

(c) proof of insurance; and

(d) documentation of a clean driving record;

(6) any person who provides direct care who is not employed by an agency that is covered by the requirements of the Caregivers Criminal History Screening Requirements, 7.1.9 NMAC, shall provide current (within the last 6 months) proof of the caregivers criminal history screening to the facility; the facility shall maintain and have proof of such screening readily available; and

(7) employers shall comply with the requirements of the Caregivers Criminal History Screening Requirements, 7.1.9 NMAC.

[7.8.2.16 NMAC - Rp, 7.8.2.16 NMAC, 01/15/2010; A/E, 3/26/2020]

## HEALTH, DEPARTMENT OF

**This is an emergency amendment to 7.9.2 NMAC, Section 27, effective 3/26/2020.**

### 7.9.2.27 EMPLOYEES:

In this section, "employee" means anyone directly employed by the facility on other than a consulting or contractual basis.

**A. Qualifications and restrictions:** No person under [eighteen (18)] 17 years of age shall be employed to provide direct care to residents.

**B. Physical health certifications:** Every new employee shall be certified in writing by a physician as having been screened for tuberculosis infection and provide a statement of medical evidence that they are currently free from communicable disease prior to beginning work.

### C. Disease

**surveillance and control:** Facilities shall develop and implement written policies for control of communicable diseases which ensure that employees and volunteers with systems or signs of communicable disease or infected skin lesions are not permitted to work unless authorized to do so by a physician or physician extender.

### D. Volunteers:

Facilities may use volunteers provided that the volunteers receive the orientation, training, and supervision necessary to assure resident health, safety and welfare.

### E. Abuse of residents:

(1) Orientation for all employees: Except in an emergency, before performing any duties, each new employee, including temporary help, shall receive appropriate orientation to the facility and its policies, including, but not limited to, policies relating to fire prevention, accident prevention, and emergency procedures. All employees shall be oriented to resident's rights and to their position and duties by the time they have worked 30 days.

(2) Training: Except for nurses, all employees who provide direct care to residents shall be trained through a program approved by the department.

(3) Assignments: Employees shall be assigned only to resident care duties consistent with their training.

(4) Reporting: All employees will be instructed in the reporting requirements of Section 27-7-14 NMSA 1978, the Adult Protective Services Act, of abuse, neglect or exploitation of any resident.

### F. Continuing education:

(1) Nursing in-service: The facility shall require employees who provide direct care to residents to attend educational programs desired to develop and improve the skill and knowledge of the employees with respect to the needs of the facility's residents, including rehabilitative therapy,



oral health care, wheelchair safety and transportation and special programming for developmentally disabled residents if the facility admits developmentally disabled person. These programs shall be conducted quarterly to enable staff to acquire the skills and techniques necessary to implement the individual program plans for each resident under their care.

(2) Dietary in-service: Educational programs shall be held quarterly for dietary staff, and shall include instruction in the proper handling of food, personal hygiene and grooming, and nutrition and modified diet patterns served by the facility.

(3) All other staff in-service: The facility shall provide in-service designed to improve the skills and knowledge of all other employees.

[7/1/1960, 5/2/1989; 7.9.2.27 NMAC - Rn & A, 7 NMAC 9.2.27, 8/31/2000; A/E, 3/26/2020]

## HEALTH, DEPARTMENT OF

**This is an emergency amendment to 7.27.11 NMAC, Sections 12, effective 3/26/2020.**

**7.27.11.12 COVID-19 public health emergency; approved deviations from EMS rules:** On March 11, 2020, New Mexico Governor Michelle Lujan Grisham issued executive order 2020-004 pursuant to the Public Health Emergency Response Act, Subsection A of Section 12-10A-5, NMSA 1978, declaring a state of public health emergency concerning the spread of the novel coronavirus disease named COVID-19. In accord with 7.27.11.2 NMAC, the department of health finds that this public health emergency stresses the emergency medical services system and disrupts delivery of medical services. Consistent with the authority of the emergency medical systems bureau pursuant to the Emergency Medical Services System Act at Section 24-

10B-1 through -13, NMSA 1978, the department hereby authorizes deviations from the department's emergency medical services rules, found in New Mexico Administrative Code, Title 7, Chapter 27 ("EMS rule"), during the pendency of the COVID-19 public health emergency, including but not limited to deviations from the emergency medical technician scopes of practice, as permitted herein.

**A. Procedure:** A person who wishes to request a deviation from an EMS rule of the department of health shall contact the EMS bureau and shall provide:

- (1) the department EMS rule at issue;
- (2) factual information relevant to the requested deviation; and
- (3) such additional information as the bureau may request.

**B. Approval and denial:** The bureau may approve or deny a requested deviation from an EMS rule of the department within its discretion. Any such determination may be rendered by the emergency medical systems bureau chief or his or her designee, or by the state emergency medical systems medical director or his or her designee.

**C. Expiration of approved deviation:** An approved deviation from EMS rule shall expire upon either termination of the declared public health emergency or rescission by the bureau, whichever occurs first.

[7.27.11.12 NMAC – N/E, 3/26/2020]

## PUBLIC REGULATION COMMISSION

**This is an emergency amendment to 17.9.560 NMAC, Section 12, effective 3/23/2020.**

### 17.9.560.12 CUSTOMER RELATIONS:

**A. Customer information.** Each utility shall:

- (1) maintain up-to-date maps, plans, or records of

its entire transmission and distribution systems with such other information as may be necessary to enable the utility to advise prospective customers and others entitled to the information as to the facilities for serving any locality;

(2) assist the customer or prospective customer in selecting the most economical rate schedule appropriate for his class of service;

(3) notify customers affected by a change in rates or schedule classification;

(4) post a notice in a conspicuous place in each office of the utility where applications for service are received informing the public that copies of the rate schedules and rules relating to the service of the utility as filed with the commission are available for inspection;

(5) upon request inform its customers as to the method of reading meters; and

(6) furnish such additional information as the customer may reasonably request.

**B. Customer deposits.** Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

(1) A utility may not require a security deposit or other guarantee of payment as a condition of new or continued service to a customer except in the case of service:

(a) to a customer that has not previously had utility service with the utility and that has not established an acceptable credit rating;

(b) to a customer that has on three or more occasions, within a 12-month period, received a final notice;

(c) as a condition for reconnection of service following discontinuance of service by the utility; or

(d) to a customer that in an unauthorized manner has interfered with or diverted the service of the utility situated on or



about or delivered to the customer's premises.

(2) In determining whether a customer that has not previously had utility service with the utility has an acceptable credit rating, a utility shall consider the following:

(a) documentation that the customer has an adequate credit reference from a utility where the customer had prior utility service;

(b) documentation obtained by the utility from a commercial credit source; or

(c) any other reasonable documentation.

(3) A utility may give special consideration to a prospective or existing customer in determining if payment by an installment agreement is appropriate.

(4) If a utility requires a deposit, it shall have on file with the commission an approved rule setting forth the minimum and maximum deposit that may reasonably be required by the utility in cases involving all types of service. That rule shall conform to the following provisions:

(a) a deposit for a customer shall not exceed an amount equivalent to one sixth (1/6) of that non-residential customer's estimated annual billings; a utility shall base its deposit criteria upon the most recent available prior 12-month corresponding period at the same service location; or, if there is not a comparable period of service at the same service location, the deposit shall be based upon consumption of similar units in the same area;

(b) simple interest on deposits at a rate not less than the rate required by Section 62-13-13 NMSA 1978, shall accrue annually to the customer's credit for the time the deposit is held by the utility; by January 15 of each year the commission shall post on its website the minimum rate to be paid on any deposits required of a customer by any public utility; the deposit shall cease to draw interest on the date it is returned, on the

date service is terminated, or on the date the refund is sent to the non-residential customer's last known address.

(5) Each customer that posts a security deposit shall receive in writing at the time of tender of deposit or with the first bill a receipt as evidence thereof. A utility shall provide the means whereby a depositor may establish its claim if its receipt is lost. The receipt shall contain the following minimum information:

(a) name of customer;

(b) date of payment;

(c) amount of payment; and

(d) statement of the terms and conditions governing the payment, retention, interest, and return of deposits.

(6) Refunds. Any non-residential customer that has not received a final notice for the 12-month period from the date of deposit or guarantee shall promptly receive a credit or refund in the amount of the deposit together with accrued interest due or shall be permitted to terminate any guarantee. If the amount of the deposit exceeds the amount of the current bill, the customer may request a refund in the amount of the excess if such excess exceeds twenty-five dollars (\$25.00). If the customer fails to qualify for a refund of the deposit on the one year anniversary date of the deposit, that account shall be reviewed at least annually, and the amount of the deposit shall be credited if the customer has not received a final notice during the preceding 12 months. A customer may request a refund at any time after 12 months payment history, which refund shall promptly be paid if the customer has not received a final notice during the prior 12-month period or a utility may pay such refund in the absence of a request within a reasonable period of time.

(7) Each utility shall keep records to show:

(a) the name and address of each depositor;

(b) the amount and the date of the deposit; and

(c) each transaction concerning the deposit.

(8) A record of each unclaimed deposit shall be maintained for at least three years during which time the utility shall mail a check or a letter to the customer at his last known address in an effort to return the deposit.

(9) Unclaimed deposits together with accrued interest shall be credited to the appropriate account and shall be handled as required by the uniform disposition of unclaimed property act of the state of New Mexico.

#### C. Customer bill forms.

(1) The utility shall bill each customer as promptly as possible following the reading of his meter. The bill shall show:

(a) the reading of the meter at the end of the period for which the bill is rendered;

(b) the nominal date on which the meter was read;

(c) the number and kind of units metered;

(d) the applicable rate schedule or identification of the applicable rate schedules;

(e) the gross or net amount of the bill;

(f) the date by which the customer must pay the bill in order to benefit from any discount or to avoid any penalty;

(g) a distinct marking to identify an estimated bill;

(h) any conversions from meter reading units to billing units or any calculations to determine billing units from recording or other devices or any other factors, such as fuel clause adjustments, power factor



adjustments, applicable primary discounts for customer-owned transformer, or billing units additions for secondary metering of primary services used in determining the bill; and

(i) a multiplier constant when used to determine billing will be shown on the bill whenever applicable.

(2) In lieu of information required under (c), (g), and (h) above, the utility may incorporate on the bill form a statement advising the customer that any additional information desired relative to the application of the rate schedule can be obtained by contacting one of the utility's offices.

#### **D. Customer records.**

The utility shall retain records as may be necessary to effect compliance with 17.3.310 NMAC and with Subsection E of 17.9.560.12 NMAC and Subsection E of 17.9.560.14 NMAC, and shall show where applicable the following:

- (1) KWH meter reading;
- (2) KWH consumption;
- (3) KW or KVA readings;
- (4) KW or KVA measured demand;
- (5) KW or KVA billing demand;
- (6) primary discounts; and
- (7) total amount of bill.

#### **E. Adjustments of bills.**

(1) General. An adjustment of bills for service shall be made for the following reasons, and may be made for reasons not listed below in order to achieve a reasonable, fair and just result:

- (a) meter creep;
- (b) kilowatt-hour registration in excess of 2% average error determined by meter test;
- (c) demand registration in excess of 1% error in addition to errors allowed

under accuracy of demand meters, Subsection H of 17.9.560.14 NMAC;

(d) failure of meter or equipment including automatic meter reading technology if such failure was not the result of a customer tampering with, damaging, replacing or deliberately destroying the equipment furnished and owned by the utility;

(e) improper installation, testing, or inspection of equipment;

(f) improper application of rate schedule;

(g) improper multiplier;

(h) improper application of a tax;

(i) failure of utility to bill a customer for services at the time the customer received the services; or

(j) failure of a customer to provide safe and reasonable access to utility equipment.

(2) The amount of the adjustment shall be calculated on the basis that the metering equipment should be 100 percent (100%) accurate with respect to the testing equipment used to make the test. For watt-hour meters the average accuracy shall be the arithmetic average of the percent registration at light load and at heavy load, giving the light load registration a weight of one (1) and the heavy load registration a weight of four (4).

(3) Determination of adjustments. Unless otherwise specified, the time periods established in Paragraph (8) of Subsection E of 17.560.12 NMAC shall apply to adjustments made under Paragraph (3) of Subsection E of 17.560.12 NMAC.

(a) Meter creep. The error in registration due to creep shall be calculated by timing the rate of creeping and assuming that this creeping affected the registration of the meter for twenty-five percent (25%) of the time since the meter was installed or since the last previous test, whichever is later.

(b)

Meter with inaccuracy in excess of specified limits. If the date when the error in registration began can be determined, such date shall be the starting point for determination of the amount of adjustment. If the date when the error in registration began cannot be determined, it shall be assumed that the error has existed for a period equal to one half (1/2) the time elapsed since the meter was installed or one half (1/2) the time elapsed since the last previous test, whichever is later.

(c)

Failure of meter or equipment. When the error in registration is caused by failure of part or all of the metering installation, it shall be permissible to use the registration of check metering installations, if any, or to estimate the kilowatt-hour consumption, demand, and other data required for billing based upon a period of similar operating conditions as agreed to between the customer and the utility.

(d)

Improper installation, testing, or inspection of meter or equipment. When the error in registration is caused by improper installation, testing, or inspection of meter or equipment, the date of installation, date of test, or date of inspection shall be the starting point for determination of the amount of the adjustment.

(4) Refunds.

(a)

If the recalculated bills indicate that a refund is due an existing customer or a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the true amount shall be refunded in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.

(b)

The refund to an existing customer may be in cash or as credit on a bill. In the case of a previous customer who is no longer a customer of the utility, a notice of the amount due shall be mailed to such previous customer at his last known address and the utility shall, upon demand within three (3) months thereafter, refund the amount due.



<p>billing.</p> <p>(5) Back-billing.</p> <p>(a) If the recalculation of billing indicates that an amount is due the utility and such amount is in excess of any refund due the customer, the utility may bill the customer the true amount due in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.</p> <p>(b) Each utility may establish a minimum amount below which the utility will not back-bill the customer. When the amount of the back-billing is greater than the established minimum amount, the customer will be billed the true amount due the utility in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.</p> <p>(c) The customer shall be permitted to pay the amount of the back-billing in reasonable installments. A back-bill shall be accompanied by an offer of an installment agreement.</p> <p>(d) The utility shall not charge the customer interest for any amount back-billed.</p> <p>(6) A utility and its special contract customer may make their own agreements respecting adjustments for errors in measurement.</p> <p>(7) The utility will assist the customer in selecting the rate schedule under which he/she is eligible to be billed. However, the utility will not be held responsible for refunding any overcharge caused by the customer's failure to select the appropriate rate schedule or by the customer's failure to notify the utility of a change in customer's operations. If the utility improperly applies the rate schedule selected by the customer, any billing in excess of the true amount will be refunded to the customer and any billing less than the true amount when greater than the established minimum amount will be billed to the customer in the applicable time period established in Paragraph (8) of Subsection E of 17.560.12 NMAC.</p>	<p>(8) Time periods for adjustment of bills.</p> <p>(a) Residential customer class (metered usage): Refunding of an overbilling is limited to 12 months. Back-billing of an underbilling is limited to six months. Customers responsible for the back-billed underbill shall be given, at a minimum, the same time period to pay the underbilling as the length of time period of the underbilling.</p> <p>(b) Residential customer class (zero usage or no bill): Back-billing is limited to six months. Customers responsible for the back-billed underbill shall be given, at a minimum, the same time period to pay the underbilling as the length of time period of the underbilling.</p> <p>(c) Non-residential small commercial customer class, defined by tariff: Refunding of an overbilling is limited to six months. Back-billing of an underbilling is limited to six months. Customers responsible for the back-billed underbill shall be given, at a minimum, the same time period to pay the underbilling as the length of time period of the underbilling.</p> <p>(d) All other non-residential customer class, such as medium, large or industrial as defined by tariff: Refunding of an overbilling is limited to 12 months. Back-billing is limited to 12 months. Customers responsible for the back-billed underbill shall be given, at a minimum, the same time period to pay the underbilling as the length of time period of the underbilling.</p> <p>(e) Back-billing customers is limited to 72 months for underbilling that was caused by tampering or fraud by the customer.</p> <p>(f) Notwithstanding the above time limits, the commission may determine a different time limit for back-billing or refunding in order to achieve a reasonable, fair, and just result.</p> <p><b>F. Reasons for denying or discontinuing</b></p>	<p><b>service.</b> Service may be denied or discontinued for any of the reasons listed below <u>unless prohibited under Paragraph (3) of Subsection G of 17.9.560.12 NMAC</u>. Unless otherwise stated the customer shall be allowed a reasonable time in which to comply with the rule before service is discontinued except as provided in Paragraphs (1), (2), (3) and (4) below:</p> <p>(1) without notice in the event of a condition determined by the utility to be hazardous;</p> <p>(2) without notice in the event of customer use of equipment in such manner as to adversely affect the utility's equipment or the utility's service to others;</p> <p>(3) without notice in the event that a customer tampers with, damages, or deliberately destroys the equipment furnished and owned by the utility;</p> <p>(4) without notice in the event of unauthorized use;</p> <p>(5) for violation of or noncompliance with the utility's rules on file with and approved by the commission;</p> <p>(6) for failure of the customer to fulfill his/her contractual obligations for service or facilities subject to the regulations of the commission;</p> <p>(7) for failure of the customer to permit the utility reasonable access to its equipment;</p> <p>(8) for nonpayment of bill provided the utility has given the customer final notice;</p> <p>(9) for failure of the customer to provide the utility with a deposit as authorized by Subsection B of 17.9.560.12 NMAC except that a utility may not discontinue service to an existing customer solely for failure to pay deposit;</p> <p>(10) for failure of the customer to furnish such service equipment, permits, certificates, or rights-of-way as shall have been specified by the utility as a condition for obtaining service</p>
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or in the event such equipment or permissions are withdrawn or terminated; and

(11) for failure of the customer to pay for service of the same class at a previous metering point or points.

**G. Reasons insufficient for denying or discontinuing service.**

(1) The following shall not constitute sufficient cause for discontinuing service to a present customer:

(a) for failure to pay for merchandise purchased from the utility;

(b) for failure to pay for a different type or class of public utility service;

(c) for failure to pay the bill of another customer as guarantor thereof; or

(d) for failure to pay for concurrent service of whatever class at a different metering point.

(2) The following shall not constitute sufficient cause for denying service to a prospective customer:

(a) for delinquency in payment for service by a previous occupant unless the previous occupant still resides at the premises;

(b) for failure to pay for merchandise purchased from the utility; or

(c) for failure to pay the bill of another customer as guarantor thereof.

(3) The following additional temporary emergency rules regarding disconnection of residential utility service shall be effective for the duration of time that governor's executive orders 2020-004 through 2020-0010 ("emergency executive orders") remain in effect:

(a) all utilities are prohibited from discontinuing residential utility service for non-payment during the time period the emergency executive orders are in effect;

(b) disconnections of residential utility service for non-payment issued on or after March 11, 2020 (the effective date of the emergency executive orders) are suspended for the duration of the effectiveness of the emergency executive orders;

(c) any late fees on residential accounts that would be incurred during the time period of the effectiveness of the emergency executive orders shall be waived;

(d) utilities are permitted to temporarily and immediately close in-person bill payment locations as long as they provide notice to residential customers regarding the same and notice how to pay electronically or by mail. In the event of closure of in-person bill payment locations, utilities shall be permitted to continue to collect credit card or bank fees in accordance with their own commission approved and filed tariffs;

(e) medical certificates set to expire shall not expire for the duration of the effectiveness of the emergency executive orders and shall automatically be extended for 90 days from the end of the emergency executive orders.

