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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

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November 10, 2020

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Notices of Rulemaking and Proposed Rules

LIVESTOCK BOARD

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Livestock Board (NMLB) will hold a video/telephonic rulemaking hearing on December 10, 2020 at 12:30 p.m. The hearing will be held via a virtual format. Instructions on how to join the virtual rulemaking hearing will be posted on the NMLB's website, www.nmlbonline.com.

The NMLB will consider a proposed amendment to 21.32.2 NMAC, **BRANDING OF LIVESTOCK**. The purpose of the proposed rule amendment to Subsection J of 21.32.2.7 NMAC is to provide NMLB clarity on the term "Confined Feeding" as used in the field in regards to branding requirements. The purpose of the proposed rule amendment to Subsection B of 21.32.2.9 NMAC is to allow dairy producers to be able to move cattle from one confined feeding operation to another without branding, provided there is no change of ownership.

The NMLB will consider a proposed amendment to 21.32.10 NMAC, **LIVESTOCK BOARD FEES**. The purpose of the proposed rule amendment to Subsection L of 21.32.10.8 NMAC is to provide NMLB a standard rate of pay for "Transportation Fees" for stray livestock.

Full copies of text of the proposed new rule can be obtained from the agency's website at www.nmlbonline.com. To request a copy of the proposed rule by mail, contact the NMLB at (505)841-6161. Visit www.nmlbonline.com for instructions on how to attend the virtual public hearing.

Interested persons may submit written comments on the proposed changes to 21.32.2 NMAC and 21.32.10 NMAC at www.nmlbonline.com.

com or individuals may mail written comments to: NMLB/Rule Comments, 300 San Mateo Blvd NE, Suite 1000, Albuquerque, NM 87108. Comments are due by 4:30 p.m. on Wednesday, December 9, 2020. The final proposed rule will be voted on by the board during the public hearing on Thursday, December 10, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the virtual public rule hearing to be held on December 10, 2020 at 12:30 pm.

Legal authority for this rulemaking can be found in the Livestock Code 77-2-7, et seq. NMSA 1978; Livestock Board's power to establish rules and regulations 77-2-7, et seq. NMSA 1978.

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 agency at (505) 841-6161 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 NMLB at (505) 841-6161 if a summary or other type of accessible format is needed.

WORKFORCE SOLUTIONS DEPARTMENT

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions ("Department" or "NMDWS") hereby gives notice that the Department will conduct a public hearing in in the conference room of the Human Rights Bureau located at 1596 Pacheco Street Suite 103 in Santa Fe, New Mexico, 87505 on December 16, 2020 from 1:00 pm to 3:00 pm. The public comment hearing will also be conducted virtually.

Zoom meeting link: <https://zoom.us/j/98590263928?pwd=NE5vN21xYnRVZXdDUmM1Zlhpdk9Ndz09>
The Meeting ID: 985 9026 3928
Passcode: 63xD4U

The purpose of the public hearing will be to obtain input and public comment on the amendments proposed to the current NMAC 11.3.300. On April 24, 2020, an emergency rule was implemented which provided that during a state or federal declaration of emergency, NMDWS may waive the work search requirements for unemployment compensation eligibility until the emergency declaration is lifted. The emergency rule will automatically expire unless made a permanent part of the rule. This amendment proposes to make section 11.3.300.320 a permanent part of the regulation.

Under NMSA 1978, §9-26-4, the Workforce Solutions Department is responsible for the administration of the workforce technology division and the workforce transition services division. The Department is therefore responsible for the administration of the Unemployment Compensation Law pursuant to NMSA 1978 §51-1-1 et seq.

The purpose of the amendment is to make the emergency rule under 11.3.300.320 NMAC a permanent part of the regulation.

Interested individuals are encouraged to submit written comments to the State of New Mexico Department of Workforce Solutions, 401 Broadway NE, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on December 15, 2020. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to

Andrea.Christman@state.nm.us.
The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

WORKFORCE SOLUTIONS DEPARTMENT

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in the conference room of the Human Rights Bureau located at 1596 Pacheco Street Suite 103 in Santa Fe, New Mexico, 87505 on December 16, 2020 from 10:00 am to 12:00 pm. The public comment hearing will also be conducted virtually.

Zoom Meeting link: <https://zoom.us/j/94352900570?pwd=WGUxVDZYVHkwSHo2TWkzcXFFMkNJUT09>

Meeting ID: 943 5290 0570
Passcode: S686DJ

The purpose of the public hearing will be to obtain input and public comment on proposed changes to 9.1.1 NMAC.

Summary: amending the regulation governing the human rights act to change the procedures for issuance of Notices of Rights to Sue, drafting and amending charges of discrimination, and mediations and conciliations.

Under NMSA 1978 §§28-1-1 to 28-1-14 and 28-23-1 through 28-23-6, the Department is the agency responsible for the Human Rights Bureau.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on December 15, 2020. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rule will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

WORKFORCE SOLUTIONS DEPARTMENT

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in the conference room of the Human Rights Bureau located at 1596 Pacheco Street Suite 103 in Santa Fe, New Mexico, 87505 on December 15, 2020 from 1:00 pm to 3:00 pm. The public comment hearing will also be conducted virtually.

Zoom Meeting link: <https://zoom.us/j/97191166040?pwd=M0x3dVQ4aGtrb3dDNWpEYXkybmJPUT09>
Meeting ID: 971 9116 6040
Passcode: 05MtKn

The purpose of the public hearing will be to obtain input and public comment on proposed prevailing wage rates and subsistence and zone pay for Public Works projects for 2021.

Summary: The proposed amendment addresses updates to the prevailing wage rates and subsistence and zone pay in sections 11.1.2.20 and 11.1.2.21 NMAC

Under Section 9-26-4, NMSA 1978, the Workforce Solutions Department is responsible for the administration of the labor relations division which oversees setting the prevailing wage and fringe benefit rates. Pursuant to Section 13-4-11, NMSA 1978, the Director of the Labor Relations Division shall determine the prevailing wage rates and the prevailing fringe benefit rates.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on December 14, 2020. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rule will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

WORKFORCE SOLUTIONS DEPARTMENT

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in the conference room of the Human Rights Bureau located at 1596 Pacheco Street Suite 103 in Santa Fe, New Mexico, 87505 on December 15, 2020 from 10:00 am to 12:00 pm. The public comment hearing will also be conducted virtually.