**H. Estimated demand.** Upon request of the customer and provided the customer's demand is estimated for billing purposes, the utility shall measure the demand during the customer's normal operations and use the measured demand for billing.

**I. Servicing utilization control equipment.** Each utility shall service and maintain any equipment it owns and used on the customer's premises and shall correctly set and keep in proper adjustment any thermostats, clocks, relays, time switches, or other devices which control the customer's service in accordance with the provisions of the utility's rate schedules.

**J. Customer complaints.** Bona fide complaints concerning the charges, practices, or service of the utility shall be

investigated promptly and thoroughly. The utility shall keep such records of customer complaints as will enable the utility to review and analyze its procedures and actions.

**K. Temporary service.** When the utility renders temporary service to a customer it may require that the customer bear all the cost of installation and removal of the service facilities in excess of any salvage realized.

**L. Extension plan.** Each utility shall develop a plan acceptable to the commission for the extension of facilities where they are in excess of those included in the regular rates for service and for which the customer shall be required to pay all or part of the cost.

[6/30/1988; 17.9.560.12 NMAC - Rn, NMPSC 560.18-560.29 & A, 6/15/2005; A, 3/29/2013; A/E 3/23/2020]

## PUBLIC REGULATION COMMISSION

**This is an emergency amendment to 17.10.650 NMAC, Section 11, 3/23/2020.**

### 17.10.650.11 CUSTOMER RELATIONS:

**A. Customer information.** Each utility shall:

(1) maintain up-to-date maps, plans, or records of its entire transmission and distribution systems with such other information as may be necessary to enable the utility to advise prospective customers and others entitled to the information as to the facilities for serving any locality;

(2) assist the customer or prospective customer in selecting the most economical rate schedule appropriate for his/her class of service;

(3) notify customers affected by a change in rates or schedule classification;

(4) post a notice in a conspicuous place in each office of the utility where applications for service are received informing



the public that copies of the rate schedules and rules relating to the service of the utility as filed with the commission are available for inspection;

(5) upon request inform its customers as to the method of reading meters; and

(6) furnish such additional information as the customer may reasonably request.

**B. Customer deposits.**

Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

(1) A utility may not require a security deposit or other guarantee of payment as a condition of new or continued service to a customer except in the case of service:

(a) to a customer that has not previously had utility service with the utility and that has not established an acceptable credit rating;

(b) to a customer that has on three or more occasions, within a 12-month period, received a final notice;

(c) as a condition for reconnection of service following discontinuance of service by the utility; or

(d) to a customer that in an unauthorized manner has interfered with or diverted the service of the utility situated on or about or delivered to the customer's premises.

(2) In determining whether a customer who has not previously had utility service with the utility has an acceptable credit rating, a utility shall consider the following:

(a) documentation that the customer has an adequate credit reference from a utility where the customer had prior utility service;

(b) documentation obtained by the utility from a commercial credit source; or

(c) any other reasonable documentation.

(3) A utility may give special consideration to a prospective or existing customer in determining if payment by an installment agreements is appropriate.

(4) If a utility requires a deposit, it shall have on file with the commission an approved rule setting forth the minimum and maximum deposit that may reasonably be required by the utility in cases involving all types of service. That rule shall conform to the following provisions:

(a) a deposit for a customer shall not exceed an amount equivalent to one sixth (1/6) of that non-residential customer's estimated annual billings; a utility shall base its deposit criteria upon the most recent available prior 12-month corresponding period at the same service location; or, if there is not a comparable period of service at the same service location, the deposit shall be based upon consumption of similar units in the same area;

(b) simple interest on deposits at a rate not less than the rate required by Section 62-13-13 NMSA 1978 shall accrue annually to the customer's credit for the time the deposit is held by the utility; by January 15 of each year the commission shall post on its website the minimum rate to be paid on any deposits required of a customer by any public utility; the deposit shall cease to draw interest on the date it is returned, on the date service is terminated or on the date the refund is sent to the customer's last known address.

(5) Each customer that posts a security deposit shall receive in writing at the time of tender of deposit or with the first bill a receipt as evidence thereof. A utility shall provide the means whereby a depositor may establish its claim if its receipt is lost. The receipt shall contain the following minimum information:

(a) name of customer;

(b) date of payment;

(c) amount of payment; and

(d) statement of the terms and conditions governing the payment, retention, interest and return of deposits.

(6) Refunds. Any non-residential customer that has not received a final notice for the 12-month period from the date of deposit or guarantee for the 12-month period from the date of deposit or guarantee shall promptly receive a credit or refund in the amount of the deposit together with accrued interest due or shall be permitted to terminate any guarantee. If the amount of the deposit exceeds the amount of the current bill, the customer may request a refund in the amount of the excess if such excess exceeds twenty-five dollars (\$25.00). If the customer fails to qualify for a refund of the deposit on the one year anniversary date of the deposit, that account shall be reviewed at least annually, and the amount of the deposit shall be credited if the customer has not received a final notice during the preceding 12 months. A customer may request a refund at any time after 12-months payment history, which refund shall promptly be paid if the customer has not received a final notice during the prior 12-month period or a utility may pay such refund in the absence of a request within a reasonable period of time.

(7) Each utility shall maintain records to show:

(a) the name and address of each depositor,

(b) the amount and the date of the deposit, and

(c) each transaction concerning the deposit.

(8) A record of each unclaimed deposit shall be maintained for at least three years during which time the utility shall mail a check or a letter to the customer at its last known address in an effort to return the deposit.

(9) Unclaimed deposits together with accrued interest shall be credited to the appropriate account and shall be handled as



required by the Uniform Disposition of Unclaimed Property Act of the state of New Mexico.

**C. Customer bill**

**forms.** The utility shall bill each customer as promptly as possible following the reading of his meter. The bill shall show:

(1) the reading of the meter at the end of the period for which the bill is rendered;

(2) the nominal date on which the meter was read;

(3) the number and kind of units metered;

(4) the applicable rate schedule or identification of the applicable rate schedule;

(5) the gross or net amount of the bill;

(6) the date by which the customer must pay the bill in order to benefit from any discount or to avoid any penalty;

(7) a distinct marking to identify an estimated bill;

(8) any conversions from meter reading units to billing units from recording or other devices or any other factors such as fuel clause adjustments, power factor adjustments, applicable primary discounts for a customer-owned transformer, or billing unit additions for secondary metering of primary services used in determining the bill; and

(9) a multiplier constant when used to determine billing, whenever applicable.

(10) In lieu of information required by Paragraphs (4), (8), and (9) of this subsection, the utility may incorporate on the bill form a statement advising the customer that any additional information desired relative to the application of the rate schedule can be obtained by contacting one of the utility's offices.

**D. Customer records.**

The utility shall retain records as may be necessary to effect compliance with 17.3.310 NMAC and with Subsection E of 17.10.650.11 NMAC, and Subsections D and E of

17.10.650.13 NMAC, and shall show, where applicable, the following:

(1) MCF meter reading;

(2) MCF consumption;

(3) demand charges;

(4) penalties; and

(5) total amount of bill.

**E. Adjustment of**

**bills.** Bills which are incorrect due to meter or billing errors are to be adjusted as follows.

(1) Fast meters. Whenever a meter in service is tested and found to have over-registered more than two percent (2%), the utility shall recalculate the bills for service for the period as determined below.

(a) The bills for service shall be recalculated from the time the error first developed or occurred if that time can be determined.

(b) If the time the error first developed or occurred cannot be determined, it shall be assumed that the over-registration existed for a period equal to one half (1/2) the time since the meter was last tested, not to exceed six (6) months, and the bills for service shall be recalculated for that period.

(c) If the recalculated bills indicate that a refund is due an existing customer or a person no longer a customer of the utility, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded. The utility shall make refunds to the existing customer and to the next previous customer served through the same meter if the period of refund determined in accordance with this section extends into the period when the said next previous customer was served through the same meter. The refund to an existing customer may be in cash or as a credit on his bill if a refund is due a person no longer a customer of the utility, a notice

shall be mailed to the last known address, and the utility shall upon request made within three (3) months thereafter refund the amount due.

(2) Nonregistering meters. Whenever a meter in service is found not to register the utility may render an estimated bill.

(3) Slow meters. Whenever a meter is found to be more than two percent (2%) slow the utility may bill the customer for one half (1/2) of the undercharge caused by the error indicated by the test for a period of twelve (12) months unless the meter has been tested within the twelve-month period, in which event the customer may be billed for the undercharge caused by the error indicated by the test for the period since the meter was last tested. No back-billing will be sanctioned if the customer has called to the company's attention his doubts as to the meter's accuracy and the company has failed to check it within a reasonable time.

(4) Billing adjustments due to fast or slow meters shall be calculated on the basis that the meter should be one hundred percent (100%) accurate. For the purpose of billing adjustments the meter error shall be one half (1/2) of the algebraic sum of the error at full-rated flow plus the error at check flow.

(5) When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the meter, or other similar reasons, the amount of the overcharge shall be adjusted, refunded, or credited to the customer. The utility will assist the customer in selecting the rate schedule under which he/she is eligible to be billed. However, the utility will not be held responsible to refund any overcharge caused by the customer's failure to select the appropriate rate schedule or to notify the utility of a change in his/her operations.

(6) When a customer has been undercharged as a result of an incorrect meter reading,



incorrect application of the rate schedule, or other similar reasons, the amount of the undercharge may be billed to the customer.

(7) A utility and its special contract customers may make their own agreements with respect to adjustments for errors in measurement.

**F. Reasons for denying or discontinuing service.** Service may be denied or discontinued for any of the reasons listed below unless prohibited under Paragraph (3) of Subsection G of 17.10.650.11 NMAC. Unless otherwise stated the customer shall be allowed a reasonable time in which to comply with the rule before service is discontinued, except as provided in Paragraphs (1), (2), (3), and (4) of this subsection:

(1) without notice in the event of a condition determined by the utility to be hazardous;

(2) without notice in the event of customer use of equipment in such manner as to adversely affect the utility's equipment or the utility's service to others;

(3) without notice in the event of customer's tampering with, damaging, or deliberately destroying the equipment furnished and owned by the utility;

(4) without notice in the event of unauthorized use;

(5) for violation of, or noncompliance with, the utility's rules on file with and approved by the commission;

(6) for failure of the customer to fulfill its contractual obligations for service or facilities subject to the regulation by the commission;

(7) for failure of the customer to permit the utility reasonable access to equipment;

(8) for nonpayment of bill, provided the utility has given the customer final notice;

(9) for failure of the customer to provide the

utility with a deposit as authorized by Subsection B of 17.10.650.11 NMAC, except that a utility may not discontinue service to an existing customer solely for failure to pay a deposit;

(10) for failure of the customer to furnish such service, equipment, permits, certificates, or rights-of-way as shall have been specified by the utility as a condition to obtaining service, or in the event such equipment or permissions are withdrawn or terminated; or

(11) for failure to pay for service of the same class at a previous metering point or points.

**G. Reasons insufficient for denying or discontinuing service.**

(1) The following shall not constitute sufficient cause for denial of or discontinuance of service to a present customer:

(a) failure to pay for merchandise purchased from the utility;

(b) failure to pay for a different type or class of public utility service;

(c) failure to pay the bill of another customer as guarantor thereof; or

(d) failure to pay for concurrent service of whatever class at a different metering point.

(2) The following shall not constitute sufficient cause for denying service to a prospective customer:

(a) delinquency in payment for service by a previous occupant unless the previous occupant still resides at the premises;

(b) failure to pay for merchandise purchased from the utility; or

(c) failure to pay the bill of another customer as guarantor thereof.

(3) The following additional temporary emergency rules regarding disconnection of residential utility

service shall be effective for the duration of time that governor's executive orders 2020-004 through 2020-0010 ("emergency executive orders") remain in effect:

(a) all utilities are prohibited from discontinuing residential utility service for non-payment during the time period the emergency executive orders are in effect;

(b) disconnections of residential utility service for non-payment issued on or after March 11, 2020 (the effective date of the emergency executive orders) are suspended for the duration of the effectiveness of the emergency executive orders;

(c) any late fees on residential accounts that would be incurred during the time period of the effectiveness of the emergency executive orders shall be waived;

(d) utilities are permitted to temporarily and immediately close in-person bill payment locations as long as they provide notice to residential customers regarding the same and notice how to pay electronically or by mail. In the event of closure of in-person bill payment locations, utilities shall be permitted to continue to collect credit card or bank fees in accordance with their own commission approved and filed tariffs;

(e) medical certificates set to expire shall not expire for the duration of the effectiveness of the emergency executive orders and shall automatically be extended for 90 days from the end of the emergency executive orders.

**H. Material changes in character of service.** If under the control of the utility and after adequate notice to customers, material changes in the character of gas service rendered shall be made only with the approval of the commission. Whenever required by any such change the utility shall make any necessary adjustments to the customers' appliances without charge and shall conduct such



adjustment program with a minimum of inconvenience to customers.

**I. Customer complaints.** Complaints concerning the charges, practices, facilities, or service of the utility shall be investigated promptly and thoroughly. The utility shall maintain such records of customer complaints as will enable the utility to review and analyze its procedures and actions. The utility shall make such information available to the commission upon request. [6/30/1988; 17.10.650.11 NMAC - Rn, NMPSC 650.18-650.26 & A, 6/15/2005; A, 3/29/2013; A/E, 3/23/2020]

## PUBLIC REGULATION COMMISSION

**This is an emergency amendment to 17.12.760 NMAC, Section 10, effective 3/23/2020.**

**17.12.760.10 FORMAT FOR CUSTOMER SERVICE RULES AND REGULATIONS:** [For the convenience of the utilities the customer service rules and regulations herein are set forth in the appropriate format. [See 17.12.760.10.pdf]]

**A.** For the convenience of the utilities the customer service rules and regulations herein are set forth in the appropriate format. (See 17.12.760.10.pdf)

**B.** The following additional temporary emergency rules regarding disconnection of residential water service by all water utilities subject to the jurisdiction of the commission shall be effective for the duration of time that governor's executive orders 2020-004 through 2020-0010 ("emergency executive orders") remain in effect:

**(1)** all water utilities are prohibited from discontinuing residential water service for non-payment during the time period the emergency executive orders are in effect;

**(2)** disconnections of residential water service for non-payment issued on or after March 11, 2020 (the effective

date of the emergency executive orders) are suspended for the duration of the effectiveness of the emergency executive orders:

**(3)** any late fees on residential accounts that would be incurred during the time period of the effectiveness of the emergency executive orders shall be waived;

**(4)** water utilities are permitted to temporarily and immediately close in-person bill payment locations as long as they provide notice to residential customers regarding the same and notice how to pay electronically or by mail. In the event of closure of in-person bill payment locations, water utilities shall be permitted to continue to collect credit card or bank fees in accordance with their own commission approved and filed tariffs;

**(5)** medical certificates set to expire shall not expire for the duration of the effectiveness of the emergency executive orders and shall automatically be extended for 90 days from the end of the emergency executive orders.

[6/30/1988; 1/1/1989; 1/1/1990; Recompiled 12/30/2001; A/E, 3/23/2020]

## SECRETARY OF STATE, OFFICE OF

**This is an amendment to 1.10.12 NMAC, Sections 7, 9, 13 and 15, effective 4/7/2020.**

### 1.10.12.7 DEFINITIONS:

**A. "Absentee ballot"** means a method of voting by mail, accomplished by a voter who is absent from the voter's polling place on election day. "Absentee ballot" has the same definition under the Absent Voter Act as a mailed ballot.

**B. "Absentee ballot register"** means a listing kept by the county clerk for each election with the information specified in the Election Code, Section 1-6-6 NMSA 1978.

**C. "Adjudicate"** means a decision made by a precinct

board, in accordance with the Election Code, of a ballot signifying a voter's intent to mark their selection for a candidate contest or ballot question.

**D. "Alternate voting location"** means a location outside the office of the county clerk, established by the county clerk, where a voter may cast an early in person ballot on voting tabulator. This includes mobile alternate voting locations.

**E. "Application"** means [an absentee] a mailed ballot application, prescribed by the secretary of state pursuant to the Election Code, Section 1-6-4 NMSA 1978.

**F. "Ballot markers"** means the grid pattern around the voting response area on the ballot face used by the voting tabulator to distinguish the ballot style and voter's selection of alternatives allowed in any candidate contest or ballot question to record, count and produce a tabulation of votes cast.

**G. "Blank ballot"** means a paper ballot on which the voter has not selected any of the alternatives allowed in any candidate contest or ballot question.

**H. "Challenger"** means a voter of a precinct located in that county to which the voter is appointed in conformance with the Election Code, Section 1-2-21 to 1-2-22 NMSA 1978 for the purpose of carrying out such duties as prescribed in the Election Code, Section 1-2-23 to 1-2-26 NMSA 1978.

**I. "County canvassing board"** means the board of county commissioners in each county, convened for the purposes of conducting the county canvass.

**J. "Early voter"** means a voter who votes in person before election day, and not by mail.

**K. "Early voting daily report"** means a form used to certify the daily early voting activity at the office of the county clerk, alternate voting location and mobile alternate voting location; the form shall be prescribed by the office of the secretary of state to be completed and filed daily during early voting, consisting of the voting



tabulator serial number, beginning public counter number, ending public counter number, total number of ballots cast early per tabulator and those to be hand tallied.

**L. “Electronically transmitted ballot”** means a ballot provided through an electronic transmission system to federal qualified electors pursuant to Section 1-6B-7 NMSA 1978 or to blind or visually impaired voters as provided in Section 1-9-7.1 NMSA 1978.

~~[M.] “Immediate family member”~~ means a person’s spouse, children, parents, brothers and sisters.

**N.] M. “Inner envelope”** means the official envelope, prescribed by the secretary of state, given to the voter along with an absentee or provisional ballot into which the voter places the ballot after it is voted and which is used to preserve the secrecy of the voter’s ballot.

**[O.] N. “Official transmittal envelope”** means the official envelope used by the county clerk to mail absentee ballot materials, to include the inner and outer envelopes.

**[P.] O. “Outer envelope”** means the official envelope, prescribed by the secretary of state, which has information that will identify the voter and contains a sworn affidavit, into which the voter places the inner envelope, containing an absentee ballot.

**[Q.] P. “Overvoted ballot”** means a ballot on which the voter has selected more than the number of candidates to be elected for that contest, or in both the affirmative and negative on a ballot question.

**[R.] Q. “Provisional ballot envelope”** means the official envelope, prescribed by the secretary of state, which has information that will identify the provisional voter, purpose the provisional ballot was issued and contains a sworn affidavit and a blank voter registration certificate, into which the provisional voter places the inner envelope.