Zoom Meeting link: <https://zoom.us/j/99052420729?pwd=RkJmeTJU SVREUHo1WTVlck9pb2NJdz09>
Meeting ID: 990 5242 0729
Passcode: b1mNML

The purpose of the public hearing will be to obtain input and public comment on proposed amendments to the State Apprenticeship Policy Manual

Summary: The proposed amendment will outline the new protocol for the State Apprenticeship Council to include changes to the agenda and will add provisions for unemployment compensation eligibility in certain apprenticeship circumstances.

Under NMSA 1978 §9-26-4, §13-4D-4, and §21-19A-6, the Department of Workforce Solutions Labor Relations Division has authority to adopt rules and regulations necessary to implement provisions of the Apprenticeship Assistance Act and the State Apprenticeship program.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on December 14, 2020. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rule will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

End of Notices of Rulemaking and Proposed Rules

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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.

HEALTH, DEPARTMENT OF

The New Mexico Department of Health approved the repeal of its rule 7 NMAC 28.2 - Requirements for Home Health Agencies (filed 10/31/2001) and replaced it with 7.28.2 NMAC - Requirements for Home Health Agencies (adopted on 10/28/2020), and effective 11/10/2020.

HEALTH, DEPARTMENT OF

TITLE 7 HEALTH
CHAPTER 28 HOME HEALTH
SERVICES
PART 2 REQUIREMENTS
FOR HOME HEALTH AGENCIES

7.28.2.1 ISSUING AGENCY: New Mexico department of health, division of health improvement.
[7.28.2.1 NMAC - Rp 7 NMAC 28.2.1, 11/10/2020]

7.28.2.2 SCOPE: These regulations apply to:
A. public, profit or nonprofit home health agencies providing services as outlined by these regulations;
B. any facility providing services as outlined by these regulations which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.
[7.28.2.2 NMAC - Rp 7 NMAC 28.2.2, 11/10/2020]

7.28.2.3 STATUTORY AUTHORITY: The regulations set forth herein which govern the licensing of home health agencies

have been promulgated by the secretary of the New Mexico department of health, pursuant to the general authority granted under Subsection E of Section 9-7-6 NMSA 1978, and Subsection D of Section 24-1-2 and Subsection J of Section 24-1-3 and 24-1-5 NMSA 1978 of the Public Health Act, as amended.
[7.28.2.3 NMAC - Rp 7 NMAC 28.2.3, 11/10/2020]

7.28.2.4 DURATION:
Permanent.
[7.28.2.4 NMAC - Rp 7 NMAC 28.2.4, 11/10/2020]

7.28.2.5 EFFECTIVE DATE: November 10, 2020 unless a different date is cited at the end of a section.
[7.28.2.5 NMAC - Rp 7 NMAC 28.2.5, 11/10/20]

7.28.2.6 OBJECTIVE:
A. Establish minimum standards for licensing of home health agencies who provide medically directed therapeutic or supportive services to a patient/client in their place of residence.

B. Monitor home health agencies' compliance with these regulations through surveys to identify any areas which could be dangerous or harmful to a patient/client or staff.

C. Encourage the establishment and maintenance of home health agencies to provide medically directed therapeutic or supportive services, to a patient/client in their place of residence, that maintain or improve the health and quality of life to patients/clients who are in New Mexico.
[7.28.2.6 NMAC - Rp 7 NMAC 28.2.6, 11/10/2020]

7.28.2.7 DEFINITIONS:
For purposes of these regulations the following shall apply:

A. Definitions beginning with "A":

(1) "Abuse"
means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a patient/client, including:

(a)
physical contact that harms or is likely to harm a patient/client of a home health agency;

(b)
inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a patient/client;

(c)
inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order;

(d)
medically inappropriate conduct that causes or is likely to cause physical harm to a patient/client;

(e)
medically inappropriate conduct that causes or is likely to cause great psychological harm to a patient/client;

(f)
an unlawful act, a threat or menacing conduct directed toward a patient/client that results and might reasonably be expected to result in fear or emotional or mental distress to a patient/client.

(2)
"Administrator/director" means a qualified individual, on-site, appointed by the governing body who organizes and directs the agency's on-going functions, maintains liaison among the governing body, the group of professional personnel and other staff, employs qualified personnel, ensures adequate staff

education, ensures the accuracy of public information materials and activities, and implements an effective budgeting and accounting system. A branch office must have a qualified on-site branch manager who receives direction and supervision from the parent home health agency's administrator/director.

(3)

"Applicant" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization must have authority from the organization. The applicant must be the owner.

(4) **"Auxiliary work station"**

means a nonlicensed, non-staffed convenience work station away from the licensed location of the home health agency's office.

B. Definitions

beginning with "B":

(1) **"Branch office"**

means a licensed location or site from which a home health agency provides services and is located sufficiently close that it is not impractical for it to receive direction and supervision from the parent home health agency on a day-by-day basis.

(2) **"Bylaws"**

means a set of rules adopted by a home health agency for governing the agency's operation.

C. Definitions

beginning with "C":

(1) **"Clinical service note"**

means a written notation dated and signed by a member of the health team that summarizes facts about care furnished and the patient/client's response during a given period of time.

(2) **"Clinical Nurse Specialist"**

means a registered nurse who is licensed by the New Mexico board of nursing for advance practice as a clinical nurse specialist and whose name and pertinent information are entered on the list of clinical nurse specialists maintained by the New Mexico board of nursing, as defined in the Nursing Practice Act, Subsection G of Section 61.3.3 NMSA 1978.

D. Definitions

beginning with "D": "Department" means the New Mexico department of health.

E. Definitions

beginning with "E":

(1)

"Exception" Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

(2)

"Exploitation" of a patient/client consists of the act or process, performed intentionally, knowingly or recklessly, of using any patient/client's money or property, for another person's profit, advantage or benefit. Exploitation includes but is not limited to:

(a)

manipulating the patient/client by whatever mechanism to give money or property to any agency staff or management member;

(b)

misappropriation or misuse of monies belonging to a patient/client or the unauthorized sale, transfer or use of a patient/client's property;

(c)

loans of any kind from patient/clients to agency staff or management;

(d)

accepting monetary or other gifts from a patient/client or their family with a value in excess of \$25 or gifts which exceed a total value of \$300 in one year. All gifts received by agency operators, their families or staff of the agency must be documented and acknowledged by the person giving the gift and the recipient.