**[S.] R. “Replacement absentee ballot”** means a ballot that is processed as a provisional ballot,

provided to a voter whose name appears on the absentee ballot register or signature roster as having been issued an absentee ballot and who has affirmed that the ballot was not received or voted on pursuant to the Election Code, Section 1-6-16 NMSA 1978. The ballot shall be placed in a provisional ballot envelope prescribed by the secretary of state and processed within the timeframe specified in the Election Code, Section 1-6-16 NMSA 1978. A voter may also be issued a ballot at the office of the county clerk, an alternate voting location, a mobile alternate voting location, or at a polling location on election day, to be filled out and fed by the voter into the electronic voter tabulator if that voter affirms that their absentee ballot was not voted.

**[T.] S. “Undervoted ballot”** means a ballot that is not a blank ballot and on which the voter has selected at least one candidate or answered at least one ballot question in accordance with the instructions for that ballot type, but on which the voter has selected fewer than the number of alternatives allowed in a candidate contest or on a ballot question.

**[U.] T. “Voting response area”** means the place on a ballot the voter is instructed to mark the voter’s selection for a candidate or question. [1.10.12.7 NMAC - Rp, 1.10.12.7 NMAC, 4/24/2018; A, 4/7/2020]

#### **1.10.12.9 ABSENTEE VOTING:**

**A.** A voter shall have the right to vote by absentee ballot for all candidate contests and ballot questions as if the voter were casting the ballot in person at their election day polling place. Absentee ballots are provided as follows:

**(1)** By mail - by completing and signing an application as provided in the Election Code, Section 1-6-5 NMSA 1978 and received by the office of the county clerk, pursuant to the Election Code, Section 1-6-10 NMSA 1978 during the regular hours and days of business.

**(a)** A voter who is required to present identification and has not done so at the time the voter’s ballot is to be mailed to them, shall be sent a ballot that is processed as a provisional ballot, ~~[along with a provisional ballot envelope prescribed by the secretary of state,]~~ and shall include instructions on how to provide the required identification pursuant to the Election Code, Section 1-4-5.1 NMSA 1978.

**(b)** A blind or visually impaired voter pursuant to the Election Code, Section 1-9-7.1 NMSA 1978, may request an electronically transmitted ballot by completing an absentee application and executing a statement certifying blindness. The county clerk shall provide an absentee ballot through electronic transmission, enabling the use of one’s personal nonvisual or low vision access technology to independently mark the ballot. The electronic transmission shall also include instructions on how the voter accesses the ballot, marks their selections, returns the ballot, as well as, the voter certificate as required in the Election Code, ~~[Subsections C and D]~~ Subsection C of Section 1-6-8 NMSA 1978, which shall be completed, signed and included with the returned ballot, in the outer envelope.

**(i)** The secretary of state shall prescribe an official transmittal envelope such that the blind or visually impaired voter can distinguish it for the purposes of returning the absentee ballot.

**(ii)** Delivery of electronically transmitted ballots shall be by a computer system secured by intrusion detection and protection systems.

**(2)** Early - by completing and signing an application at the office of the county clerk beginning 28 days before the election, or 20 days prior to the election at an alternate voting location or mobile alternate voting location in accordance with the Election Code, Section 1-6-5 NMSA 1978.



(a)

Each county clerk shall ensure that the employee issuing ballots at the office of the county clerk and precinct board members at the alternate voting location or mobile alternate voting location are trained on the accessible voting device of the voting tabulator so that any voter may mark a ballot independently.

(b)

A voter who is required to present a physical form of identification and does not submit it upon requesting to vote early shall be issued a provisional ballot in accordance with the Election Code, Section 1-12-7.1 NMSA 1978.

(3)

A federal qualified elector or emergency response provider may apply for an absentee ballot in accordance with the Uniform Military and Overseas Voter Act.

B.

A voter who has been issued an absentee ballot by mail or via electronic delivery shall not be allowed to vote in person, other than under the following conditions:

(1) In

accordance with the Election Code, Section 1-6-16 NMSA 1978, a voter who has not received, or if received, has not voted the ballot, will be issued a replacement absentee ballot that is processed as a provisional ballot. The replacement absentee ballot may be mailed to the voter, to include express mail, if the county clerk deems necessary, or issued in person at the office of the county clerk, alternate voting location or mobile alternate voting location. Once voted, the voter shall place the replacement absentee ballot in an outer envelope and shall complete and sign the attached sworn affidavit.

(2)

The voter, by executing a sworn affidavit at their election day polling place affirms that they have not received, or if received, have not voted the ballot, will be issued a replacement absentee ballot that is processed as a provisional ballot, along with a provisional ballot envelope prescribed by the secretary of state.

(3) A

replacement absentee ballot issued at the office of the county clerk, alternate voting location, mobile alternate voting location or election day polling place must be voted on prior to the voter leaving the premises, provided however, that the ballot shall be not be cast in the voting tabulator, but placed and sealed in a provisional ballot envelope prescribed by the secretary of state to undergo the subsequent provisional qualification process by the county clerk.

(4) The

voter, by executing a sworn affidavit affirming that they did not and will not vote the mailed ballot that was issued, may appear at the office of the county clerk, an alternate voting location or a mobile alternate voting location and be issued a replacement ballot to be filled out and fed by the voter into the electronic vote tabulator.

[1.10.12.9 NMAC - Rp, 1.10.12.9 NMAC, 4/24/2018; A, 4/7/2020]

#### 1.10.12.13 VOTE TABULATION:

A. Ballots shall be tabulated for the reporting of votes pursuant to the Election Code, Section 1-12-70 NMSA 1978.

(1) Early voted

ballots, not by mail, cast on a voting tabulator shall be counted separately from absentee by-mail ballots in accordance with the Election Code [~~Section 1-6-5.4 NMSA 1978~~] and recorded in the early vote by machine counting group.

(a)

If an early voted ballot is returned by the voting tabulator as overvoted or blank, the ballot shall be accepted by the voting tabulator only after requesting and receiving a declaration by the voter of their intent to cast the overvoted or blank ballot as is.

(b)

An early voter who declares their intent to cast the overvoted or blank ballot, shall have their ballot cast on the voting tabulator. For overvoted ballots, only those contests receiving no more than the allotted selections

for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be tabulated; for blank ballots, no votes will be tabulated.

(c)

An early voter who declares their intent to not cast the overvoted or blank ballot shall have their ballot rejected by the voting tabulator without the tabulation of votes. The overvoted ballot shall be spoiled in conjunction with Section 1-12-62 NMSA 1978. The county clerk or precinct board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope and return the spoiled ballot envelope to the county clerk. The voter shall then be issued a new ballot, be instructed how to mark their selection of alternatives allowed in any candidate contest or ballot question in the voting response area and how to personally feed the ballot into the voting tabulator.

(i)

In the event the voter does not wish to spoil their voted ballot and declines a new ballot, the overvoted ballot shall be delivered to the absentee precinct board, after the close of early voting, to be hand tallied in accordance with 1.10.23 NMAC. The ballot will be counted and recorded in the early vote by hand tally counting group; or,

(ii)

if deemed necessary by the county clerk, a high speed central cast tabulator may be designated, programmed and certified for the tabulation of such ballots. The absentee precinct board will adjudicate the overvoted or blank ballot and count and record it in the early vote by hand tally counting group.

(d)

If an early voted ballot cast is misread after being fed into the voting tabulator, the voter shall be instructed to insert the ballot in a different orientation. If the ballot is misread again, the ballot will be spoiled, and the county clerk or precinct board member shall instruct the voter to insert the spoiled ballot into a spoiled



ballot envelope and return it to the county clerk in conjunction with the Election Code, Section 1-12-62 NMSA 1978. The voter shall then be issued a new ballot, be instructed how to mark their selection of alternatives allowed in any candidate contest or ballot question in the voting response area and how to personally feed the ballot into the voting tabulator. In the event the voter does not wish to spoil their voted ballot and declines a new ballot, the misread ballot shall be delivered to the absentee precinct board, after the close of the early voting period, by the precinct board, to be hand tallied in accordance with 1.10.23 NMAC. The ballot will be counted and recorded in the early vote by hand tally counting group.

**(2)** Absentee by-mail ballots, either returned by mail or hand-delivered, shall be fed into a voting tabulator by an absentee precinct board member in accordance with the Election Code, Sections 1-6-11 and 1-6-14 NMSA 1978 as follows:

**(a)** An overvoted or blank absentee by-mail ballot shall be accepted by the voting tabulator after it has been adjudicated by the absentee precinct board. The ballot will be counted and recorded in the absentee by machine counting group.

**(b)** If an absentee by-mail ballot is misread after being fed into a voting tabulator, an absentee precinct board member shall feed it into the voting tabulator a second time. An absentee by-mail ballot that is rejected after two attempts shall be adjudicated by the absentee precinct board, hand tallied by precinct as provided in 1.10.23 NMAC and counted and recorded in the absentee by hand tally counting group.

**(c)** Returned absentee ballots that were issued via electronic transmission to a blind or visually impaired voter will not contain programmed ballot markers necessary for tabulation by the voting tabulator. These ballots shall be hand tallied by the absentee precinct board, by precinct and

shall be counted and recorded in the absentee by hand tally counting group.

**(3)** Returned military-overseas ballots, either mailed back or electronically submitted shall be counted separately from all other absentee by-mail or early voted ballots. The county clerk shall determine whether returned military-overseas ballots are to be hand-tallied, or if necessary, to designate, program and certify a voting tabulator for the tabulation of such ballots.

**(a)** Returned military-overseas ballots that do not contain programmed ballot markers necessary for tabulation by a voting tabulator, shall be hand tallied by the absentee precinct board, by precinct and shall be counted and recorded in the federal overseas hand tally counting group.

**(b)** When a voting tabulator is used for the tabulation of military-overseas ballots that contain programmed ballot markers, the ballots shall be fed into the voting tabulator by an absentee precinct board member and the votes shall be counted and recorded in the federal overseas by machine counting group.

**(c)** An overvoted or blank military-overseas ballot shall be accepted by the voting tabulator after it has been adjudicated by the absentee precinct board. The ballot will be counted and recorded in the federal overseas by machine counting group.

**(d)** If a military-overseas ballot is misread after being fed into a voting tabulator, an absentee precinct board member shall feed it into the voting tabulator a second time. A military-overseas ballot that is rejected after two attempts shall be adjudicated by the absentee precinct board, hand tallied by precinct as provided in 1.10.23 NMAC and counted and recorded in the federal overseas hand tally counting group.

**(4)** Undervoted ballots shall be accepted by the voting tabulator, regardless of

either being cast early at the county clerk's office, an alternate voting location or mobile alternate voting location or absentee by-mail ballot and only those contests or ballot questions receiving a selection by the voter will be tabulated.

**B.** The public counter number of the voting tabulator will not increase in the above scenarios involving an overvoted or blank ballot, unless the ballot is accepted by the voting tabulator after requesting and receiving a declaration by the voter of their intent to cast the overvoted or blank ballot as is or by adjudication of the absentee precinct board. An undervoted ballot fed into the voting tabulator will increase the public counter number.

**C.** Overvoted, blank, undervoted or misread ballots required to be hand tallied shall be recorded on the prescribed hand tally sheet, by precinct, as follows:

**(1)** Each ballot shall increase the ballots cast count by one;

**(2)** On an overvoted ballot, only those contests receiving no more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be hand tallied;

**(3)** No votes for either candidate contests or ballot questions will be hand tallied on a blank ballot;

**(4)** On an undervoted ballot, only those contests or ballot questions receiving a selection by the voter will be hand tallied; and,

**(5)** Only those contests receiving no fewer, nor more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be hand tallied on a misread ballot.

**D.** An overvoted, blank or undervoted ballot cast by a voter, after going through the above process shall be recorded as a "ballot cast" and proper voting credit shall



be given on the respective voter registration record on file with the county clerk.

**E.** In accordance with the Election Code, Section 1-12-70 NMSA 1978, the reporting of vote totals by precinct and voting method shall be combined to the extent necessary to protect the secrecy of each voter's ballot.

[1.10.12.13 NMAC - Rp, 1.10.12.13 NMAC and 1.10.12.14 NMAC, 4/24/2018; A, 4/7/2020]

**1.10.12.15 [ABSENTEE] ELECTION PRECINCT BOARD, COUNTY CLERK AND COUNTY CANVASS BOARD DUTIES:**

**A.** An absentee precinct board shall be created for the purpose of determining voter eligibility, counting and tabulating absentee by-mail and early voted ballots cast. The board shall be comprised of precinct board members in accordance with the Election Code, Section 1-2-12 NMSA 1978 provided that the counting and tabulation of absentee by-mail ballots shall remain separate from early voted ballots.

**(1)** Pursuant to the Election Code, Section 1-6-11 NMSA 1978, the absentee by-mail ballots shall be delivered along with all necessary supplies, including red pencils or red pens, to be used as a writing instrument, for absentee precinct board members. Only the presiding judge shall be issued a black or blue ink pen for signing and filling out required documents.

**(2)** The processing of absentee by-mail ballots shall be in accordance with the Election Code, Section 1-6-14 NMSA 1978.

**(a)** An absentee by-mail ballot inner envelope containing two ballots shall be counted if the determination can be made that the outer envelope is signed by both voters, the absentee ballot register confirms the issuance of absentee by-mail ballots to the voters who signed, and it has been determined that the voters have not already voted in the election. Absentee ballot envelopes not in

compliance with one or more of the above requirements shall be changed to "rejected" in the absentee ballot register, with the reason for rejection.

**(b)**

An absentee by-mail ballot inner envelope containing no ballot shall be "accepted" if the outer envelope is signed by the voter, the absentee ballot register confirms the issuance of the ballot to the voter who signed the outer envelope, and the voter has not voted in any other manner during the election. Absentee ballot envelopes not in compliance with one or more of the above requirements shall be changed to "rejected" in the absentee ballot register, with the reason for rejection.

**(3)** Pursuant to the Election Code, Subsections C and D of Section 1-6-14 NMSA 1978, an absentee by-mail ballot envelope may be challenged by a lawfully appointed challenger. A voter who satisfies the reason for the affirmed challenge before the conclusion of the county canvass shall have their ballot accepted and counted. The voter's record on the absentee ballot register shall be changed from "rejected" to "accepted", and the notation "challenged-affirmed" on the absentee by-mail ballot envelope shall be crossed out, signed and dated by either the presiding judge of the absentee precinct board or a member of the county canvassing board, dependent upon when the voter satisfies the reason for the affirmed challenge. If the ballot is hand tallied it shall be recorded in the absentee by-mail hand tally counting group. If the ballot is tabulated by a voting tabulator, it shall be recorded in the absentee by-mail machine counting group.

**(4)** An absentee by-mail ballot, processed as a provisional ballot, in a provisional ballot envelope, prescribed by the secretary of state because the first-time voter did not provide the required form of physical identification prior to the ballot issuance, shall be separated from all other absentee by-mail ballots and provided to the county clerk.

The county clerk shall perform the required provisional qualification process to the ballots in accordance with the Election Code, Section 1-6-14 NMSA 1978 and with 1.10.22 NMAC.

**B.** Upon the last day to early vote, all early voted ballots shall be delivered to the county clerk, who will transfer custody to the absentee precinct board. A receipt containing the serial number and public counter number indicating the votes recorded on the voting tabulator, number of ballot boxes, number of provisional ballots, number of ballots to be hand tallied and the signature of the respective alternate or mobile alternate voting location presiding judge shall be provided. After verifying the information for accuracy, the county clerk or absentee precinct board presiding judge shall sign the receipt indicating custody of the early voting returns, voting tabulator and ballot boxes. Keys to the alternate or mobile alternate voting location and the key or security token to access the voting tabulator shall also be transferred to the county clerk. The receipt shall be maintained on file with the county clerk.

**(1)** The absentee precinct board shall process early voted ballots cast by closing the polls and running the results reporting tapes for each voting tabulator used during the early voting period. The absentee precinct board shall be responsible for hand tallying any early voted ballot not tabulated by the voting tabulator in accordance with the Election Code, Section 1-1-5.2 NMSA 1978.

**(2)** Provisional ballots issued during early voting in the office of the county clerk, alternate voting location or mobile alternate voting location for the reasons set out in the Election Code, shall be provided to the county clerk.

**C.** The county canvassing board shall canvass the election returns and ascertain whether any discrepancies, omissions or errors appear on the face of the election returns, in accordance with the Election Code, Section 1-13-1 to 1-13-22 NMSA 1978.



**D.** All provisional ballots issued to absent or early voters are subject to requalification in the event of a recount or contest as prescribed in the Election Code, Section 1-14-22 NMSA, 1978. [1.10.12.15 NMAC - Rp, 1.10.12.15 NMAC, 4/24/2018; A, 4/7/2020]

## SECRETARY OF STATE, OFFICE OF

**This is an amendment to 1.10.23 NMAC, Sections 7, 9 and 10 and repealing Sections 12 and 13, effective 4/7/2020.**

**Explanatory statement:  
Percentages in Section 9 were spelled out to conform to current legislative style.**

### 1.10.23.7 DEFINITIONS:

~~[A.] “Abbreviated name”~~ means shortened given or surname including, but not limited to, ‘Pat’ for Patrick, Patricia, or Patricia, ‘Wm’ or ‘Bill’ for William, ‘Rick’ for Ricardo or Richard, ‘Mtz’ for Martinez.]

~~[B.] A. “Absentee ballot”~~ means a method of voting by ~~[ballot]~~ mail, accomplished by a voter who is absent from the voter’s polling place on election day. “Absentee ballot” has the same definition under the Absent Voter Act as a mailed ballot.

~~[C.] “Absent voter precinct board”~~ means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.]

~~[D.] B. “Absentee provisional ballot”~~ means the paper ballot issued to a provisional absentee voter.

~~[E.] C. “Audit”~~ means a check of the voting systems conducted pursuant to Section ~~[1-14-13.1]~~ 1-14-13.2 NMSA 1978.

~~[F.] D. “Ballot”~~ means a paper ballot card that is tabulated on an optical scan vote tabulating system or hand tallied.

~~[G.] E. “Contest”~~ means court litigation that seeks to overturn the outcome of an election pursuant to Sections 1-14-1 *et seq.* NMSA 1978.

~~[H.] F. “County canvassing board”~~ means the board of county commissioners in each county.

~~[I.] G. “Designated polling place”~~ means the voting location assigned to a voter based on that voter’s residence within a precinct of the county.

~~[J.] H. “High speed central count [marksense] ballot tabulator”~~ means a self-contained optical scan vote tabulating system that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

~~[K.] “In-lieu-of absentee ballot”~~ means a ballot provided to a voter at his designated polling place when the absentee ballot was not received by the voter before election day.]

~~[L.] I. “Observer”~~ means a voter of a county who has been appointed by a candidate, political party chair, or election related organization pursuant to the provisions of the Election Code.

~~[M.] J. “Optical scan”~~ or ~~[marksense] “EVT ballot”~~ means a ballot used on an optical scan vote tabulating system or EVT ~~[marksense]~~ voting system.

~~[N.] K. “Optical scan vote tabulating system”~~ or ~~“electronic vote tabulating (EVT) [marksense] voting system”~~ means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot imprinted on either or both faces with text and voting response areas, and includes a high-speed central count ~~[marksense]~~ ballot tabulator. The ~~[marksense or]~~ optical scan vote tabulating system records votes by means of marks made in the voting response areas.

~~[O.] L. “Overvote”~~ means the selection by a voter of more than the number of alternatives allowed in a voting response area.

~~[P.] M. “Provisional absentee voter”~~ means a voter who votes on an absentee provisional

ballot after initially attempting to vote by absentee ballot but whose name does not appear on the signature roster or has failed to meet the voter identification requirements in the Election Code.

~~[Q.] N. “Provisional ballot”~~ means a ballot that is marked by a provisional voter.

~~[R.] O. “Provisional voter”~~ means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

~~[S.] P. “Recheck”~~ shall have the meaning given in Subsection A of Section 1-1-6 NMSA 1978.

~~[T.] Q. “Recount”~~ shall have the meaning given in Subsection B of Section 1-1-6 NMSA 1978 and shall include hand recounts conducted pursuant to this part.

~~R. “Recount precinct board”~~ means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.

~~[U.] S. “Signature roster”~~ means the certified list of voters at a polling place which is signed by a voter when presenting himself on election day.

~~[V.] T. “Tally sheet”~~ means a document prepared by the county clerk and used for the counting of ballots that are electronically tabulated.

~~[W.] U. “Undervote”~~ means the failure of a voter to select any of the alternatives in a voting response area.

~~[X.] V. “Vote”~~ shall have the meaning given in ~~[Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978]~~ Section 1-1-5.2 NMSA 1978.

~~[Y.] W. “Voter”~~ means any ~~[person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.]~~ qualified elector or federal qualified elector who is registered under the provisions of the Election Code.



~~[Z]~~ X. “Voting response area” means the place on a ballot where the voter is instructed to mark his preference for a candidate or question.

[1.10.23.7 NMAC - N/E, 10/2/2008; A/E, 11/3/2008; A, 4/7/2020]

### 1.10.23.9 VOTING SYSTEM CHECK

**PROCEDURES:** This section applies to voting system checks for all federal offices, for governor, and for the statewide elective office other than the office of the governor for which the winning candidate won by the smallest percentage margin of all candidates for statewide office in New Mexico, as required by Section 1-14-13.2 NMSA 1978.

#### A. Auditor functions (1) Selection

**of precincts for the voting system check.** The number of precincts to be selected for each contest shall be based on the margin between the top two candidates as determined in Table 1 of Section 1-14-13.2 NMSA 1978. (The calculations for determining the number of precincts in the sample assume that the maximum margin shift in any precinct will not exceed thirty percent. Achieving the ninety percent probability of detection with the number of precincts in the sample as indicated in Table 1 requires that the probability of selecting a precinct is proportional to the precinct size.)

(a)

By no later than 12 calendar days after the election, the auditor shall select the precincts for the voting system check pursuant to the precinct selection process set forth in Section 1-14-13.2 NMSA 1978.

(b)

The auditor will conduct an agreed upon procedures engagement in accordance with AICPA statements on standards for attestation engagements for procedures set forth in Section 1-14-13.2 NMSA 1978 and 1.10.23.9 NMAC.

(c)

Precincts will be randomly selected using a process that is visually observable, such as rolling dice or selecting pieces of paper from a box,

with the probability of selection being proportional to the number of persons registered to vote in the last election in each precinct.

(d)

The random sampling process shall be open to public observation. At least seven days prior to the random sampling conducted pursuant to this subsection, the secretary of state shall post notice on its web site of the time, date, and location of the random sampling.

(2)

#### Notification of the county clerks:

By no later than 13 days after the election the auditor shall notify the county clerks of the precincts that have been selected for the voting system check.

(a)

The auditor shall provide the county clerks with tally sheets for the offices to be subjected to voting system checks in the selected precincts.

(b)

The auditor shall reference rules and guidelines that have been provided in advance by the secretary of state for conducting the hand counts and reporting the results to the auditor.

(3) Analysis

**of results:** The auditor shall compare the hand count results with the vote tabulator results to determine if further sampling or a full hand count is needed for any office being subjected to the voting system check.

(a)

The auditor determines within 26 days after the election if further sampling is required. The determination is made by 1) calculating the difference between the vote tabulator counts divided by the votes cast for the office in the sample as reported by the vote tabulators and the hand counts divided by the votes cast for the office in the sample as reported by the hand counts for the putative first place candidate, 2) calculating the difference between the vote tabulator counts divided by the votes cast for the office in the sample as reported by the vote tabulators and the hand counts divided by the votes cast for the office in the sample as reported by the hand counts for the

putative second place candidate, and 3) subtracting the result in 2) for the putative second place candidate from the result in 1) for the putative first place candidate. For any office being subjected to the voting system check, if the result in 3) exceeds ninety percent of the reported margin between the first and second place candidates, a voting system check must be conducted on an additional sample of the same size as the original sample. The procedures in subsection A are repeated for selecting the additional sample and notifying the county clerks. If the result in 3) does not exceed ninety percent of the reported margin between the first and second place candidates, the auditor reports to the secretary of state that no further checking of voting systems for that office pursuant to Section 1-14-13.2 NMSA 1978 is required.

(b)

If a second sample was required, the auditor determines within 39 days after the election if a full hand count is required. The determination is made by 1) calculating the difference between the vote tabulator counts divided by the votes cast for the office in both samples as reported by the vote tabulators and the hand counts divided by the votes cast for the office in both samples as reported by the hand counts for the putative first place candidate, 2) calculating the difference between the vote tabulator counts divided by the votes cast for the office in both samples as reported by the vote tabulators and the hand counts divided by the votes cast for the office in both samples as reported by the hand counts for the putative second place candidate, and 3) subtracting the result in 2) for the putative second place candidate from the result in 1) for the putative first place candidate. For any office being subjected to the voting system check, if the result in 3) exceeds ninety percent of the reported margin between the first and second place candidates, a full hand count of all precincts must be conducted for the contest. If the result in 3) does not exceed ninety percent of the reported margin between the first and second



place candidates, the auditor reports to the secretary of state that no further checking of voting systems for that office pursuant to Section 1-14-13.2 NMSA 1978 is required.

**(4) Reporting**

**results:** The auditor shall, within three days of receiving the hand counting results from the county clerks for the initial sample, an additional sample, if applicable, and a full hand recount, if applicable, submit a report to the secretary of state and to the public that shall include, for each office subject to the voting system check, the numbers and names of the precincts in the initial sample and, if applicable, the second sample for each office; the outcome of full recounts, if conducted; a comparison of the vote tabulator results with the hand counts in each precinct in the samples and the full recount, if conducted; a comparison of the vote tabulator results with the hand counts for all precincts; a comparison of the reported margin between the first and second place candidates with the error rates in the first sample and, if applicable, in both samples and for a full recount, if conducted. Within 30 days of receiving the hand counting results from the county clerks, a final report to the secretary of state and to the public shall also include a description of the procedures used for the voting system check.

**B. Secretary of**

**state functions:** The secretary of state shall contract with an auditor whose firm name appears on the state auditor's list of independent public accountants approved to perform audits of New Mexico government agencies.

**(1)** Within 28 days of the closing of voter registration, the secretary of state shall provide the auditor with the number of registered voters in each precinct in the state.

**(2)** Upon receipt of the county canvass results and no later than 10 days after the date of the election, the secretary of state shall provide the auditor with the voting results from each county

to be used to determine the size of the random sample of precincts for the voting system check.

**(3)** The secretary of state shall provide a venue and the necessary supplies and equipment for use by the auditor in publicly selecting precincts for each office subject to the voting system check.

**(4)** The secretary of state shall provide the auditor with the forms or templates to be used by the county clerks and by the auditor for recording, reporting and analyzing results of the voting system check. These forms or templates may include those used for notifying county clerks of the precincts selected for each office, for tallying hand counts, for reporting hand count results to the auditor, for analyzing results of the voting system check by the auditor, and for reporting results of the voting system check to the secretary of state and state canvassing board. The secretary of state shall provide tally sheets to the auditor for only those precincts and offices being tallied as part of the voting system check.

**(5)** The secretary of state shall arrange for the communications channels and terminals to be used by the auditor for communications of information related to the voting system check to and from the county clerks.

**(6)** The secretary of state shall provide guidelines to the county clerks for conducting the hand counts and reporting the results to the auditor.

**(7)** The secretary of state shall post on the web the intermediate and final results reported by the auditor as soon as they are available.

**C. County clerk functions**

**(1)** Early voting, absentee voting and election day voting ballots counted by vote tabulators by the time of closing of the polls on election night will be subject to the voting system check. Therefore, it is recommended that sorting of these ballots by precinct should be done in advance.

**(a)** Within 10 days of the notice to conduct the voting system check, the county clerk shall report their results to the auditor.

**(b)** The county clerk shall choose a location for the voting system check that is accessible to the public.

**(c)** The county clerk or her designee shall arrange for transportation of ballots to the site of the voting system check and contact the sheriff or state police to move the ballot boxes from the current place of storage to the site of the voting system check.

**(d)** At least one person in addition to the county clerk shall witness all movement of ballots during the voting system check, and all movement of ballots from and to the ballot box during the voting system check shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted and the identity of the witness shall be documented.

**(e)** Prior to conducting the voting system check, the county clerk shall ~~[seek an order from the district judge permitting the county clerk to open]~~ have a district judge present when opening those ballot boxes containing ballots from the precincts selected for the voting system check.

**(f)** The county clerk shall assign counting teams of at least two members (a reader and a marker) and preferably three, to particular precincts. The third member, if present, verifies that what the reader reads is correct and is what the marker marks. The team members shall consist of at least two distinct political parties, if possible.

**(2) Hand counting procedures.** The ballots from the precincts selected for auditing shall be hand tallied pursuant to the procedures in this subsection.



(a)

For election day voting, and when possible, for absentee and early voting, the counting team shall ensure that the serial number for the voting system and the type of ballot to be counted are prominently displayed on the tally sheet. When multiple vote tabulators are used for a precinct as in early voting and absentee voting, this rule may be ignored.

(b) To

count the votes by a two person team, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. With a three person team the third person verifies that the marker marks correctly and the reader reads correctly. Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader with the verifier shall confirm these amounts. The marker, the reader and, if present, the verifier shall sign the tally form.

(c)

If a two person counting team is used, it is recommended that the ballots be counted again using the sort and stack method. With this method, the ballots are sorted into stacks by candidate, undervotes and overvotes. The stacks are then hand counted. The results of the sort and stack method shall be compared to the hand tally method. Any discrepancies may require the processes in (b) and (c) to be repeated. The reasons for the discrepancies shall be noted on the tally sheet.

(d)

If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall make the appropriate determination as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section ~~[1-9-4.2]~~ 1-1-5.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. ~~[1.10.23.12 NMAC contains-~~

illustrative examples of how to discern voter intent.]

(e)

Upon completion of the hand counting of the initial sample of precincts included in the voting system check, and of subsequent samples, if conducted, the results of the hand counting shall be reported to the auditor within 10 days of the notice to conduct the voting system check. If a full hand count is required pursuant to Section 1-14-13.2 NMSA 1978, the results shall be reported as soon as practicable.

[1.10.23.9 NMAC - N/E, 10/2/2008; A/E, 10/16/2008; A/E, 11/3/2008; A/E, 10/15/2010; A, 4/7/2020]

#### **1.10.23.10 RECOUNT AND RECHECK PROCEDURES:**

This section applies to rechecks and recounts conducted pursuant to Sections 1-14-14 and 1-14-24 NMSA 1978, and recounts resulting from audits performed under Section 1-14-13.2 NMSA 1978. ~~[Except as otherwise provided in Subsection E of Section 1-14-23 NMSA 1978 and this section, the]~~ The recheck and recount procedures in this section shall be used in conjunction with the procedures in Sections 1-14-16 and 1-14-18 through 1-14-23 NMSA 1978, along with guidance from the secretary of state.

##### **A. Time and place; ballot security.**

(1) Pursuant to Subsection A of Section 1-14-16 NMSA 1978, the recount or recheck shall be held at the county ~~[courthouse]~~ seat.

(2) The county clerk shall arrange for transportation of ballots to the recount or recheck site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the recount or recheck site.

(3) The county clerk shall convene the ~~[absent voter]~~ recount precinct board no more than 10 days after the filing of the application for a recount or recheck, notice of an automatic recount, or notice of a recount required by Subsection B of Section 1-14-13.2 NMSA 1978.

(4)

The presiding judge of the ~~[absent voter]~~ recount precinct board shall assign counting teams of at least two members, of opposite political parties if possible, to particular precincts.

(5)

At least one person in addition to the district judge or presiding judge shall witness all movement of ballots during the recount, and all movement of ballots from and to the ballot box during the recount process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.

**B. Random selection of ballots to determine whether the recount shall be hand tallied or electronically tabulated.** This subsection does not apply to recounts resulting from audits performed under Section 1-14-13.2 NMSA 1978. To determine whether votes shall be recounted using optical scan vote tabulating systems pursuant to Section 1-14-23 NMSA 1978, the ~~[absent voter]~~ recount precinct board shall electronically tabulate ~~[absentee]~~ recount ballots from the precincts to be recounted in accordance with the procedures in this subsection.

(1)

A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into an ~~[M-100]~~ optical scan vote tabulating system. A summary zeros results report shall be generated and certified by the precinct board.

(2)

~~[Absentee]~~ Recount ballots equal to at least the number required by Subsection B of Section 1-14-23 NMSA 1978 shall be fed into the optical scan vote tabulating system. Any ~~[absentee]~~ recount ballots rejected by the optical scan vote tabulating system shall be placed back into the ballot boxes and additional ~~[absentee]~~ recount ballots shall be inserted until the number of ballots tabulated by the system is



equal to at least the amount required by Subsection B of Section 1-14-23 NMSA 1978. If the [absent-voter] recount precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedure in Paragraph (1) of this subsection shall be repeated for each precinct being tabulated.

(3) The [absent-voter] recount precinct board shall then hand tally the votes from the same ballots counted by the optical scan vote tabulating system in accordance with the procedures in [Subsection E of this section] Section 1-14-23 NMSA 1978.

~~[(4)]~~ Pursuant to Subsection C of 1-14-23 NMSA 1978, for statewide or federal offices, if the results of the hand-tally and the electronic vote tabulating system differ by one-fourth of one percent or less, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.

~~[(5)]~~ Pursuant to Subsection D of 1-14-23 NMSA 1978, for offices other than statewide or federal offices, if the results of the hand-tally and the optical scan vote tabulating system differ by the greater of one percent or less, or two votes, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.]

#### C. Electronic recount procedures.

(1) ~~[Class A counties.]~~ If the remaining ballots in a class A county are to be re-tabulated using optical scan vote tabulating systems, the absent voter precinct board shall use an M-650 optical scan vote tabulating system in accordance with the procedures in this paragraph, provided that the M-650 optical scan

vote tabulating system was not used to tabulate voted absentee, early in-person or election day ballots. If the M-650 optical scan vote tabulating system was used to tabulate voted ballots, the absent voter precinct board shall use M-100 optical scan vote tabulating systems in accordance with the procedures in Paragraph (2) of this subsection].

~~[(a)]~~ To recount the ballots for a particular ballot type (e.g., absentee ballots, election day ballots, early in-person ballots), a results cartridge programmed with ballot configurations for all precincts to be recounted in the county shall be inserted into the optical scan vote tabulating system. A summary zeros report shall be generated and certified by the absent voter precinct board.

~~[(b)]~~ The ballots for the ballot type being recounted shall be inserted into the optical vote tabulating system.

~~[(c)]~~ The votes from any ballots rejected by the system shall be tallied by hand in accordance with the procedures in Subsection E of this section.

~~[(d)]~~ A machine report shall be generated for each precinct after ballots are tabulated for that precinct, and the machine results shall be zeroed out. The ballots for the next precinct shall be tabulated until all ballots for the ballot type being recounted are tabulated.

~~[(e)]~~ The procedures in this paragraph shall be repeated for each ballot type being recounted.

~~[(2)]~~ **Non-class A counties.]** If the remaining ballots in a non-class A county are to be re-tabulated using optical scan vote tabulating systems, the [absent-voter] recount precinct board shall use [M-100] optical scan vote tabulating systems selected at random by the county clerk in accordance with the procedures in this paragraph.

(a) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot

configuration for the precinct to be tabulated shall be inserted into the optical scan vote tabulating system chosen by the county clerk.

(b) A summary zeros report shall be generated and certified by the precinct board.

(c) The ballots for the ballot type (e.g., absentee ballots, election day ballots, early in-person ballots) and precincts to be recounted shall be fed into the optical scan vote tabulating system.

(d) All ballots rejected by the tabulator shall be tallied by hand in accordance with the procedures in Subsection E of this section.

(e) A machine report shall be generated and certified by the [absent-voter] recount precinct board.

(f) If the [absent-voter] recount precinct board uses a results cartridge programmed with ballot configurations for all precincts in the county, then the procedures in this paragraph shall be repeated for each ballot type being recounted. If the [absent-voter] recount precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedures in this paragraph shall be repeated for each precinct being tabulated.

~~[(3)]~~ (2) If the voted ballots in a precinct are unavailable or incomplete for recount, the district judge, in consultation with the county clerk, may order that a results tape or report be regenerated from the results cartridge that was used to tabulate the voted ballots.

#### D. Review of rejected ballots and re-tally of provisional, in-lieu of absentee ballots and other paper ballots in a recount.

(1) The district judge shall orally order that any ballot boxes, envelopes, or containers that hold provisional, in-lieu of absentee, and absentee provisional ballots be opened one at a time.

(2) The presiding judge shall count the total



number of provisional, absentee provisional, and in-lieu of absentee ballots in each precinct and the number shall be compared to the previously certified signature roster count in that precinct and noted. Any discrepancies shall be noted.

(3) The county clerk shall review the qualification of all rejected provisional, absentee provisional, and in-lieu of absentee ballots pursuant to Section 1-12-25.4 NMSA 1978 and 1.10.22 NMAC.

(4) The ~~[absent voter]~~ recount precinct board shall review the qualification of all rejected absentee ballots in accordance with 1.10.12.15 NMAC and any other rejected ballots in accordance with applicable law.

(5) All previously and newly qualified ballots (including provisional, absentee provisional, in-lieu of absentee ballots, absentee ballots and other paper ballots) shall be recounted and the votes shall be added to the tally of the appropriate precinct.

(6) If any voting data changes as a result of this review, the county clerk shall update the report required in Subsection I of 1.10.22.9 NMAC.

**E. Hand counting procedures for recounts.** This subsection applies to hand recounts. The secretary of state shall provide tally sheets for only those races being recounted, and shall include options for marking undervotes and overvotes.

(1) The counting team shall ensure that the precinct and the ballot type (eg., election day, early in-person, absentee, in-lieu of absentee, and provisional) being counted are prominently displayed on the tally sheet.

(2) To recount the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet.

Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.

(3) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section ~~[1-9-4.2]~~ 1-1-5.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

(4) If a recount for an office selected for a voting system check is conducted pursuant to the provisions of Chapter 1, Article 14 NMSA 1978, the vote totals from the hand count of ballots for that office in precincts selected for the voting system check may be used in lieu of recounting the same ballots for the recount.