F. Definitions

beginning with "F": [RESERVED]

G. Definitions

beginning with "G":

(1)

"Governing body" means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a home health agency licensed pursuant to these regulations.

(2) **"Great psychological harm"**

means psychological harm that causes mental or emotional incapacitation

for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care.

H. Definitions

beginning with "H":

(1)

"Home health agency" means any business, entity or organization primarily engaged in providing medically directed acute, restorative, rehabilitative, maintenance, preventive or supportive services through professional or paraprofessional personnel to a patient/client in the patient/client's residence. This term does not apply to any individual, licensed practitioner providing services within the scope of his/her practice or to any business, entity or organization providing non-medically directed services in a patient/client's place of residence.

(2) **"Home health aide"**

means a person who has successfully completed a course of training or demonstrated competency in assisting patient/clients to meet basic personal care needs. A home health aide provides medically directed personal care to patient/clients such as, but not limited to, taking and recording vital signs, bathing, grooming, feeding, ambulation, exercise, oral hygiene and skin care.

(3) **"Home health services"**

means those medically directed therapeutic or supportive services provided by a home health agency to a patient/client in his or her place of residence.

(4)

"Homemaker" means a person who has successfully demonstrated competency to provide household services such as cleaning, meal preparation, laundry, shopping and to assist a patient/client with activities of daily living.

I. Definitions

beginning with "I": [RESERVED]

J. Definitions

beginning with "J": [RESERVED]

K. Definitions

beginning with "K": [RESERVED]

L. Definitions

beginning with "L":

(1) **“Level of care”** means the long term care assessment abstract which medically qualifies a patient/client for medicaid waiver services.

(2) **“Licensed practical nurse”** means a person licensed as a practical nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

(3) **“Licensee”** means the person(s) who, or organization which, has an ownership or similar interest in the home health agency and in whose name a license for a home health agency has been issued and who is legally responsible for compliance with these regulations.

(4) **“Licensing authority”** means the New Mexico department of health.

M. Definitions beginning with “M”: **“Medically directed services”** means in-home services that are provided in accordance with a patient/client’s plan or level of care which is reviewed and approved by a physician, physician assistant, nurse practitioner or clinical nurse specialist at least annually.

N. Definitions beginning with “N”:

(1) **“Neglect”** means subject to the patient/client’s right to refuse treatment and subject to the caregiver’s right to exercise sound medical discretion, the grossly negligent:

(a) failure to provide any treatment, services, care, medication or item that is necessary to maintain the health or safety of a patient/client;

(b) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a patient/client;

(c) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a patient/client.

(2) **“Nurse Practitioner”** means a registered

nurse who is licensed by the New Mexico board of nursing for advance practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the New Mexico board of nursing, as defined in the Nursing Practice Act, Subsection E of Section 61.3.3 NMSA 1978.

O. Definitions beginning with “O”:

(1) **“Occupational therapist”** is a person who is licensed by the state of New Mexico as an occupational therapist, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.

(2) **“Occupational therapist assistant”** is a person who is licensed by the state of New Mexico as a certified occupational therapist assistant, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.

P. Definitions beginning with “P”:

(1) **“Parent home health agency”** means an agency that develops and maintains responsibility for the operation and administrative control of branch office(s).

(2) **“Patient/client”** means a person who is receiving home health care services.

(3) **“Personal care attendant/provider”** means a person who has successfully demonstrated competency to provide assistance with personal care such as bathing, grooming, bowel and bladder needs.

(4) **“Physical therapist”** is a person who is licensed by the state of New Mexico as a physical therapist, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.

(5) **“Physical therapist assistant”** is a person who is licensed by the state of New Mexico as a physical therapist assistant, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.

(6) **“Physician’s assistant”** means a person licensed under Section 61-6-

7 through 61-6-10 NMSA 1978, the Physician Assistant Act, to perform as a physician’s assistant.

(7) **“Plan of care”** means a written plan of treatment which sets forth each service that the home health agency agrees to provide to a patient/client.

(8) **“Plan of correction”** means a plan written and signed by the licensee or representative addressing how and when the licensing authority’s identified deficiencies will be corrected.

(9) **“Physician”** is a person who is a doctor of medicine, osteopathy or podiatry licensed to practice medicine.

(10) **“Policy”** means a statement of principle that guides and determines present and future decisions and actions.

(11) **“Procedure”** means the action(s) that must be taken in order to implement a policy.

(12) **“Professional personnel”** means the staff of the agency or personnel under contract or agreement with the agency who require a license, registration or certification by the state of New Mexico.

Q. Definitions beginning with “Q”: **“Quality improvement”** means an on-going assessment program which addresses clinical care and program evaluation.

R. Definitions beginning with “R”:

(1) **“Registered nurse”** means a person who holds a certificate of registration as a registered nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

(2) **“Residence”** means the place in New Mexico where a patient/client is residing at the time home health services are provided.

S. Definitions beginning with “S”:

(1) **“Social worker”** is a person who is licensed

by the state of New Mexico as a social worker, pursuant to Sections 61-31-1 to 61-31-25 NMSA 1978.

(2) **“Speech language pathologist”** is a person licensed by the state of New Mexico to practice speech language pathology, pursuant to Sections 61-14B-1 to 61-14B-25 NMSA 1978.

(3) **“Supervision”** means direction, guidance and oversight by a qualified person, within their sphere of competence, of an individual providing services in accordance with a patient/client’s plan of care.

(4) **“Supportive services”** means medically or non-medically directed assistance to patient/clients to meet basic activities of daily living.

T. Definitions beginning with “T”: **“Therapeutic services”** means a medically directed activity or activities to patients/clients based upon a knowledge of disease processes provided by a home health agency.

U. Definitions beginning with “U”: [RESERVED]

V. Definitions beginning with “V”: [RESERVED]

W. Definitions beginning with “W”: **“Waive/waiver”** means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time in which the health, safety, or welfare of the patient/clients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED] [7.28.2.7 NMAC - Rp 7 NMAC 28.2.7, 11/10/2020]

7.28.2.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory.

“May” means permissive. The use of the words “adequate”, “proper”, and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide services of home health agencies as outlined in these regulations.