#### **F. Recount and recheck reconciliation procedures.**

(1) Upon completion of a recount, the district judge or presiding judge shall tabulate the total vote count from the machine generated tapes or reports and the tally sheets from the hand recount.

(2) The county clerk or secretary of state in a statewide race shall compare the results of each recount or recheck to the results of the county or statewide canvass. County clerks shall make available to the public and provide to the secretary of state the results of the recount or recheck within five days of the completion of the recount or recheck. The secretary of state shall combine the county files and place the results on the secretary of state's website.

(3) Pursuant to Subsection A of Section 1-14-18 NMSA 1978, the ~~[absent voter]~~ recount precinct board shall send the certificate of recount or recheck executed pursuant to Subsection D of

Section 1-14-16 NMSA 1978 to the proper canvassing board.

(4) In the event of a recount or recheck conducted pursuant to Section 1-14-14 NMSA 1978, if no error or fraud appears to be sufficient to change the winner, the county clerk may provide documentation of costs to the secretary of state, or directly to the candidate, for reimbursement from the money provided pursuant to Section 1-14-15 NMSA 1978. [1.10.23.10 NMAC - Rn & A/E, 1.10.22.11 & 12 NMAC, 10/2/2008; A/E, 11/3/2008; A/E, 10/15/2010; A, 4/7/2020]

#### **1.10.23.12 [STANDARDS FOR WHAT CONSTITUTES**

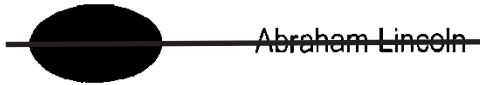
~~A VOTE:~~ All optical scan ballots that are read by a ballot scanner shall be counted in accordance with applicable provisions of the New Mexico Election Code. The following standards shall apply in determining whether a ballot has been properly voted and whether a vote should be counted for any office or ballot question when counting ballots by hand. In the event of a recount, a court should provide guidance as to whether the recount shall be conducted by a ballot scanner or by hand. These standards have been adopted in accordance with the New Mexico Election Code, where applicable.

~~A. Optical Scan 1 -~~ A ballot that is properly marked, as specified by the legally valid ballot instructions, in the target area for an office or ballot question shall be counted as a vote for that candidate or ballot response.

**Continued Next Page**



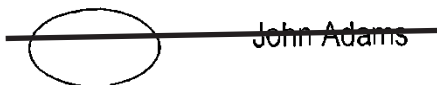
~~For Governor~~  
~~(Vote for one)~~



~~Valid Vote for Lincoln~~

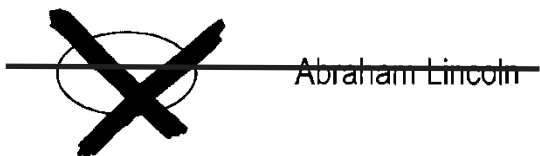
**B. — Optical Scan 2** - A ballot containing a clear mark indicating the intent of the voter, any portion of which is contained in the target area and does not enter into another target area, shall be counted as a vote for that candidate or ballot response:

~~For Governor~~  
~~(Vote for one)~~



~~Valid Vote for Washington~~

~~For Governor~~  
~~(Vote for one)~~




~~Valid Vote for Lincoln~~

**C. — Optical Scan 3** - A ballot that has any mark in the target area that partially extends into another target area or areas shall not be counted for that office or ballot question.



~~For Governor~~  
~~(Vote for one)~~

 George Washington


 Abraham Lincoln

 John Adams

~~Invalid vote~~

~~D. Optical Scan 4~~ - A ballot that has any mark in the target area that partially extends into an area surrounding a candidate or ballot response, other than its target area, shall be counted as a vote for the candidate or ballot response so marked:

~~For Governor~~  
~~(Vote for one)~~

 George Washington

 Abraham Lincoln

 John Adams

~~Valid Vote for Washington~~


~~E. Optical Scan 5~~ - A ballot properly marked with any device other than the marking device provided to the voter shall be counted:

~~F. Optical Scan 6~~ - A ballot marked with more than one type of marking device shall not be counted for any office or ballot question on the ballot:

~~G. Optical Scan 7~~ - A ballot with marks for more candidates in an office or more responses to a ballot question than permitted shall be deemed an over-vote, and no vote shall be counted for that office or ballot question:

~~For Governor~~  
~~(Vote for one)~~

 George Washington

 Abraham Lincoln

 John Adams

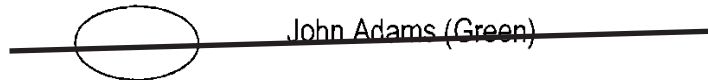
~~Invalid vote~~



**H. ~~Optical Scan 8~~** - A ballot with a proper mark in the straight party target area and with additional marks for candidates or ballot responses elsewhere on the ballot shall be counted for those candidates or ballot responses properly marked outside the straight party area. For the other offices on the ballot, the ballot shall be counted for the candidates of the political party for which the voter cast a straight party vote

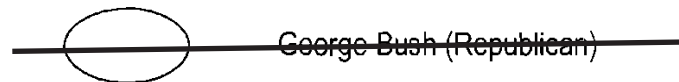


**~~For Governor~~**  
**(Vote for one)**



**Valid Vote for Lincoln**

**~~For Senator~~**  
**(Vote for one)**



**~~Valid Vote for Clinton~~**

**I. ~~Optical Scan 9~~** - A ballot with marks for more than one party in the straight party target areas, and with additional marks in the target areas of candidates or ballot responses elsewhere on the ballot, shall be counted only for those candidates or ballot responses properly marked.

(Continued Next Page)



Straight Democrat

Straight Republican

For Governor

(Vote for one)

George Washington (Democrat)

Abraham Lincoln ((Republican)

John Adams (Green)

Valid Vote for Adams

Straight Democrat

Straight Republican

For Governor

(Vote for one)

George Washington (Democrat)

Abraham Lincoln ((Republican)


John Adams (Green)


Valid Vote for Lincoln






~~For Governor~~  
~~(Vote for one)~~

 George Washington (Democrat)

 Abraham Lincoln (Republican)

 John Adams (Green)

~~Invalid vote~~

**J. Optical Scan 10** - A ballot on which writings or remarks in the target area appear to be ranking candidates (letters, numbers, etc.) shall be considered valid marks only if they do not exceed the number of candidates permitted to be elected for that office.

~~For Governor~~  
~~(Vote for one)~~

 George Washington


 Abraham Lincoln

 John Adams

~~Valid Vote for Lincoln~~

~~For Governor~~  
~~(Vote for one)~~

 George Washington

 Abraham Lincoln

 John Adams

~~Invalid vote~~



~~For Governor~~  
~~(Vote for two)~~

☒ 2 George Washington

☒ 1 Abraham Lincoln

☐ John Adams

~~Valid Votes for Lincoln & Washington~~

**K. — Optical Scan 11** - A ballot with any writings or remarks regarding one or more candidates or ballot responses shall not be counted as a vote for that office or question, unless clarified by an additional mark or marks in the target area(s) that indicate support for those candidates or ballot responses:

~~For Governor~~  
~~(Vote for one)~~

☐ George Washington

☐ Abraham Lincoln

☒ John Adams

~~Valid Vote for Adams~~

~~For Governor~~  
~~(Vote for one)~~

☐ George Washington (Democrat) *Yes*

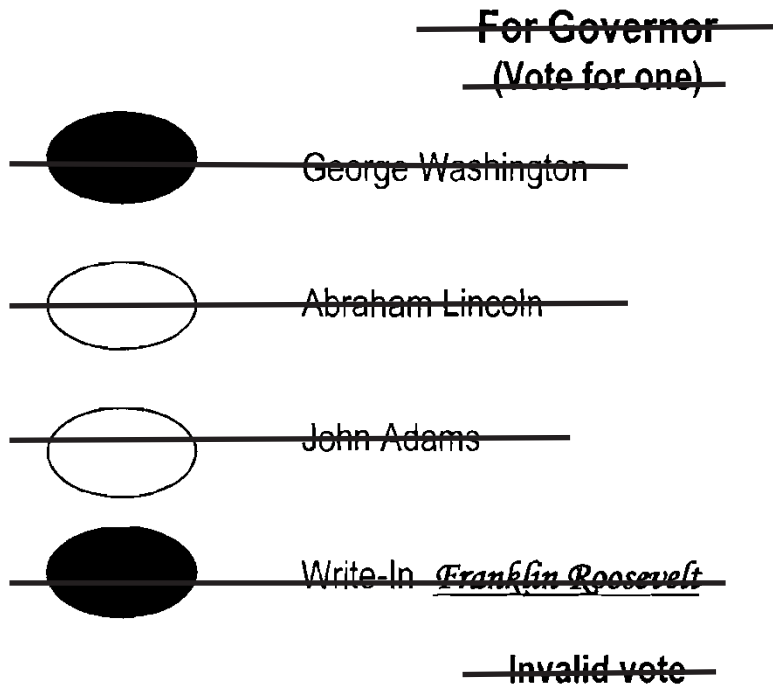
☐ Abraham Lincoln (Republican)

☒ John Adams (Green)

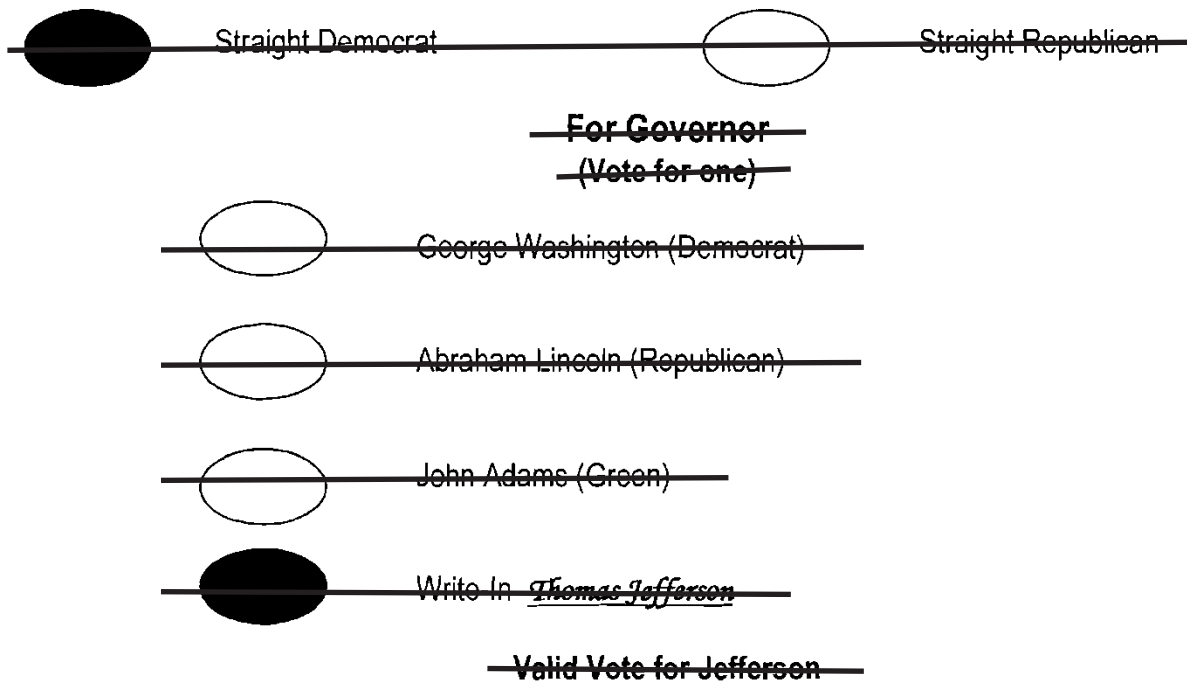
~~Valid Vote for Adams~~



**L. — Optical Scan 12** - A ballot on which the voter casts a vote on the ballot and properly writes in a different candidate in the write-in area shall be considered an over-vote for that office if the number of chosen candidates exceeds the number permitted to be voted for in that office and no vote shall be counted, except as provided by optical scan 13.



**M. — Optical Scan 13** - A ballot on which the voter casts a straight party vote and properly writes in a candidate in the write-in area shall be counted only for the write-in candidate in that office. For the other offices on the ballot, the ballot shall be counted for the candidates of the political party for which the voter cast a straight party vote.




**N. — Optical Scan 14** - A properly cast write-in vote shall contain a mark in the target area and, in the space provided, the written name of a candidate whose name does not otherwise appear on the ballot for that office.




~~For Governor~~  
~~(Vote for one)~~

 George Washington


 Abraham Lincoln

 John Adams


 Write-In Thomas Jefferson

~~Valid Vote for Jefferson~~

~~For Governor~~  
~~(Vote for one)~~

 George Washington (Democrat)

 Abraham Lincoln (Republican)

 John Adams (Green)

 Write-In Thomas Jefferson

~~Invalid Vote~~



~~For Governor~~  
~~(Vote for one)~~

~~George Washington~~

~~Abraham Lincoln~~

~~John Adams~~

~~Write-In Abraham Lincoln~~

~~Invalid Vote~~

~~For Governor~~  
~~(Vote for one)~~

~~George Washington~~

~~Abraham Lincoln~~

~~John Adams~~

~~Write-In A. Lincoln~~

~~Invalid Vote~~



~~For Governor~~  
~~(Vote for one)~~

 George Washington

 Abraham Lincoln

 John Adams


 Write-In John Adams

~~Invalid Vote~~

**O. Optical Scan 15** - All properly cast write-in votes must be counted exactly as they appear on the ballot

~~For Governor~~  
~~(Vote for one)~~

 George Washington

 Abraham Lincoln

 John Adams

 Write-In H. Truman


~~Valid Vote for H. Truman only~~

**P. Optical Scan 16** - If a voter designates a vote for a named candidate on the ballot and also properly writes in the same candidate in the write-in area, no vote shall count for that candidate.



~~For Governor~~  
~~(Vote for one)~~

 George Washington

 Abraham Lincoln

 John Adams

 Write In John Adams

~~Invalid Vote~~

~~Q. Optical Scan 17 - A ballot on which the voter does not mark the voting response area but instead marks the ballot in a consistent manner, such as placing some type of consistent mark (other than a circle), on or around a candidate's name, shall be counted as a vote for that candidate or ballot response.~~

~~Example 1)~~

~~For Governor~~  
~~(Vote for one)~~


 George Washington *yes*

 Abraham Lincoln

 John Adams

~~For Auditor~~  
~~(Vote for one)~~

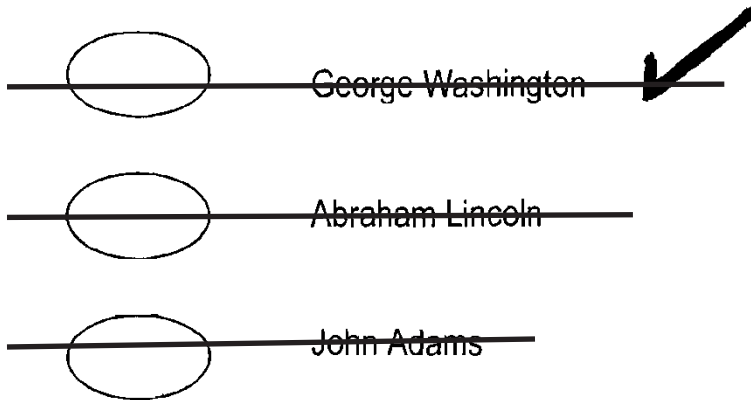
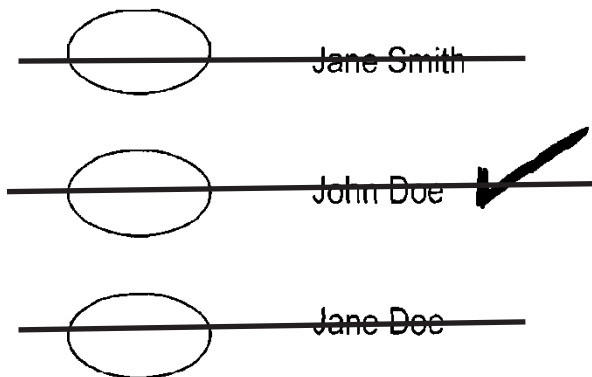
 Jane Smith

 John Doe *yes*

 Jane Doe

~~Valid vote for George Washington & John Doe~~



~~Example 2)~~~~For Governor  
(Vote for one)~~~~For Auditor  
(Vote for one)~~~~Valid vote for George Washington & John Doe~~ ]**[RESERVED]**

[1.10.23.12 NMAC - N/E, 11/3/2008; Repealed, 4/7/2020]

**1.10.23.13 [RECOUNT PROCEDURES FOR STATEWIDE AUTOMATIC RECOUNTS:** This section applies to automatic recounts for statewide elective office in a general election when the margin between the two candidates receiving the greatest number of votes for the office, the margin between those supporting and those opposing a ballot question or the margin affecting the outcome of a nonpartisan judicial retention election is less than one-half of one percent of the total votes cast for that office in that election]the margins set forth in 1-14-24 NMSA 1978. Upon notification by the secretary of state to the state canvassing board that an automatic recount is required, a recount shall proceed according to the procedures set forth in these rules:

**A. Dates and times prescribed for the Recount.** Pursuant to 1-14-16 NMSA 1978, the [absent] recount voter precinct board ("the absentee board"), district judge ("district judge") and county clerk ("clerk") shall meet at the county seat on day one of the recount to recount and re-tally the ballots in the contest for commissioner



of public lands, and no other contest. Upon receipt of this order, county clerks shall send notices, by registered mail, of the date for the recount to the district judge for the county, the absentee board members and the county chair of each of the political parties that participated in the election for the office in question. In addition to the notices sent by registered mail, the state canvassing board strongly recommends that county clerks promptly contact, by telephone, e-mail, and all other appropriate media the district judge, absentee board members and county chairs involved in the recount. It is also recommended that there be notification to the general public in all appropriate media. The secretary of state's office shall order 500 new, unused compact flash cards ("cards") for the vote tabulators and will provide those to the counties for the conduct of the recount. In the weeks preceding the commencement of the recount, the removable storage media for the election tabulators and *results tabulating reporting* (RTR) servers will be programmed to conduct the recount of the ballots for the commissioner of public lands race. The absentee board, district judge and clerk shall meet on the date fixed, at 8:00 AM, for the recount. The recount shall continue until all ballots shall have been recounted and re-tallied. If the recount is not completed during the first day of the recount, the process shall continue until at least 5:00 PM on that day and shall continue on the second day beginning at 8:00 AM and continuing until at least 5:00 PM or until the process is completed. If the process is still not complete, the same schedule used for day 2 shall be followed each succeeding day until such time as the recount and re-tally is completed and the absentee board has certified the results to the secretary of state (Section 1-14-16 (D) NMSA 1978). All counties, with the exception of Bernalillo county, should complete the recount and re-tally not later than day 2, and shall complete the process not later than day 3. Should a continuation of the process beyond

day 3 be deemed necessary, the clerk shall request an extension, in writing, to the secretary of state, providing the reasons for the extension and the ballot security measures in place. Bernalillo county should complete the recount and re-tally not later than day 4, and shall complete the process not later than day 5. Should a continuation of the process beyond day 5 be deemed necessary, the clerk shall request an extension, in writing, to the secretary of state, providing the reasons for the extension and then ballot security measures in place. The absentee board shall consist of a sufficient number of members to ensure that each time a tabulator is in operation in the conduct of the recount, whether it is for absentee ballots, early voting ballots, or Election Day ballots, a two-person team is assigned to conduct the recount on that particular tabulator. Examples follow:

(1) If a county uses five tabulators simultaneously to recount early voting ballots cast, 10 precinct board members would be required to conduct that portion of the recount.

(2) If, simultaneously, absentee ballots are being recounted on one tabulator, early voting ballots are being recounted on two tabulators, and Election Day ballots are being recounted on three tabulators, all tabulators being programmed for the respective ballot types, then 12 absentee board members would be required to be present in order to ensure the required two-person team per tabulator. County clerks shall appoint additional members of the absentee board in order to ensure the board is sufficiently staffed to complete the recount, provided that equal numbers of qualified board members from the democratic party and the republican party shall be appointed. Names and respective political party affiliations of absentee board members shall be provided to the secretary of state not later than noon, Thursday, December 4, 2014. If any absentee board members are replaced or added during the

recount, the names and political party affiliations of the replaced members and of those of the new members replacing them shall be provided to the secretary of state.

**B. Duties of the state canvassing board, secretary of state, presiding judge, absentee board, district judge and clerk.** The state canvassing board has adopted these procedures governing the statewide recount to ensure that all ballots are treated uniformly and consistently throughout the state and that the procedures followed are uniform and consistent in each county.

(1) The presiding judge ("presiding judge") of the absentee board in each county is charged with the duty of conducting and maintaining an orderly recount following the procedures set forth in this order and under the oversight and supervision of the secretary of state, and shall maintain a record of the proceedings ("the log").

(2) The district judge, or his or her designee, is charged with maintaining the security of the ballots and election returns during the conduct of the recount.

(3) The clerk is charged with providing the tabulators, staff assistance as required by the presiding judge in zeroing machines, or other technical assistance not provided by the *dominion* technical representatives, lists of voters as required, and shall supervise review of qualified and unqualified provisional ballots and absentee-in-lieu-of ballots. The clerk shall maintain the list of watchers (Subsection I).

(4) Consistent with the provisions of Sections 1-2-1 and 1-2-2 NMSA 1978, the secretary of state shall be authorized to provide required ministerial and technical instructions as needed to implement this order.

**C. Ballot Security.** When the absentee board is properly convened in the presence of the district judge and county clerk, the ballot boxes and ballot containers or voting machines of the precincts involved in the recount or recheck



shall be opened. Either the district judge or the presiding judge and at least one other witness, shall witness the movement of all ballots during the recount. All movement of ballots to and from the ballot boxes shall be logged by the precinct board. Each time that ballots are removed from or returned to a ballot box, the presiding judge shall ensure that the number of ballots present are determined and ensure that that number is compared to the number of ballots that should be in that particular box. All discrepancies shall be noted by the absentee board, and the presiding judge shall report the same to the office of the secretary of state, bureau of elections.

**D. Preparation; zeroing and testing procedures.**

The absentee board shall recount and re-tally the ballots for the office in question in the presence of the clerk, district judge or person designated to act for the district judge, and any other person who may desire to be present. The automatic recount shall be conducted pursuant to the recount procedures established in Sections 1-14-16 and 1-14-18 through 1-14-22 NMSA 1978, and further delineated in greater detail in this order.

(1) The recount will involve the machine re-tabulating and tallying of an expected number of 521,797 ballots cast, based on county canvass reports and any additional provisional or absentee ballots which may be determined to have been improperly disqualified and that may be qualified during the course of the recount.

(2) Pursuant to the express provisions of Section 1-14-24 NMSA 1978, the provisions of Section 1-14-23 NMSA 1978, do not apply to a statewide automatic recount. Therefore, the ballots in this statewide recount will be electronically tabulated using *imagecast evolution* (ICE), *imagecast precinct* (ICP) and *imagecast central count* (ICC) voting systems, which shall be certified according to the procedures set forth below.

(3) In each instance where an ICE or ICP is being

used, the clerk and the presiding judge shall ensure that only new and unused cards programmed by and provided by *dominion voting* are employed for the recount, and that each is clearly marked for use in recounting and re-tabulating for either "absentee," "early voting" or "Election Day" ballots. The clerk and presiding judge shall confirm such markings in the log.

(4) In each instance where an ICE or ICP is being used, the clerk and the presiding judge shall ensure that each tabulator present for use in the recount, or designated as a back-up tabulator, is clearly marked for either "absentee," "early voting" or "Election Day" ballots, and that only those ballots and those cards designated for the corresponding method of voting shall be inserted into any tabulator. Upon ensuring that tabulator identification has been completed, the clerk and the presiding judge shall confirm such markings in the log.

(5) In each instance where an ICC is being used, the clerk and presiding judge shall ensure that the correct file for each method of voting is uploaded, and that each ICC is labeled as early voting 1, early voting 2, Election Day 1 and election 2, as the case may be. Counties with two ICCs or fewer will ensure the labels conform to the method of voting being recounted.

(6) The recount shall be conducted using newly acquired removable media storage devices for the tabulators which shall be programmed to accept all precincts in the county. A team of two members of the absentee board, one from each of the major political parties involved in the recount, shall be assigned to each tabulator.

(7) A zero summary report ("zero tape") shall be generated and certified by the absentee board in the presence of the clerk and a designated representative of a candidate or political party who may desire to witness the certification, prior to tabulating any ballots on any machine. This designated representative shall be

chosen from the appointed discussed in Subsection I below. Remove alpha and parentheses next

(8) One hundred (100) ballots of the ballot type (absentee, early voting and Election Day) to be recounted on each tabulator shall be used to test the accuracy of each tabulator to be used in the recount. 100 absentee ballots shall be inserted into the absentee tabulator, 100 early ballots shall be inserted into each early vote tabulator and 100 Election Day ballots shall be inserted into each Election Day tabulator. The same ballots for each shall have been hand-tallied by the absentee board prior to being fed into the tabulators. If the vote totals on the tabulator tape match the hand-tally totals for each candidate, the recount may then proceed with the machine recount. If the count does not match, the presiding judge shall supervise a re-tally of the hand count at least twice to ensure that no error has occurred in the hand tally. If after the presiding judge is certain that the tabulator and the hand-tally counts cannot be reconciled on the tabulator being tested, new removable storage media cards shall be programmed for that ballot type and inserted in a new tabulator, and shall be tested. Only those tabulators that match the hand-tally with 100% accuracy shall be used. Write as one hundred percent

(9) If 100 ballots of a particular ballot type were not voted during the November 4, 2014 general election, then the test shall be conducted using all those ballots available from that particular ballot type, and if the tabulator tape matches the hand-tally of those same ballots the totals produced in that process shall constitute the final totals of that particular portion of the recount, and that portion shall be concluded.

**E. Recounting and re-tallying of ballots.** The ballots shall be re-tabulated by precinct and ballot type (absentee ballots, early voting ballots and Election Day ballots).

(1) Where ICE and ICP units are in use, the absentee board two-person team conducting



each recount on each ballot type on each tabulator shall closely preview each ballot. Those ballots which do not show a mark in a voting target oval (an oval alongside one of the two candidates, indicating a choice for a candidate) but which do provide an indication of voter intent, such as a circled name, check mark beside a candidate's name or other similar marking, shall be set aside for hand-tallying. All other ballots shall be inserted into the tabulator. Once all the ballots for the precinct or *voting-convenience-center* (VCC) being recounted have been inserted into the tabulator, the absentee board shall then hand-tally the ballots that have been set aside for review. Those ballots shall be adjudicated according to procedures shown in Subsection H.

(2) When all ballots to be tabulated in that vote category (absentee, early, Election-Day) have been either placed in the tabulator or hand-counted, the presiding judge shall close the polls on the tabulator and generate a results tape. The total of hand-tallied ballots and machine-tallied ballots shall be compared to the existing results—the official canvassed results of the 2014 general election, and any discrepancies shall be noted by the absentee board.

(3) When all ballots in all categories have been tabulated the clerk shall upload the results from the removable storage media (cards) to the secretary of state's *integrated reporting and integrity system* (IRIS).

(4) Where ICC units are in use, the two-person teams shall use the adjudication program provided for those ballots with ambiguous marks or over votes, applying the same standards outlined in Subsection H.

(5) The existing removable media storage devices from the 2014 general election shall be preserved in their current state, and shall not be handled, examined, erased, or altered, and shall be retained by the clerks, including the ballot images, all audit logs and audit marks. In the event any voted

ballots are unavailable or incomplete for the recount, the district judge, in consultation with the clerk, may order that a results tape or ballot images be regenerated from the removable storage media that was originally used to tabulate the voted ballots.

(6) Each clerk shall ensure that tabulators, sufficient in number to allow for the completion of the recount, are available in each county beginning on day one of the recount and concluding not later than day 3, or in the case of Bernalillo county not later than 5:00 PM, day 5. Should a continuation of the process beyond those scheduled dates be deemed necessary, the clerk shall request, in writing to the secretary of state, an extension, providing the reasons for the extension and detailing the ballot security measures in place.

(7) As each box of ballots is completely tabulated in the recount, the absentee precinct board shall replace the ballots in the original ballot box and re-lock it. The absentee precinct board shall certify to the secretary of state the results of the recount. The district judge, or the person designated to act for the district judge, and clerk shall also certify that the recount was made in their presence. The secretary of state shall have the authority to extend the time set aside for the statewide recount on a county-by-county basis, if extraordinary circumstances are deemed to exist.

#### **F. Provisional ballots.**

Any ballot boxes, envelopes or containers that hold provisional or absentee-in-lieu-of ballots shall be opened one at a time.

(1) The presiding judge shall count the total number of provisional and absentee-in-lieu-of ballots in each polling location and the number shall be compared to the previously certified signature roster count in that polling location and noted. Any discrepancies in the number of ballots shall be immediately reported to the clerk, district judge and secretary of state's office, bureau of elections. Section 1-4-22 NMSA 1978, states "the secretary of state shall issue rules

governing and allowing procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in case of a contest or recount of election results. All rejected provisional paper ballot envelopes shall be included in any contest or recount of election results, and a review of the qualifications of provisional ballots envelopes shall occur in a recount."

(2) The clerk shall review the qualification of all rejected provisional and absentee in-lieu-of ballots. Reasons for rejected ballots shall be clearly stated and detailed and shall be noted on the ballot application or other appropriate form or record. If a previous record of reasons for rejected ballots exists on the ballot application or other appropriate form, new comments or details that may be added by the clerk shall be added in blue pencil, or in such a manner as to ensure the new comments are distinguishable from previous records.

(3) The absentee board shall review the qualification of all rejected absentee ballots. Reasons for rejected ballots shall be clearly stated and detailed and shall be noted on the ballot application or other appropriate form or record. If a previous record of reasons for rejected ballots exists on the ballot application or other appropriate form, new comments or details that may be added by the presiding judge shall be added in blue pencil or in such a manner as to ensure the new comments are distinguishable from previous records.

(4) The clerk shall not disqualify any provisional ballot or absentee-in-lieu-of ballot because the voter's address on the affidavit of the outer provisional ballot envelope does not match the voter's address on the certificate of registration, provided the clerk can identify the voter with other information provided on the affidavit or certificate of voter registration attached to the provisional ballot outer envelope.

(5) The clerk shall not disqualify a provisional or



absentee-in-lieu-of ballot because the voter has used an abbreviated name, abbreviated address, middle name, middle initial or suffix, provided the clerk can identify the voter with other information provided on the provisional ballot outer envelope or certificate of voter registration attached to the provisional ballot outer envelope. The clerk shall not disqualify a provisional or absentee-in-lieu-of ballot because the voter did not sign both the affidavit and the polling place roster if the voter provided a valid signature and the clerk can identify the voter with the information provided on the affidavit on the outer envelope or certificate of voter registration attached to the provisional ballot outer envelope.

**G. Hand-tallied ballots.** Any ballots that cannot be read by a ballot tabulator shall be hand-tallied by the absentee board. (See Subsection H, as applicable.)

(1) The absentee board shall utilize tally sheets provided by the bureau of elections showing only the commissioner of public lands race, with options for under votes and over votes. The two-person counting team for hand-tallying shall be a democrat and a republican. The team shall ensure that the ballot type (Election Day, early, absentee, provisional, or absentee-in-lieu-of) and the precinct number are noted on each hand-tally sheet.

(2) The reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote. The marker shall then mark the tally sheet of the appropriate precinct and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the hand-tally sheet, the marker shall add the total number of votes for each candidate, as well as any under votes and over votes. The reader shall confirm those numbers. Both the marker and the reader shall sign the tally sheet.

**H. Ambiguous marks.** If a ballot is marked indistinctly or not marked according to the instructions

on the ballot, the counting team shall count as a vote as provided for in Section 1-1-5.2 NMSA 1978. A vote shall be counted if it is:

(1) marked in accordance with the ballot instructions;

(2) the preferred candidate's name is circled;

(3) there is a cross or check within the voting response area for the preferred candidate; or

(4) the presiding judge and election judges for the absentee precinct board unanimously agree that the voter's intent is clearly discernable. In no case shall the counting team mark or remark a ballot. The presiding judge shall inform the counting team of the procedures to be followed. The presiding judge shall ensure that the counting team is sensitive to the need to handle ballots in a manner that facilitates possible reviews and inspections. The counting team shall not use black ink pens or markers to mark the tally sheets and shall only use blue or red pencils.

#### **I. Watchers.**

(1) **Appointment.** Each candidate and each political party participating ("organization") in the recounted race shall be entitled to have watchers present during the recount, provided that watchers shall not disturb or obstruct the conduct of the recount. Watchers may be appointed for each county. The list of watchers appointed by each organization shall be provided to the clerk not later than noon, Friday, December 5, 2014.

(2) **Counties other than Bernalillo county.** The county chairs for the democratic and republican parties of each county may appoint a watcher to be present during the recount for each method of voting: absentee voting recount, early voting recount, and Election Day voting recount. Each of the candidates may appoint a watcher to be present in each county in the same manner as provided for the political parties. Substitute watchers may be employed, but no more than one watcher for

each organization, or a maximum of 12 individuals may act as watcher at one time (four for each method of voting recount). No watcher may be appointed who is a sheriff, deputy sheriff, marshal, deputy marshal, or state or municipal police officer. Nor may a watcher be a member of the judiciary or a member of the staff of a judicial officer or the office of the district attorney.

(3) **Bernalillo county.** Watchers may be appointed in the same manner as described in Paragraph (2) of Subsection I above, except that each organization may have a maximum of three watchers for the absentee ballot recount, and two each for the early vote ballot recount and Election Day ballot recount. No more than 12 watchers may be present for the absentee vote ballot recount at any one time. No more than eight watchers may be present for the early vote ballot recount. No more than eight watchers may be present for the Election Day ballot recount.

(4) **Identification.** Watchers shall identify themselves to the clerk or clerk staff, and clerk staff shall verify watchers' appointments on the list provided by the organization. At all times while present at the recount proceedings, a watcher shall wear a self-made badge, nameplate, or other suitable means of identification, designating himself or herself as an authorized watcher on behalf of the organization he or she represents. Substitute watchers must observe the same rule, and watchers leaving the area shall remove their identification.

(5) **Permitted activities.** A watcher, upon ensuring his or her identifying badge is visible to the presiding judge, shall be permitted to be present at any time from the time the absentee precinct board convenes at the recount location until the completion of the absentee board's duties. A watcher may view, but not handle, signature rosters, precinct or VCC voter lists, ballots and provisional ballot applications. He or she may view each tabulator to ensure that the public counter is at zero, and to ensure the zero tape



contains no votes and that there are no voted ballots in the voting machine bins, and the results tape which is produced for each tabulator in the course of the recount. The watcher may also make and preserve for future reference written memoranda of any action or omission on the part of any member of the absentee board, or other official present at the recount.

(6)

**Questions.** While a watcher shall not be permitted to interfere with or disrupt the proceedings, he or she may interpose reasonable questions to the presiding judge. The presiding judge is charged with conducting the recount in accordance with the provisions set forth in this order, pertinent provisions of the Election Code and 1.10.23 NMAC, as applicable. Determinations made by the presiding judge in consultation with the absentee board shall be adhered to in the course of the recount proceedings. The presiding judge may refer questions, if he or she deems it necessary, to the secretary of state. However, questions or discussions should not, except in rare instances, require any pause in the recount proceedings. In the event a watcher or candidate or party representative is not satisfied with a decision taken by the presiding judge, the watcher may file a statement, report, or question, in writing, to the office of the secretary of state. Such report or question shall outline in detail the concerns or issues in question and shall be forwarded immediately via email or other appropriate media available. However, no pause in the recount proceedings shall take place unless the presiding judge so determines.

(7)

**Provisional ballots.** Watchers may review qualification and disqualification decisions of the clerk, and may pose reasonable questions regarding the qualifications. Determinations made by the clerk shall be adhered to in the course of the recount proceedings. The clerk may refer questions, if he or she deems it necessary, to the secretary of state. In the event a watcher or candidate or

party representative is not satisfied with a decision taken by the clerk, the watcher may file a report, in writing, to the office of the secretary of state. Such report shall be forwarded via email immediately, but no pause in the recount proceedings shall take place, unless the presiding judge so determines.

(8) **Prohibited**

**activities.** Watchers shall not be permitted to perform any duty of absentee board member; shall not handle the ballots, signature rosters, checklist of voters or voting machines, or take any part in the recounting or re-tallying of the ballots; shall not be allowed to view a voter's full date of birth or any portion of the voter's social security number; and shall not interfere with the orderly conduct of the recounting or re-tallying of ballots.

J. **Preservation of**

**the record.** Upon completion of the recount and the certification of the results to the secretary of state, the clerk shall take all measures necessary to preserve the record of the recount proceedings, including all ballots cast, the identity of the tabulators used and the ballots contained therein, the cards and the identity of the cards, hand-tallied ballots, and all other categories of ballots; including all records, notes, observations and provisional ballots accepted and rejected. The clerk shall ensure that all the above records are locked and secured in a secure location. The clerk shall preserve all records for a minimum of 22 months from the date the results of the recount are certified to the secretary of state, or until the office of the secretary of state provides further information regarding their disposition.] **[RESERVED]**

[1.10.23.13 NMAC - N/E, 12/2/2014; Repealed, 4/7/2020]

[1.10.23.13 NMAC is being adopted and filed pursuant to Section 1-12-4 NMSA 1978. As it is an emergency in nature, upon filing, this section will become immediately effective without public hearing or publication. It is intended to be temporary and shall expire at the conclusion of the recount

and no more than 30 days from the effective date.]

## SECRETARY OF STATE, OFFICE OF

This is an amendment to 1.10.35 NMAC, Sections 7, 8 and 9, effective 4/7/2020.

### 1.10.35.7 DEFINITIONS:

#### A. "Active voter"

means a registered voter who has not been declared an inactive voter.

#### [B.] "Agency central"

means the system used by the SOS to submit electronic batches to the county clerks for processing in the statewide voter records system. Electronic batches processed using *agency central* include death records, felon records, electronic voter registration records submitted from the motor vehicle division (MVD), and online voter registration records collected from the SOS's website.]