[7.28.2.8 NMAC - Rp 7 NMAC 28.2.8, 11/10/2020]

7.28.2.9 HOME HEALTH AGENCY AND SCOPE OF SERVICES:

An agency or organization meeting the following criteria must be licensed as a home health agency:

A. Provides at least one medically directed service, such as, but not limited to:

- (1) skilled nursing;
- (2) physical therapy;
- (3) occupational therapy;
- (4) inhalation therapy;
- (5) infusion therapy;
- (6) speech language pathology;
- (7) social work;
- (8) home health aide;
- (9) personal care attendant;
- (10) homemaker.

B. A home health agency must provide at least one of the above services, in its entirety, directly through employees, but may provide other services under arrangements with another agency or organization or provider.

C. A licensed home health agency may also provide non-medically directed services.

D. Home health agency excludes:

- (1) independent or sole practitioners providing in-home services under their respective professional practice acts;

(2) medical suppliers who do not provide services listed in Paragraph (1) of Subsection D of 7.28.2.9 NMAC above;

(3) family, friends, volunteers and paid individuals not under the direct control of a home health agency.

E. Branch office: Means a licensed location from which a home health agency provides services to patient/clients. A home health agency may not apply for a license to open a branch office unless the parent agency has been in operation for at least one year, had an annual survey conducted by the licensing authority, and is found to be in substantial compliance with these regulations.

(1) A branch office must be located within 100 miles distance from the licensed location of the parent home health agency.

(2) A branch office must have a qualified on-site administrator who receives direction and supervision from the parent home health agency’s administrator/director.

(3) A branch office must be able to provide the same services as the parent home health agency.

(4) Original patient/client records, if stored at the parent home health agency, shall be made available upon request of the licensing authority within two hours.

F. Service area: A home health agency may only provide services to patient/clients who reside within 100 miles distance from the licensed location of the agency.

(1) The licensing authority may grant a temporary exception to the 100 mile distance limitation when the following conditions exist:

(a) no other home health agency service for the patient/client is available;

(b) no home health agency in the area within the 100 miles distance limitation is able or willing to provide services to the patient/client.

(2) Home health agencies not previously required to be licensed by the licensing authority shall have twelve months from the date these regulations are adopted to comply.

G. Auxiliary work station: A non-licensed, non-staffed convenience work station away from the licensed location of the home health agency's office for the limited purposes of storage of supplies and a work area for documentation by staff where a telephone and fax may be available for communication. The auxiliary work station shall not function as a branch office and the following requirements are intended to insure that the work station does not become a branch office:

(1) must not be utilized to increase the geographical service area of a home health agency or as a substitute for a branch operation of the agency;

(2) the name of the agency must not be identified by signage at the work station;

(3) the telephone number for the work station shall not be advertised or otherwise made available to persons or individuals other than staff of the agency;

(4) patient/clients shall only be admitted by and through the licensed location of the agency;

(5) no orders for patient/client care from physicians shall be accepted by agency staff at its auxiliary work station;

(6) no original patient/client records, copies of patient/client records or personnel records shall be maintained by the agency at the auxiliary work station. [7.28.2.9 NMAC - Rp 7 NMAC 28.2.9, 11/10/2020]

7.28.2.10 INITIAL LICENSURE PROCEDURES: The authority to determine if a person(s) or organization is subject to regulation under the statute is inherent in the responsibility to regulate agencies that are within the definitions of the statute and these regulations. To obtain

an initial license for a home health agency pursuant to these regulations, the following procedures must be followed by the applicant:

A. These regulations should be thoroughly understood by the applicant and used as reference prior to applying for initial licensure.

B. The following documents must be submitted to the licensing authority:

(1) Letter of intent: Submit to the licensing authority a letter of intention to open a home health agency pursuant to these regulations.

(2) Application for initial license: All information requested by the licensing authority must be provided. All applications for an initial license must be accompanied by the required non-refundable fee.

(3) Functional program outline: Each application for initial licensure must be accompanied by a functional program outline that provides the following information:

(a) scope of services to be provided by the proposed home health agency;

(b) estimated number of patient/clients to be served monthly;

(c) services that will be contracted or arranged with another health provider, i.e., homemaker, I.V. therapy, etc.;

(d) hours and days of operation.

(4) Home health agency policies: Submit for review and approval by the licensing authority, a copy of the home health agency policies and a copy of these licensing regulations annotated to the agency's policies and procedures. Note: Each regulation must be referenced to the appropriate policy by writing the page or policy number by the corresponding regulation.

C. Upon the licensing authority's approval of items Paragraphs (1) through (4) of Subsection B of 7.28.2.10 NMAC above, a temporary license will be issued. Upon receipt of the temporary

license, the home health agency may admit patients/clients.

D. Upon becoming fully operational and accepting a patient/client, a home health agency must submit a written request to the licensing authority for the initial survey.

E. Upon completion of the initial survey and determination that the facility is in compliance with these regulations, the licensing authority will issue an annual license. [7.28.2.10 NMAC - Rp 7 NMAC 28.2.10, 11/10/2020]

7.28.2.11 LICENSES:

A. Annual license: An annual license is issued for a one year period to a home health agency which has met all requirements of these regulations.

B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations, or for administrative purposes.

(1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility.

(1) application must be on a form provided by the licensing authority;

(2) application must be accompanied by the required fee for an amended license;

(3) application must be submitted within 10 working days of the change.

[7.28.2.11 NMAC - Rp 7 NMAC 28.2.11, 11/10/2020]

7.28.2.12 LICENSE

RENEWAL:

A. The licensee must submit renewal application on forms provided by the licensing authority, along with the required fee at least 30 days prior to expiration of the current license.

B. Upon receipt of renewal application, required fee and an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the agency is in substantial compliance with these regulations.

C. If the licensee fails to submit a renewal application with the required fee and the current license expires, the agency shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license. [7.28.2.12 NMAC - Rp 7 NMAC 28.2.12, 11/10/2020]

7.28.2.13 POSTING OF

LICENSE: The agency's current, original license must be posted in a conspicuous place at the licensed location, as identified in the application for licensure. [7.28.2.13 NMAC - Rp, 7 NMAC 28.2.13, 11/10/2020]

7.28.2.14 NON-TRANSFERABLE RESTRICTION ON LICENSE:

A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

- A.** ownership of the agency changes;
- B.** the agency changes location of its office;
- C.** licensee of the agency changes;
- D.** the agency discontinues operation;
- E.** an agency wishing to continue operation as a licensed home health agency under

circumstances Subsections A through D of 7.28.2.14 NMAC above must submit an application for initial licensure in accordance with Section 10 of these regulations, at least 30 days prior to the anticipated change. [7.28.2.14 NMAC - Rp 7 NMAC 28.2.14, 11/10/2020]

7.28.2.15 AUTOMATIC EXPIRATION OF LICENSE:

A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, revoked, or:

- A.** on the day an agency discontinues operation;
- B.** on the day an agency is sold, leased, or otherwise changes ownership or licensee;
- C.** on the day an agency changes location of its office. [7.28.2.15 NMAC - Rp 7 NMAC 28.2.15, 11/10/2020]

7.28.2.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING:

In accordance with Subsection H of Section 24-1-5 NMSA 1978, as amended, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee. [7.28.2.16 NMAC - Rp 7 NMAC 28.2.1611/10/2020]

7.28.2.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

- A.** failure to comply with any provision of these regulations;
- B.** failure to allow survey by authorized representatives of the licensing authority;
- C.** any person active in the operation of an agency licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;
- D.** misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;
- E.** discovery of repeat violations of these regulations during surveys;
- F.** failure to provide the required care and services as outlined by these regulations for the patients/clients receiving care from the agency. [7.28.2.17 NMAC - Rp 7 NMAC 28.2.17, 11/10/2020]

7.28.2.18 HEARING PROCEDURES:

- A.** Hearing procedures for adverse action taken by the licensing authority against an agency's license as outlined in Section 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico department of health, 7.1.2 NMAC.
- B.** A copy of the above regulations may be requested at any time by contacting the licensing authority. [7.28.2.18 NMAC - Rp 7 NMAC 28.2.18, 11/10/2020]

7.28.2.19 AGENCY SURVEYS:

- A.** Application for licensure, whether initial or renewal shall constitute permission for entry into and survey of a home health agency by authorized licensing authority representatives during pendency of the application, and if licensed, during the licensure period.
- B.** The licensing authority shall perform, as it deems necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate

complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility. The licensing authority may include patient/client home visits as part of any survey or investigation.

C. Upon receipt of the official deficiency statement from the licensing authority, the licensee or his/her representative will be required to submit a plan of correction to the licensing authority within 10 working days, stating how the agency intends to correct each violation noted and the expected date of completion.

D. The licensing authority may, at its sole discretion, accept the plan of correction as written or require modifications of the plan by the licensee.

[7.28.2.19 NMAC - Rp 7 NMAC 28.2.19, 11/10/2020]

7.28.2.20 ACCEPTANCE OF PATIENTS/CLIENTS:

Patients/clients must be accepted for treatment by the agency when there is a reasonable expectation that the patient/client's health care or supportive service needs can be met adequately in the patient/client's place of residence.

[7.28.2.20 NMAC - Rp 7 NMAC 28.2.20, 11/10/2020]

7.28.2.21 OFFICE REQUIREMENTS:

A. An agency licensed pursuant to these regulations shall establish and maintain an official office for the conduct of its business with posted hours of operation.

B. The office space must be able to maintain, store and safeguard agency records.

[7.28.2.21 NMAC - Rp 7 NMAC 28.2.21, 11/10/2020]

7.28.2.22 HEALTH AND AGE REQUIREMENTS:

A. All staff or contracted personnel involved in the care of patients/clients shall be at least eighteen (18) years of age.

B. All staff, contracted personnel, or volunteers having patient/client contact must have a TB test in accordance with the

requirements of the infectious disease bureau, of the public health division, department of health.

[7.28.2.22 NMAC - Rp 7 NMAC 28.2.22, 11/10/2020]

7.28.2.23 REQUIREMENTS FOR LICENSURE OF PROFESSIONALS:

Any health professional employed or contracted by the home health agency, such as, but not limited to, physicians, physician's assistants, nurse practitioners, physical or occupational therapists, speech language pathologists, registered professional nurses, licensed practical nurses, licensed or certified social workers, physical therapy assistants or certified occupational therapy assistants, must have a current license, registration or certification from the state of New Mexico. Proof of licensure must be maintained on file by the agency.

[7.28.2.23 NMAC - Rp 7 NMAC 28.2.23, 11/10/2020]

7.28.2.24 GOVERNING BODY:

Each agency licensed pursuant to these regulations must have a governing body who adopts and reviews, at least annually, written by-laws or policies and procedures which govern the day to day operation of the agency.

A. The governing body may include the licensee of the agency.

B. The governing body must have full legal authority and responsibility for the operation of the agency.

C. The governing body must appoint a qualified administrator.

D. The governing body must oversee the management and fiscal affairs of the agency.

E. The governing body must meet at least annually. These meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.

[7.28.2.24 NMAC - Rp 7 NMAC 28.2.24, 11/10/2020]

7.28.2.25 ADVISORY GROUP:

Each agency licensed

pursuant to these shall have an advisory group.

A. The advisory group shall consist of:

(1) at least three individuals;

(2) an individual representing at least one of the services offered by the agency;

(3) at least one member of the group must be neither an owner or an employee of the agency;

(4) governing body members may also be part of the advisory group.

B. The advisory group shall meet at least semi-annually to perform the following functions:

(1) to review the agency's required policies and procedures and on-going quality improvement program and make recommendations to the governing body, at least annually;

(2) to participate in the agency's program evaluation, at least annually;

(3) to advise the agency on professional issues;

(4) to assist the agency in maintaining liaison with other health care providers in the community and in its community information efforts.

C. The advisory group meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.

[7.28.2.25 NMAC - Rp 7 NMAC 28.2.25, 11/10/2020]

7.28.2.26 ADMINISTRATOR:

Each agency licensed pursuant to these regulations must have an administrator appointed by the governing body who:

A. is a licensed physician; or

B. is a registered nurse; or

C. has at a minimum, a high school diploma or general equivalency diploma, training and experience in health services administration, and at least one year of supervisory or administrative experience in home health care;

D. may also be the supervising physician or registered nurse;

E. is responsible for implementing the directions of the governing body and organizing and directing the on-going functions of the agency in compliance with these regulations;

F. a qualified person is authorized in writing to act in the absence of the administrator.
[7.28.2.26 NMAC - Rp 7 NMAC 28.2.26, 11/10/2020]

7.28.2.27

RESPONSIBILITIES OF

AGENCY PERSONNEL: Home health agencies utilizing any of the following personnel for provision of home care services must assure the responsibilities listed below are met.