#### [C.] B. "Board of

registration" means the voters of a county who are appointed by the board of county commissioners and serve under the provisions of Sections [1-4-33 to] 1-4-34 NMSA 1978.

#### [D.] C. "Cancelled"

means the status of a person's voter registration record when that person is no longer eligible to vote due to death; transfer of residence to another county or state; a finding by a court of legal insanity; felony conviction while the person is in prison, on parole, or on supervised probation; or at the voter's request.

#### [E.] D. "Certificate of

registration" means the form, prescribed by the SOS or the federal form complying with the National Voter Registration Act of 1993, used by qualified electors or by federal qualified electors to register to vote.

#### [F.] E. "Confirmation

card" means a postage prepaid and preaddressed notice, with language in compliance with the National Voter Registration Act of 1993 and Subsection C of Section 1-4-28 NMSA 1978, sent by forwardable mail, with a postage prepaid return



postcard on which a voter may state the voter's current address.

**[G:] E. "Confirmation mailing"** means a non-discriminatory mass mailing; conducted by the office of the SOS to voters flagged as NVRA on the statewide voter file and to voters who have filed a change of address request with the postal service since the last confirmation mailing.

**[H:] G. "County"** means an administrative district of the state of New Mexico.

**[H:] H. "County register"** means a physical file of voter registration records kept in fire resistant containers at the county clerk's office.

**[J:] L. "County voter file"** means the computerized version of the county register, comprising each county's portion of the statewide voter file.

**[K:] J. "Data recording media"** means physical material that holds data expressed in any existing electronic format.

**[L:] K. "District"** means a distinct territorial subdivision containing a body of eligible voters within the represented area.

**[M:] L. "Duplicate search"** means the process of verifying that voters are not registered in more than one county of the state, or registered more than once in a single county.

**[N:] M. "Election"** means [any] a statewide [special] election that is a general election, political party-primary election, local elections included in the Local Elections Act, or [special-county-wide election or special] elections to fill vacancies in the office of United States representative [and regular or special-school district or municipal elections].

**[O:] N. "File maintenance"** means the total activities undertaken by county or state election officials to ensure the accuracy and integrity of the statewide voter file.

**[P:] O. "Inactive voter"** means a voter who has been mailed a confirmation card in accordance with 52 U.S.C. 20501 to 20511, and who has either failed to respond or has failed to vote in any election

conducted after the mailing of the confirmation card.

**[Q:] P. "Initial mailing"** means the first non-discriminatory mailing to a voter, by the county clerk or SOS, which is returned as undeliverable by the postal service.

**[R:] Q. "Mailing address"** means the address at which a voter receives correspondence; it is the address in the "physical street address where you live now" box on the certificate of registration, unless the voter's address has been updated by the county clerk and the updated address is attached to the certificate of registration, or unless a voter has entered a different mailing address in the "address where you get your mail (if different from above) box on the certificate of registration.

**[S:] R. "Module"** means a portion of the statewide voter records system program that carries out a specific function and may be used alone or combined with other modules of the same program.

**[T:] S. "New registrant"** means a voter who has never been registered in any county within the state.

**[U:] T. "Non-standard address"** means an unnamed street, unknown structure or directional address not on the county street file.

**[V:] U. "NVRA"** means a designation in the statewide voter file indicating a voter was sent an initial mailing other than a confirmation mailing, which was returned to the county clerk as undeliverable.

**[W:] V. "Online voter registration system"** means the system authorized by the SOS for the purpose of accepting voter registration applications through the internet.

**[X:] W. "Physical address"** means the location of a voter's residence even if provided in the form of a map or geographic description pursuant to 1-4-5.3 NMSA 1978.

**[Y:] X. "Positive match"** means that two records match based on a strong match or that a match has been determined to exist based on further investigation by a county clerk of a weak match.

**[Z:] Y. "Precinct"** means a part of a county with definite boundaries established for electoral administrative functions.

**[AA:] Z. "Precinct part"** means the designation given when a precinct is divided by one or more districts.

**[BB:] AA. "Precinct voter list"** means a voter list arranged in alphabetical order of voter surname within and for each precinct.

**[CC:] BB. "Public service request"** means information prepared for an individual or organization requesting certain information from the voter records system.

**[DD:] CC. "Registrant detail"** means all data entered into the voter records system for an individual voter.

**[EE:] DD. "Removable"** means the designation in the statewide voter file for the voter registration record of a person registered to vote whose voter registration has been cancelled due to death, transfer of residence to another state, a finding by a court of legal insanity, felony conviction while the person is in prison, on parole or on supervised probation, at the voter's request, or, if after 45 days, a county clerk is unable to fulfill an incomplete application received online or electronically.

**[FF:] EE. "Scanned image"** means the digital capture of the certificate of registration and any other physical documents relating to the voter's record.

**[GG:] FF. "Select groups"** means a group of voters selected based upon their party registration, or lack thereof, gender, residence, age, or any other protected class as defined by law.

**[HH:] GG. "Special voter list"** means a prepared list of selected voters arranged in the order in which requested.

**[H:] HH. "Street file"** means a method of geocoding or manually managing street segments, including address ranges, road networks and providing for incremental updates in the statewide voter registration system.



**[JJ:] LL. “Strong match”**

means that two records in different databases have: (1) the same name, (2) same date of birth (DOB), and (3) the same full social security number (SSN)

**[KK:] JJ. “Suspense**

**status”** means an applicant for voter registration whose status as a voter is held in abeyance until certain voter qualifications are met.

**[LL:] KK.**

**“Undeliverable mailing”** means correspondence sent to a voter and returned by the postal service indicating that the voter no longer receives mail at that address.

**[MM:] LL. “Voter”**

means any qualified elector or federal qualified elector who is registered under the provisions of the Election Code.

**[NN:] MM. “Voter**

**data”** means selected information from the voter file.

**[OO:] NN. “Voter**

**file”** means all voter information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on the voter records system and certified by the county clerk as the source of all information required by the Voter Records System Act.

**[PP:] OO. “Voter**

**history”** means extracted voter information from the voter file indicating the jurisdiction where a voter voted, election and date, political party, if any, precinct or precinct part, location and method of voting.

**[QQ:] PP. “Voter**

**list”** means any prepared list of voters.

**[RR:] QQ. “Voter**

**records system”** means the statewide computerized voter registration system and database, in compliance with the Help America Vote Act of 2002, developed, implemented, established, supervised and maintained by the SOS. The system is used by the SOS to exchange electronic information with the county clerks.

**[SS:] RR. “Weak**

**match”** means that two records in different databases have any of the two following matching: (1) name, (2) DOB, (3) SSN, or (4) address. [1.10.35.7 NMAC - N, 3/15/2012; A, 2/12/2016; A, 4/7/2020]

**1.10.35.8 PROCESSING VOTER REGISTRATION CERTIFICATES:**

**A. Adding and transferring voters.**

**(1)** Upon receipt of a voter registration certificate, the county clerk shall run a duplicate search to determine if the voter ~~[is new, is to be transferred from another county, or if the record should be updated within the county]~~ is already registered in the registration records of the county. To determine if a record already exists in the statewide voter registration system, the duplicate search criteria shall be based on a strong match. The county clerk may also conduct additional duplicate searches using different criteria to minimize the chance of entering a duplicate record. Additional search criteria may be based on weak match criteria. Upon running a duplicate search, if the voter's information on the voter registration certificate matches with an existing record, the voter shall be updated and transferred from another county.

**(2)** If the qualified elector submits a paper voter registration form and provides all other required voter information, but only provides the qualified elector's driver's license or state identification number, or last four digits of the voter's SSN, the county clerk will first verify that the voter has a matching MVD record with the provided information. If the county clerk can verify and match a MVD record with the qualified elector then the county clerk should complete the search stated in Paragraph 1, of Subsection A, of 1.10.35.8 NMAC. If the county clerk is unable to verify the voter has a matching MVD record, the clerk shall, within five days, email and mail the voter information with directions

on how to provide their full SSN on the secure SOS portal.

~~[(2)]~~ **(3)** Upon receipt of a voter registration certificate, the county clerk shall run a search in the statewide voter registration system to determine if the applicant has been previously marked as deceased or as having a felony conviction prior to acceptance of the application. If a strong match is found, the application shall be rejected pursuant to Subsection C of 1.10.35.8 NMAC. The county clerk may conduct additional searches to determine a possible match for purposes of ensuring a death or felony record does not exist prior to entering the voter registration certificate.

~~[(3)]~~ **(4)** All registrant detail and statutorily required data must be entered from the certificate of registration into the voter file including: name, full social security number (SSN), physical address, DOB, and an image of the signature.

~~[(4)]~~ **(5)** The county clerk may establish a best practice of proofreading data entry to prevent errors and duplicate voter entry. Proofreading may be done by a staff member who did not complete the original entry and the proofreading search for the record may be conducted using different criteria (i.e. DOB or name rather than SSN).

~~[(5)]~~ **(6)** The county clerk shall scan each certificate of voter registration in the county register and attach to the electronic voter record. All scanned images attached to a voter record transferred to another county shall be retained as attached to that record.

~~[(6)]~~ **(7)** Pursuant to Subsection C of Section 1-4-15 NMSA 1978, a voter who does not declare a political party preference shall be entered into the voter file as “decline to select”. County clerk staff shall not check the “no party” box on the certificate of voter registration, but shall leave it blank.

**(8)** A voter who does not declare a qualified political party preference shall be entered into the voter file as “decline to select.”



~~(7)~~ **(9)** A voter who is not 18 years of age at the time of registration shall be placed in “suspense” status. At 35 days and 21 days prior to the next election, the county clerk shall run a suspense query report of the county voter file and activate suspense voters on the appropriate date prior to the election. At 21 days prior to an election, the county clerk shall activate all those suspense voters who will be 18 on or before the election.

~~(8)~~ **(10)** If the age question is checked “no” or left blank the application shall nonetheless be accepted if the DOB demonstrates that the applicant is over the age of 18 or placed in suspense status if the DOB demonstrates the applicant is under the age of 18.

~~(9)~~ **(11)** The county clerk shall receive voter registration certificates, but shall not process certificates when the registration books are closed pursuant to Section 1-4-8 NMSA 1978, during the county canvass, or during the period of time following the county canvass when voter credit is entered into the voter registration system pursuant to Subsection B of Section 1-4-12 NMSA 1978.]

~~(10)~~ **(11)** When a voter registration agent number is provided on an application, the county clerk shall ~~[enter]~~ note the agent number and the registration form number in the statewide voter registration system ~~[under “additional info.”]~~.

**B.** Matching with MVD database: All online and MVD electronic registrations have been verified with the MVD database prior to transmission to the county clerk. Upon receiving a paper voter registration certificate, the county clerk may conduct a search in the MVD database for investigative purposes.

**(1)** If the county clerk determines that a conflict exists between the MVD database and the voter registration record the county clerk may contact the registrant to request clarification. If it is determined that the information

provided on the voter registration form needs to be corrected, the county clerk shall request that the voter fill out a new voter registration form with the corrected information before processing the application.

**(2)** The MVD database shall not be used to fill in information that is not included on incomplete applications or applications not otherwise in proper form.

**C.** Rejection of voter registration forms.

**(1)** Rejection for incomplete information: Voter registration forms ~~[which] that~~ do not contain the qualified elector’s name, ~~[physical]~~ address ~~[or a non-standard physical address without a mailing address, full SSN]~~, DOB, and signature or usual mark shall be rejected. A full social security number is required to finish processing a new voter registration. For voter registration forms ~~[meeting these criteria]~~ that only provide incomplete information or the county clerk cannot ascertain the qualified elector’s full SSN, the county clerk shall make the appropriate notation in the statewide voter file, and return the form to the qualified elector with an explanation of the reasons for rejection and indicate that the voter shall provide the full SSN prior to receiving a ballot and, if not, may only vote on a provisional ballot until the incomplete information is provided, within five business days ~~[but as soon as is practicable.]~~ of the county clerk rejecting the voter registration form.

**(2)** Rejection for non-citizenship: For voter registration forms in which the citizenship question is answered in the negative, the county clerk shall reject the form. The county clerk shall also reject any voter registration certificate in which the question regarding citizenship is not answered. The county clerk shall send a notice within five business days to the applicant with an explanation that non-citizens are not eligible to vote in New Mexico elections. If the box was checked in error, the applicant may fill out a new form.

**(3)** Rejection of forms containing commercial mailbox locations as the physical address: The county clerk shall maintain a listing of addresses for commercial mail box establishments, if any, to prevent the entry of a non-residential address as a residence address into the voter file. When any voter registration form is received containing a commercial mail box location as the physical address, it shall be rejected, and the form returned to the voter with an explanation of the reason for the rejection along with a new voter registration form and instructions on how to register online, if available to that voter, within five business days, but as soon as is practicable.

**(4)** Rejection for felony conviction confirmation: For voter registration forms submitted that have a positive match with a felon record in ~~[agency central]~~ the voter records system, the county clerk shall send a notice to the applicant with an explanation that felons are not allowed to vote while in prison, on parole or on supervised probation, and provide the elector with information on how they can become eligible or how to update or correct the information in ~~[agency central]~~ voter records system, within five business days, but as soon as is practicable.

**(5)** Rejection for deceased confirmation: For voter registration forms submitted that have a positive match with a death record in ~~[agency central]~~ the voter records system, the county clerk shall contact the secretary of state who will work with the department of health or other authorized agencies to confirm that a death certificate exists. If the death is confirmed, the county clerk shall reject the voter registration form and shall refer the matter to the assigned election prosecutor within the district attorney’s office for investigation.

**(6)** Voter registration applications that contain an invalid series of numbers for SSN shall be rejected. Within five business days, but as soon as is practicable of the rejection, the form shall be returned to the



voter with an explanation of the reason for the rejection. The social security administration has provided information regarding invalid or impossible SSNs as follows:

(a)

SSN's never begin with the first three digits of 000, 666, or 900 series; and

(b)

prior to June 25, 2011, SSN's did not begin with the first three digits of 800 series or above 772 in the 700 series.

(7) If

applications are complete, but the county clerk reasonably believes an application is fraudulent, a copy of such registration shall be sent to the assigned election prosecutor within the district attorney's office located in the same county, along with a statement of the reasons the application(s) are considered suspicious for further investigation. The county clerk may contact the SOS to request assistance in researching suspicious applications.

(8) The county

clerk may contact the applicant via phone or e-mail if necessary, however, in no case shall a change in registrant information be processed unless provided in writing.

**D.** Processing online voter registration forms received from the SOS.

(1) In order

for an applicant to use the online voter registration system, a positive match of identity is required with the MVD database. The match criteria shall be a current or expired MVD driver's license ID number or state ID number, full SSN, and full DOB. If a positive match is not found in the MVD database, the applicant shall be provided with a notice that the application cannot be processed online because of non-matching MVD information. The applicant shall be provided a link to print a paper voter registration application and an option to provide contact information and request to be contacted by the county clerk. If a positive match is made with the MVD database, the applicant shall be allowed to proceed with online registration and the MVD will send an image of the signature and

photo as part of the voter registration application.

(2) If the

applicant answers no to the questions regarding citizenship, the voter will not be allowed to continue with the online application process.

(3) If the

applicant answers no to the question regarding age, the voter will be allowed to continue with the online application process, however, the clerk will place the record in suspense status in the statewide voter registration system.

(4) If the

applicant answers yes to the question regarding currently being in prison, on parole, or on supervised probation as a result of a felony conviction, the voter will not be allowed to continue with the online application process.

(5) The

applicant shall be provided the opportunity to enter all information as prescribed by the paper registration form, except the voter will not be allowed to modify the SSN or DOB after receiving confirmation of a positive match with the MVD database.

(6) The online

voter registration system shall allow the applicant to designate from the list of qualified political parties or choose not to designate a political party. The online voter registration system shall not permit an applicant to designate a political party that is not a qualified political party pursuant to Article 7 of the Election Code.

(7) The online

voter registration system shall not allow incomplete voter registration applications to be submitted to the statewide voter registration system. The registrant shall receive a system notification when attempting to submit incomplete information and shall not be allowed to proceed until all required information has been provided. Required information shall include the voter's first name, last name, DOB, SSN, gender, physical address, mailing address in the event a non-standard physical address is provided, answers to citizenship and age questions, and party designation or choice of no party designation.

(8) Upon

receipt of any online or electronic application forwarded to the county clerk via ~~[agency central]~~ the voter records system, the application shall be processed as described in Subsection A of 1.10.35.8 NMAC.

(9) The online

voter registration system will generate a digital image of a voter registration certificate which shall be included as part of the statewide voter registration system and shall be printed and maintained as part of the county register pursuant to Section 1-4-12 NMSA 1978.

(10) The

online voter registration system shall transmit all information provided by the voter via a secured and encrypted transmission path and an audit log of all attempts, both successful and unsuccessful, to use the online voter registration system will be maintained by the secretary of state.

**E.** Processing

electronic voter registration forms received from the MVD.

(1) Upon

receipt of any electronic application forwarded to the county clerk via ~~[agency central]~~ the voter records system, the application shall be processed as described in Subsection A of 1.10.35.8 NMAC.

(2) The

electronic voter registration system will generate an image of a voter registration certificate which shall be included as part of the statewide voter registration system and shall be printed and maintained as part of the county register pursuant to Section 1-4-12 NMSA 1978.

**F.** Processing

incomplete or ineligible electronic or online voter registration applications: This section applies to all electronically submitted voter registration applications.

(1) Upon

determining that the electronic or online voter registration application does not contain a valid physical address, includes a non-standard address with no mailing address, or is otherwise not filled out in proper form, the county clerk shall place



the voter in “suspense” status with the status reason of “incomplete application.” The county clerk shall attempt to contact the applicant to request a corrected voter registration form within five business days, but as soon as is practicable.

(2) After 45 days of an electronic record remaining in “suspense” status, the county clerk shall place the voter in “removable” status with a reason of “incomplete application” until such time the voter submits a completed application. Additionally, the clerk shall print the affected voter registration certificate image(s), mark as removable with the applicable status reason, and maintain as part of the county register pursuant to Section 1-4-12 NMSA 1978.

(3) Upon determining that the electronic or online voter registration application is ineligible by reason of felony conviction, death, or other applicable reason pursuant to Section 1-4-24 NMSA 1978, the county clerk shall process the application with the applicable status and status reason code as follows:

(a) If a county clerk determines that the applicant has a death record in ~~[agency-central]~~ the voter records system, the county clerk shall contact the SOS to receive confirmation and a copy of the state vital records death certificate. Upon confirmation, the application shall be processed with a status of “removable” and a status reason of “deceased” and shall refer the matter to the assigned election prosecutor within the district attorney’s office for investigation.

(b) If a county clerk determines that the applicant has a felony conviction record in ~~[agency-central]~~ the voter records system that has not been satisfied and the county clerk has received no information satisfying the county clerk that the felon is no longer in prison or on parole or on supervised probation, the county clerk shall process the application with a status of “not eligible” and a status reason of “felony conviction.” Additionally, the county clerk shall

send a notice to the applicant with an explanation that felons are not allowed to vote while in prison, on parole or on supervised probation, and provide the elector with information on how they can become eligible or how to update or correct the information in ~~[agency-central]~~ the voter records system, within five business days, but as soon as is practicable.