A. Primary service personnel: including, but not limited to, registered nurses, physical therapists, occupational therapists, speech therapists, social workers, shall:

- (1) provide necessary professional care and guidance within the scope of their licensure;
- (2) evaluate the home for its suitability for the patient/client's care;
- (3) teach the patient/client and caregivers how to provide care;
- (4) develop, evaluate and coordinate the patient/client's plan of care on a continuing basis;
- (5) inform the physician and other personnel of changes in the patient/client's condition and needs;
- (6) perform an evaluation visit and follow-up visits as needed;
- (7) prepare clinical notes.

B. Secondary service personnel: Other licensed personnel, including, but not limited to, respiratory therapists, licensed practical nurses, physical therapy assistants, certified occupational therapist assistants, shall:

(1) provide services in accordance with an established plan of care and agency policies;

(2) provide necessary professional care and guidance within the scope of their licensure;

(3) prepare clinical notes;

(4) evaluate the home for its suitability for the patient/client's care;

(5) teach the patient/client and caregiver how to provide care;

(6) inform the physician and other personnel of changes in the patient/client's condition and needs.

C. Non-licensed personnel: Individuals, including, but not limited to, home health aides, homemakers, personal care attendants, shall:

(1) provide personal care including assistance in the activities of daily living;

(2) assist to maintain a safe and clean environment;

(3) perform household services and other activities as assigned;

(4) communicate with appropriate supervisor about changes or variations in the patient/client or home situation;

(5) teach the patient/client and caregivers how to provide care, within the level of their competency;

(6) prepare patient/client notes.

[7.28.2.27 NMAC - Rp 7 NMAC 28.2.27, 11/10/2020]

7.28.2.28 SUPERVISING PERSONNEL:

A. The medically directed services provided by the agency must be supervised by a licensed professional or an appropriately qualified staff member.

B. The supervising staff member or their alternate who is similarly qualified must be available at all times during operating hours of the agency.

C. The supervising staff member or alternate who is similarly qualified must participate in all activities relevant to the services provided, including developing qualifications for assignments of personnel.

[7.28.2.28 NMAC - Rp 7 NMAC 28.2.28, 11/10/2020]

7.28.2.29 SUPERVISION OF SECONDARY AND NONLICENSED PERSONNEL:

A. Licensed practical nurses: Services and care provided by a licensed practical nurse will be furnished under the supervision of a registered nurse who has a minimum of one year home health experience or a minimum of two years nursing experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by the licensed practical nurse.

(2) Conduct and document a supervisory visit to at least one patient/client residence at least every 60 days, or more often as indicated.

B. Physical therapy assistants: Services and care provided by a physical therapy assistant will be furnished under the supervision of a physical therapist, with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by the physical therapy assistant.

(2) Conduct and document a supervisory visit to the patient/client residence at least every 30 days or as indicated.

(3) Be on-call and readily available and within a 100 mile radius, or have appointed another physical therapist in their absence.

(4) Supervise no more than two physical therapy assistants.

C. Certified occupational therapy assistants:

Services and care provided by a certified occupational therapy assistant will be furnished under the supervision of an occupational

therapist, with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by the certified occupational therapy assistant.

(2) Conduct and document a supervisory visit to the patient/client residence:

(a) at a minimum of every two weeks for intermediate-level certified occupational therapy assistants;

(b) at a minimum of every 30 days for advanced-level certified occupational therapy assistants.

D. Home health

aides: Services and care provided by a home health aide will be furnished under the supervision of an appropriately licensed professional, such as, registered nurse, physical therapist, occupational therapist, or a speech language pathologist with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client instructions which identify appropriate tasks to be performed by the home health aide.

(2) Conduct and document a supervisory visit to the patient/client residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple home health aides require only one supervisory visit. This home health aide need not be present in the patient/client's residence at the time of the supervisory visit.

E. Personal care

attendants or equivalent: Services and care provided by a personal care attendant or equivalent will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify

appropriate tasks to be performed by the personal care attendant or equivalent.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple personal care attendants or equivalent require only one supervisory visit. The personal care attendant need not be present in the patient/client's residence at the time of the supervisory visit.

F. Homemakers:

Services and care provided by a homemaker will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the homemaker.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple homemakers require only one supervisory visit. The homemaker need not be present in the patient/client's residence at the time of the supervisory visit.

[7.28.2.29 NMAC - Rp 7 NMAC 28.2.29, 11/10/2020]

7.28.2.30 HOME HEALTH AIDE TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a home health aide on a full-time, part-time, temporary, per diem, or other basis unless:

(1) that individual is competent to provide services as a home health aide;

(2) that individual has completed a training program or a competency evaluation program as outlined in Subsections

C or E of 7.28.2.30 NMAC of these regulations.

B. Source of training:

Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct home health aide training and the training curriculum to the licensing authority. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of home health aides and document that each is determined competent.

(3) The licensing authority may deny a home health agency the right to conduct home health aide training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial non-compliance with these regulations.

C. Course

requirements: Home health aides: The home health aide training program must address each of the subject areas listed below through classroom and supervised practical training totaling at least 75 hours, with at least 16 hours devoted to supervised practical training. "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse.

(1) the individual being trained must complete at least 16 hours of classroom training before beginning the supervised practical training;

(2) communications skills;

(3) observation, reporting and documentation of patient status and the care or service furnished;

(4) reading and recording of vital signs;
 (5) basic infection control procedures;
 (6) basic elements of body functioning and changes in body function that must be reported to an aide’s supervisor;
 (7) maintenance of a clean, safe and healthy environment;
 (8) recognizing emergencies and knowledge of emergency procedures (including CPR and first aid);
 (9) the physical, emotional and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, his or her privacy and his or her property;
 (10) appropriate and safe techniques in personal hygiene and grooming that include, but are not limited to, bathing, shampooing, nail and skin care, oral hygiene and toileting;
 (11) safe transfer techniques and ambulation;
 (12) normal range of motion and positioning;
 (13) nutrition and hydration;
 (14) patient/client rights, including respect for cultural diversity;
 (15) any other task that the home health agency may choose to have the home health aide perform.

D. Instructor personnel:

(1) The training of home health aides must be performed by, or under the supervision of, a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health services.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide home health aide training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. Competency evaluation includes both a written test and a skills demonstration. Skills demonstration must be observed and documented by a registered nurse or licensed practical nurse.

(2) Documentation must include at least the following information:

- (a) Training:
 - (i) name of individual taking training;
 - (ii) title, purpose and objectives of class;
 - (iii) name of instructor and qualifications;
 - (iv) number of hours of instruction;
 - (v) date instruction was given.

- (b) Competency:
 - (i) name of individual being evaluated for competency;
 - (ii) date and method used to determine competency.

F. Annual in-service training: Each home health aide must participate in at least 12 documented hours of in-service training during each 12 month period. This requirement may be fulfilled on a prorated basis during the home health aide’s first year of employment at the home health agency.

G. Annual performance review: A performance review, including written evaluation and skills demonstration must be completed on each home health aide no less frequently than every 12 months.

[7.28.2.30 NMAC - Rp 7 NMAC 28.2.30, 11/10/2020]

7.28.2.31 HOMEMAKER/ PERSONAL CARE ATTENDANT OR EQUIVALENT TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a homemaker/personal care attendant or equivalent on a full-time, part time, temporary, per diem or other basis unless:

(1) That individual is competent to provide assigned tasks as a homemaker/personal care attendant or equivalent.

(2) That individual has completed a training program or a competency evaluation program as outlined in Subsections C or E of 7.28.2.31 NMAC of these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct homemaker/personal care attendant or equivalent training and the source of training material. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of homemaker/personal care attendant or equivalent and document that each is determined to be competent.

(3) The licensing authority may deny a home health agency the right to conduct homemaker/personal care attendant or equivalent training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial noncompliance with these regulations.

C. Course requirements: The home health agency’s homemaker/personal care attendant or equivalent training program must consist of no less than 40 hours of training, to be completed by the homemaker/personal care attendant or equivalent in the first year of employment. 10 hours of training must be completed prior to placing the homemaker/personal care employee in a patient/client home.

Two of the 10 hours may include agency orientation. Eight of the 10 hours training must be patient/client service specific. The training must address, at a minimum, the following areas:

- (1) communication skills;
- (2) patient/client rights, including respect for cultural diversity;
- (3) recording of information for patient/client records;
- (4) nutrition and meal preparation;
- (5) housekeeping skills;
- (6) care of the ill and disabled, including the special needs populations;
- (7) emergency response (including CPR and first aid);
- (8) basic infection control;
- (9) home safety.

D. Instructor personnel:

(1) The training of homemaker/personal care attendant or equivalent must be performed by or under the direction of a licensed professional or an appropriately qualified person.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide homemaker/personal care attendant or equivalent training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. The training or competency evaluation must be observed and documented by a licensed professional or an appropriately qualified person.

(2) Documentation must include at least the following information:

- (a) Training:
 - (i) name of individual taking training;
 - (ii) title, purpose, and objectives of class;
 - (iii) name of instructor;
 - (iv) number of hours of instruction;
 - (v) date instruction was given.
- (b) Competency:
 - (i) name of individual being evaluated for competency;
 - (ii) date and method used to determine competency.
- (3) Annual in-service training: Each homemaker/personal care attendant or equivalent shall participate in at least 10 documented hours of in-service training during each 12 month period. [7.28.2.31 NMAC - Rp 7 NMAC 28.2.31, 11/10/2020]

7.28.2.32 PATIENT/CLIENT RIGHTS: A home health agency licensed pursuant to these regulations must protect and promote the rights of each individual under its care, including each of the following rights:

- A. the right to be fully informed in advance about the care and treatment to be provided by the agency;
- B. the right to refuse or terminate treatment;
- C. the right to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being;
- D. the right to participate in planning care and treatment or changes in care or treatment, except for those individuals adjudged incompetent;
- E. the right to be treated with dignity and respect and to be free from abuse, neglect, and exploitation. No home health agency to whom a patient/client's money or valuables have been entrusted shall

- mingle the patient/clients monies, valuables or property, with that of the licensee, staff or management;
- F. the right to voice grievances, with respect to treatment or care that is or fails to be furnished, without discrimination or reprisal for voicing such grievances;
- G. the right to confidentiality of medical care and patient/client records;
- H. the right to have one's property treated with respect;
- I. the right to be fully informed, orally and in writing, of all charges for services to be performed by the agency and of any changes in these charges;
- J. the right to be informed of the New Mexico home health agency hotline number (1-800-752-8649), hours of operation (8:00am-5:00pm, Monday-Friday), and purpose of the hotline, which is to receive complaints, questions about local home health agencies, or to lodge complaints concerning the implementation of the advance directives requirements;
- K. the right to be fully informed regarding advance directives, prior to care being given. This information must include agency policies on advance directives and a description of applicable state law;
- L. the right to be fully informed, in writing, of the patient/client's rights pursuant to these regulations. [7.28.2.32 NMAC - Rp 7 NMAC 28.2.32, 11/10/2020]
- 7.28.2.33 PLAN OF CARE:** Care of a patient/client by the agency must follow a written plan of care which is reviewed at least annually.
 - A. **Medically directed care:** An agency must follow a written plan of care established and periodically reviewed by a physician, physician assistant, nurse practitioner or clinical nurse specialist within the extent of their licensed scope of practice as defined by state law. Care continues under the supervision of a physician, physician assistant, nurse practitioner and clinical nurse specialist acting within the extent of

their licensed scope of practice as defined by state law.

(1) The plan of care shall be developed in consultation with a patient/client, appropriate agency staff and cover all pertinent diagnoses, including but not limited to:

- (a) mental status;
- (b) types of services and equipment required;
- (c) frequency and duration of visits;
- (d) functional limitations;
- (e) activities permitted;
- (f) nutritional requirements;
- (g) medications and treatments;
- (h) safety measures to protect against injury;
- (i) plans or goals for care;
- (j) any other appropriate items.

(2) If a physician, physician assistant, nurse practitioner and clinical nurse specialist acting within the extent of their licensed scope of practice, refers a patient/client under a plan of care which cannot be completed until after an evaluation visit, the patient/client, and physician, physician assistant, nurse practitioner or clinical nurse specialist must be consulted to approve additions or modifications to the original plan.

(3) The plan of care must be reviewed by the patient/client, the attending physician, physician assistant, nurse practitioner or clinical nurse specialist acting within the extent of their licensed scope of practice, and home health agency personnel at least annually or as often as the condition of the patient/client requires.

(4) Agency professional staff must promptly alert the physician, physician assistant, nurse practitioner or clinical nurse

specialist to any changes that suggest a need to alter the plan of care.