(c) If a county clerk determines that the applicant is ineligible for any other reason, the county clerk shall process the application with a status of “removable” and the applicable status reason.

[1.10.35.8 NMAC - N, 3/15/2012; Repealed, 2/12/2016; 1.10.35.8 NMAC - N, 2/12/2016; A, 4/7/2020]

**1.10.35.9 FILE MAINTENANCE:** List maintenance activities shall be conducted in a non-discriminatory manner and in no instance shall select groups of voters be targeted for cancellation or removal from the voter file.

A. Confirmation mailings for voters designated as NVRA under 1-4-28 NMSA 1978 (change of address).

(1) The SOS shall contract with a postal service approved vendor of the national change of address program (NCOA) pursuant to Section 1-4-28 NMSA 1978. The entire statewide voter file shall be compared to the NCOA listings for the confirmation mailing.

(2) The SOS shall also create a file of all active voters designated NVRA on the statewide voter file due to an initial undeliverable mailing returned to the county clerk or SOS and so designated by the county clerk in the county voter file.

(3) All active voters appearing in either the NCOA or the NVRA files shall be marked with a status of “inactive” and a status reason of “confirmation mailing” and mailed a confirmation card to the voter’s mailing address by the SOS.

(4) The SOS shall deliver returned and address

corrected confirmation cards to the county clerk and the county clerk shall enter the corrected address into the voter file, scan the confirmation card and attach the scanned image to the voter’s record in the voter file. The physical confirmation card shall be attached to the voter’s certificate of registration to be filed in the county register.

(5) The SOS shall return to the county clerk any confirmation card with an address indicating that the voter has moved to another state or county. If the voter has moved to another county, the county clerk shall forward a photocopy or scanned image of the confirmation card to the county clerk of that county and the voter shall be mailed a new certificate of registration by the county clerk of the county where the voter now resides.

(6) The SOS shall return to the county clerk any confirmation card that indicates the voter has moved to another state or country. The county clerk shall mark the record with a status of “removable” and a status reason of “moved outside of county/city,” remove the certificate of registration from the county register with the confirmation card attached, and retain it for six years. The county clerk shall also scan the card and attached it to the electronic voter record.

(7) The SOS shall return to the county clerk any confirmation card that is returned as undeliverable. The county clerk shall log the mail as undeliverable in the electronic voter record and attach the confirmation card to the certificate of registration in the county register. The county clerk shall also scan the card and attached it to the electronic voter record.

(8) A voter is eligible for removal from the voter file if the voter has not been returned to active status, corrected the voter’s address on the certificate of registration and not appeared to vote during a period beginning on the date of the confirmation mailing and ending on the day after the date of the second general election that occurs



after the date of the confirmation mailing.

(9)

Cancellation of voter registration shall be by the board of registration and subject to the provisions of the Election Code. Upon cancellation, the county clerk shall remove the certificate of registration from the county register and retain it for six years.

**B. Street file**

maintenance: The county clerk shall establish a street file of standard 911 residential addresses within the voter file to determine a registrant's physical address and shall attempt to correct all non-standard addresses, if any.

**C. Precinct**

assignments: The county clerk shall ensure that all political subdivision changes due to reapportionment, redistricting or annexations are entered into the voter file and voters are assigned to correct voting districts, precincts or precinct parts, if any. The county clerk shall also conduct an audit in every odd numbered year to ensure that all precinct assignments are correct and shall ensure all discrepancies that are discovered in the audit are corrected as soon as possible and at least by the end of the odd numbered year.

**D. Felony convictions and satisfactions.**

(1) The

SOS, via ~~[agency-central]~~ the voter records system, shall enter, as the method of forwarding to county clerks, information on state and federal felony convictions into the statewide voter file upon receipt from the administrative office of the courts, the department of corrections, the department of justice, or other legally recognized source. Within five business days of receiving ~~[an agency-central batch]~~ information from the voter records system, the county clerk shall check to see if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall remove the voter's voter registration certificate from the county register and mark the record in the electronic

voter file system with a status code of "not eligible" and a status reason of "felony conviction." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the felon record and the voter in the voter file. The county clerk may contact the appropriate agency to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the felon records.

(2) Upon

determining a positive match due to felony conviction, the county clerk shall send a notice to the cancelled registrant explaining that the person's registration has been cancelled due to a positive match with a felony conviction with information on how they can reinstate their registrant status if the person believes the cancellation has occurred in error, within five business days, but as soon as is practicable.

(3) When the

SOS receives notice of satisfaction of felony conditions for a voter, the SOS shall enter the voter's restoration of eligibility into ~~[agency-central]~~ the voter records system. The SOS shall send regular notices of restoration to each county clerk via mail or secure electronic transport.

(4) Upon

satisfaction of felony conditions, the qualified elector must re-register by providing a new voter registration form. The county clerk shall consider receipt of acceptable documentation from the voter of satisfaction of conditions or restoration of eligibility in ~~[agency-central]~~ the voter records system as satisfactory proof of eligibility to register. The county clerk may consider additional evidence of satisfaction for restoration of eligibility and may contact the SOS for further investigation. Upon re-registering, the voter's record shall be changed to active status.

**E. Deceased voters.**

(1) The SOS,

via ~~[agency-central]~~ the voter records system, shall enter, as the method of forwarding to county clerks, the list of deceased voters received from

the DOH into the statewide voter registration system. Within five business days of receiving ~~[an agency-central batch]~~ information in the voter records system, the county clerk shall determine if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file and may contact appropriate agencies in an attempt to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the death records.

(2) The county

clerk may also utilize information provided in the obituaries in the local newspaper of record, online sites containing such records, or signed and notarized statements from family members to positively confirm deceased status. The county clerk may also use probate information, death certificates, or information pursuant to Subsection F of Section 1-4-25 NMSA 1978, to determine strong or weak matches with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file and may contact appropriate agencies in an attempt to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the death records.

(3) Upon

designating a voter as cancelled in the voter file, the county clerk shall remove the voter's certificate of registration from the county register and retain it for six years.



F. Native American deceased processing: For counties that include tribal or pueblo land and precincts, that county's Native American coordinator shall coordinate with the tribe or pueblo officials at least three times per year to identify deceased voters on the rolls as follows:

(1) The county Native American coordinator shall request a notarized list of deceased residents since the last time period requested, that includes full name, DOB, gender, address, SSN, and place and date of death from the tribe or pueblo. Pursuant to Subsection F of Section 1-4-25 NMSA 1978, the notarized list must be provided by the president or governor of an Indian nation, tribe or pueblo, ~~[from a census bureau representative,]~~ or from a tribal enrollment clerk.

(2) Upon receipt of the notarized listing, the county shall determine if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file. In the case of a weak match, the county clerk may send a letter to the residence address or relative requesting confirmation of the death. The relative will be asked to provide a signed statement from a family member indicating that the voter in question is deceased. If no response or no supporting documentation is provided, the voter's record is left unaltered and will remain on the voter registration rolls. The record will be subject to the normal NVRA purge process.

G. Other state notifications: Upon receiving notification by another state of a voter registering to vote in that state, the county clerk shall cancel that voter's registration and designate as "removable" and status reason to

"moved outside of county/city."  
[1.10.35.9 NMAC - N, 3/15/2012; A, 2/12/2016; A, 4/7/2020]

## End of Adopted Rules



## Other Material Related to Administrative Law

**MEDICAL BOARD****NOTICE OF MINOR,  
NONSUBSTANTIVE  
CORRECTION**

The New Mexico Medical Board gives Notice of a Minor, Nonsubstantive Correction to 16.10.14 NMAC and to 16.10.22 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

16.10.14 NMAC

In Section 7, the deleted subsections K through R were renumbered correctly.

16.10.22 NMAC

In Paragraph (3) of Subsection N of Section 7, the incorrect second subparagraph (g) was corrected to (h).

In Subsections S and T of Section 7, the embedded subparagraphs were changed from letter, example “(a)...”, to number, example “(1)...”.

For incorrect second Section 16, VERIFICATION OF CME through Section 22, OTHER NEW MEXICO MEDICAL BOARD RULES THAT PERTAIN TO THE LICENSURE OF NATUROPATHIC DOCTORS, together with respective history notes for each section, were corrected to Section 17 through Section 23.

A copy of this Notification will be filed with the official version of each of the above rules.

**PUBLIC REGULATION  
COMMISSION****NOTICE OF ISSUANCE OF  
EMERGENCY RULES**

**Prohibiting public utilities subject to the jurisdiction of the New Mexico Public Regulation Commission specifically, investor-owned electric, rural electric cooperatives, gas and water, from the disconnection of residential utility service during the time period the Emergency Executive Orders 2020-004 Declaring a Public Health Emergency and 2020-005 through 2020-0010 remain in effect**

**SPECIFIC AUTHORITY**

Pursuant to Section 8-8-15 (C) NMSA 1978, Section 14-4-5.6 NMSA 1978 and Section 62-6-4 NMSA 1978 and pursuant to the authority granted under Executive Orders 2020-004, 2020-005, 2020-006, 2020-007, 2020-008, 2020-009, and 2020-010 issued by Michelle Lujan Grisham, the Governor of the State of New Mexico, the New Mexico Public Regulation Commission shall issue emergency temporary amendments to 17.9.560.12 NMAC, 17.10.650.11 NMAC and 17.12.760.10 NMAC to become effective immediately upon filing. These amendments shall be temporary in nature and the amended rules will revert to their previous versions by effect of law 180 days after the emergency rule amendments are filed.

**CONCISE EXPLANATORY  
STATEMENT**

On March 11, 2020, and on March 15, 2020, Michelle Lujan Grisham, the Governor of the State of New Mexico, declared in Executive Order 2020-004 and related Executive Order 2020-005, 2020-006, 2020-007, 2020-008, 2020-009, and 2020-010 that a Public Health Emergency exists in New Mexico under the

Public Health Emergency Response Act, and invoked the All Hazards Emergency Management Act by directing all cabinets, departments and agencies to comply with the directives of the declaration and the further instructions of the Department of Health due to COVID-19. On March 12, 2020, the Secretary of the New Mexico Department of Health issued Public Health Emergency Order to Limit Mass Gatherings due to COVID-19. As a result of the aforementioned, there has been an immediate negative economic effect upon New Mexico's and the world's economy due to the requirements of social distancing, remote working, and the laying off of workers due to the closure of certain businesses having little or no economic activity. The end result is that certain residential customers may temporarily be without sufficient funds to timely make full payment of their public utility bills during the time period of the COVID-19 public health emergency. Such customers may also experience difficulty transmitting payment without contravening social distancing protocols and placing themselves at increased risk of transmission of the coronavirus-COVID 19.

On March 18, 2020, the Commission issued an Order in Case No. 20-00069-UT, in accordance with Section 8-8-15 C. NMSA 1978 of the New Mexico Public Regulation Act. and Section 14-4-5.6 NMSA 1978 (2017), finding that due to the above stated reasons: a) a state of emergency exists that causes an “imminent peril to the public health, safety or welfare” that requires the adoption and issuance of an immediate temporary emergency rule prohibiting the discontinuation of residential customer utility service during the time period of the Governor's Executive Orders 2020-004 through 2020-0010 are in effect; and b) due to the above stated reasons, the “immediate adoption... of a rule is necessary for the preservation of the public peace, health, safety or



general welfare....” Therefore, the Commission issued the March 18, 2020 Order, pursuant to its authority under NMSA 1978, Section 62-6-4 A, immediately adopting and issuing an temporary emergency rule prohibiting the discontinuation of residential customer utility service during the time period of the Governor’s Executive Orders 2020-004 through 2020-0010 are in effect;

### **DESCRIPTION OF EMERGENCY RULE AMENDMENTS**

The emergency temporary amendments to Subsection (G) of 17.9.560.12 NMAC, Subsection (G) of 17.10.650.11 NMAC and 17.12.760.10 NMAC shall be immediately and temporarily adopted for the purpose of ensuring that public utilities subject to the jurisdiction of the New Mexico Public Regulation Commission, specifically investor-owned electric utilities, rural electric cooperatives, gas utilities and water utilities, are prohibited from the disconnection of the utility service of residential customers for non-payment during the period of time the Governor of the State of New Mexico’s Executive Order 2020-004 declaring a public health emergency under the Public Health Emergency Response Act and under the All Hazards Emergency Act, as well as Executive Orders 2020-005 through 2020-0010 remain in effect. The emergency temporary amendments shall state: Public utilities are prohibited from discontinuing residential customer utility service during the time period the Governor’s Executive Orders 2020-004 through 2020-0010 are in effect. Disconnections for non-payment issued on or after March 11, 2020 (the effective date of the Emergency Executive Orders) are suspended for the duration of the effectiveness of the Emergency Executive Orders. Late fees related to these bill payments shall be waived. Public utilities are not prohibited from disconnecting service to residential customers due to: a) an emergency; b) safety; or c) a request to disconnect

from the residential customer. Public utilities are permitted to temporarily and immediately close in-person bill payment locations as long as they provide notice to residential customers regarding the same and notice how to pay electronically or by mail. In the event of closure of in-person bill payment locations, public utilities shall be permitted to continue to collect credit card or bank fees in accordance with their own Commission approved and filed tariffs. Medical certificates set to expire shall not expire for the duration of the effectiveness of the Emergency Executive Orders and shall automatically be extended for 90 days from the end of the Emergency Executive Orders.

### **GOVERNOR, OFFICE OF THE EXECUTIVE ORDER 2020-004**

#### **ORDER DECLARING A STATE OF PUBLIC HEALTH EMERGENCY AND INVOKING THE POWERS PROVIDED BY THE ALL HAZARD EMERGENCY MANAGEMENT ACT AND THE EMERGENCY LICENSING ACT**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China and reported to the World Health Organization. The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease named COVID-19.

Since it was first identified and reported, COVID-19 has spread globally. Over 100 countries have confirmed cases of COVID-19 and more than 100,000 people have been infected.

The incidence of COVID-19 within the United States has similarly increased. The first domestic report of COVID-19 occurred on January 21, 2020, in Washington State. To date, there have been more than 1,000

reported domestic cases of COVID-19 in 39 states.

Several public health organizations have implemented emergency measures intended to slow the spread of the disease. For example, on January 20, 2020, the United States Centers for Disease Control and Prevention activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO similarly declared a Public Health Emergency of International Concern shortly thereafter. At least twelve of our sister states, including California, Colorado, Florida, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Utah, and Washington, have also implemented emergency protocols intended to mitigate the transmission of COVID-19.

My administration has been proactive in its approach to the COVID-19 epidemic. Over the last several weeks, I have been in direct and frequent contact with officials overseeing the federal response to the COVID-19 outbreak. Further, my office has worked with the New Mexico Secretary of Health and other State emergency services to develop plans to provide a swift and effective response when the inevitability of COVID-19 in New Mexico ultimately materialized.

On March 11, 2020, the first confirmed cases of COVID-19 were reported in New Mexico. For this reason, it is necessary for all branches of State government to take immediate action to minimize the spread of COVID-19 and to minimize the attendant physical and economic harms.

THEREFORE, for the reasons addressed above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, do hereby ORDER and DIRECT:

1. I hereby invoke and exercise all powers vested in my office under the All Hazard Emergency Management Act, NMSA 1978, §§ 12-10-1 through



12-10-10. All branches of State government shall cooperate with federal authorities, other states, and private agencies to provide resources and services necessary to minimize physical and economic harm and assist in the provision of lodging, shelter, health care, food, transportation, or shipping necessary to protect lives or public property. Further, all political subdivisions within New Mexico shall adhere to Section 12-10-10, which mandates compliance with and enforcement of this Order.

2. I further proclaim a public health emergency in accordance with NMSA 1978, 12-10A-5 of the Public Health Emergency Response Act. This proclamation is necessary to minimize the spread and adverse impacts of the COVID-19 in our State. All political subdivisions and geographic areas within the State of New Mexico are affected by the COVID-19 outbreak and, to the extent permitted by law, they are subject to the provisions of this Order. The temporal scope of this emergency is for a period of 30 days and shall remain in effect until further notice. If necessary, after consultation with the Department of Health Secretary, this Order will be renewed and extended. See NMSA 1978, § 12-10A-5 (2003). All public health officials, including those employed by the Department of Health, Human Services Department, and Aging and Long-Term Service Department, are required to assist in the implementation of this Order.

3. The Department of Health and the Department of Homeland Security and Emergency Management shall collaborate to provide an effective and coordinated response to this public health emergency and shall consult with my office regarding all matters germane to this Order.

4. All cabinets, departments, and agencies shall comply with the directives in this Order and any instruction given by the Department of Health.

5. Pursuant to NMSA 1978, § 13-1-127 (2019), I direct

the General Services Department Secretary and the Department of Finance and Administration to assist in the emergency purchase of all goods and services necessary to contain, respond, and mitigate the spread of COVID-19 in New Mexico.

6. The Department of Health and the Department of Homeland Security and Emergency Management shall credential out-of-state professionals who can render aid and necessary services during the pendency of this Order. NMSA 1978, §§ 12-10-10.1 through 12-10-13. (2007).

7. The Office of the Superintendent of Insurance shall promulgate emergency regulations maximizing the available insurance coverage for New Mexicans suffering from COVID-19, pneumonia, or influenza, while simultaneously ensuring that medical costs do not create barriers to testing and treatment.

8. The Secretary of the New Mexico Department of Workforce Solutions shall adopt such emergency rules, regulations, or declarations as necessary to ensure that individuals who are experiencing a temporary lay-off or furlough status due to forced absences from work because of COVID-19 are eligible to receive unemployment benefits. I direct the Department of Workforce Solutions Secretary to promulgate emergency rules allowing temporary waivers of claims requirements for affected individuals under NMSA 1978, Section 51-1-5(A)(2) & (3) and any other relevant provisions of law. The emergency waiver provisions should be similar to those already provided by 11.3.300.320(E) & (F) NMAC.

9. I direct the Adjutant General to order into service any elements of the New Mexico National Guard that may be needed to support to civil authorities in response to this public emergency. Such assistance shall be provided during the pendency of this Order at the discretion of the Governor. NMSA 1978, §§ 20-1-1 through 20-1-8; NMSA 1978, §§ 20-4-1- through 20-4-14.

10. In accordance with NMSA 1978, §§ 12-11-23 through 12-11-25 and § 12-10-4(B) (3), the Department of Finance and Administration shall make available emergency financial resources on a continuing basis as necessary to address this emergency to the Department of Health. NMSA 1978, § 12-11-25 (2005). The funds shall be expended to protect the public health, safety, and welfare; to provide those resources and services necessary to avoid or minimize economic or physical harm on a temporary, emergency basis. The funds shall be paid out only in an amount specified by warrants drawn by the Secretary of the Department of Finance and Administration upon vouchers approved by the Governor or the Department of Health.

11. This Order may be supplemented or amended.

THIS ORDER supersedes any other previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until the Governor rescinds it.

**DONE AT THE EXECUTIVE OFFICE**

**THIS 11TH DAY OF MARCH 2020**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**ATTEST:**

**/S/MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**/S/MICHELL LUJAN GRISHAM  
GOVERNOR**

**End of Other Material  
Related to Administrative  
Law**



# 2020 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXI, Issues 1-24

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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