(5) Conformance with physician, physician assistant, nurse practitioner and clinical nurse specialist's orders:

(a) Drugs and treatments shall be administered by agency staff only as ordered by the physician, or physician assistants, nurse practitioners and clinical nurse specialists within the extent of their licensed scope of practice as defined by state law.

(b) Licensed professionals must immediately record and sign oral orders and obtain the physician, or physician assistant, nurse practitioner or clinical nurse specialist's countersignature.

(c) For a patient/client receiving nursing services, all medications a patient/client may be taking must be checked to identify possible ineffective drug therapy, adverse reactions, significant side effects, drug allergies and contraindicated medications. Medication problems must be promptly reported to the physician, or physician assistant, nurse practitioner or clinical nurse specialist.

B. Non-medically directed care: An agency must follow a written plan of care, which includes goals and objectives appropriate to the patient/client being served, and which is established and reviewed at least annually by agency staff.

[7.28.2.33 NMAC - Rp 7 NMAC 28.2.33, 11/10/2020]

7.28.2.34 PATIENT/CLIENT RECORDS: Each agency licensed pursuant to these regulations must maintain the original record for each patient/client receiving services. Patient/client records shall be made available for review upon request of the licensing authority. Every record must be accurate, legible, promptly completed and consistently organized. A patient/client record must meet the following criteria:

A. Content of patient/client record:

(1) Medically directed patient/client record must include:

- (a) past and current medical findings in accordance with accepted professional standard;
- (b) plan of care;
- (c) identifying information;
- (d) name of physician, physician assistant, nurse practitioner or clinical nurse specialist;
- (e) medications, diet, treatment/services, and activity orders;
- (f) signed and dated notes on the day service(s) provided;
- (g) copies of summary reports sent to the physician, physician assistant, nurse practitioner or clinical nurse specialist;
- (h) evidence of patient/client being informed of rights;
- (i) evidence of coordination of care provided by all personnel providing patient/client services;
- (j) discharge summary.

(2) Non-medically directed patient/client records must include:

- (a) plan of care;
- (b) identifying information;
- (c) signed and dated notes on the day service(s) provided;
- (d) evidence of patient/client being informed of rights;
- (e) evidence of coordination of care of all personnel providing patient/client services;
- (f) evidence of discharge.

B. If the patient/client is discharged or transferred to another provider of health care, upon receipt of a signed request from the patient/

client, a copy of the original record or an abstract of the same must be made available to the receiving facility, within 24 hours.

C. Protection of patient/client records:

(1) The agency must insure that the original patient/client records and information is safeguarded against loss or unauthorized use.

(2) The agency must have written policies and procedures governing the use and removal of patient/client records and conditions for release of information.

(3) Patient/client's written consent is required for release of information not authorized by law.

D. Retention of patient/client records:

(1) Original patient/client records shall be retained for at least 10 years after the patient/client is discharged.

(2) Original patient/client records shall be maintained for the requisite period even if the agency has discontinued operations.

(3) The licensing authority must be notified, in writing, prior to discontinuing operation of the storage location of patient/client records.

[7.28.2.34 NMAC - Rp 7 NMAC 28.2.34, 11/10/2020]

7.28.2.35 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE AGENCY:

A. a copy of the last survey conducted by the licensing authority;

B. licensing regulations: A copy of these regulations 7.28.2 NMAC;

C. agreements or contracts to provide services or care;

D. patient/client records;

E. staff records;

F. training and in-service records as applicable;

G. minutes of advisory group and governing board meetings;

H. quality improvement program records;

I. grievances and resolutions;

J. state board of pharmacy certificates as applicable. [7.28.2.35 NMAC - Rp 7 NMAC 28.2.35, 11/10/2020]

7.28.2.36 CONTRACTED SERVICES:

Services that are provided under arrangement by an individual or entity and the home health agency, shall include a written contract between those individuals or entities and the agency, that specifies the following:

A. that patients are accepted for care only by the primary (admitting) home health agency;

B. the services to be furnished under the contract;

C. the necessity to conform to all applicable agency policies including personnel qualifications;

D. the responsibility for participating in developing plans of care;

E. the manner in which services will be controlled, coordinated and evaluated by the primary agency;

F. the procedures for submitting clinical notes, scheduling of visits and conducting periodic patient evaluation;

G. the procedures for payment for services furnished under the contract.

[7.28.2.36 NMAC - Rp 7 NMAC 28.2.36, 11/10/2020]

7.28.2.37 STAFF RECORDS:

Each agency licensed pursuant to these regulations must maintain a complete record on file for each staff member and for all volunteers with in-home contact or working more than half-time. Staff records shall be made available for review upon request of the licensing authority within four hours. Staff records must contain at least the following:

A. name;

B. address;

C. position for which employed;

D. date of employment;

E. health certificate for all staff having contact with patient/clients stating that the employee is free from tuberculosis in a transmissible form as required by the infectious disease bureau, of the public health division, department of health;

F. a copy or proof of the current license, registration or certificate for each staff member for whom a license, registration, or certification is required by the state of New Mexico.

[7.28.2.37 NMAC - Rp 7 NMAC 28.2.37, 11/10/2020]

7.28.2.38 POLICIES AND PROCEDURES:

Each agency licensed pursuant to these regulations must have written policies and procedures for at least the following:

A. scope of services offered;

B. providing of services through arrangement or contract with individuals or agencies;

C. admission and discharge;

D. written job descriptions for all categories of personnel;

E. personnel policies;

F. staff training;

G. emergency and after normal business hour care policies/procedures;

H. preparation, safeguarding, and release of information from patient/client records;

I. quality improvement program;

J. complaints and grievances, including timely resolution.

[7.28.2.38 NMAC - Rp 7 NMAC 28.2.38, 11/10/2020]

7.28.2.39 QUALITY IMPROVEMENT:

Each agency must establish an on-going quality improvement program to ensure an adequate and effective operation. To be considered on-going, the quality improvement program must document quarterly activity that addresses, but is not limited to:

A. Clinical care:

Assessment of patient/client goals and outcome, such as, diagnosis(es), plan of care, services provided, and standards of patient/client care.

B. Operational

activities: Assessment of the total operation of the agency, such as, policies and procedures, statistical data (i.e., admissions, discharges, total visits by discipline, etc.), summary of quality improvement activities, summary of patient/client complaints and resolutions, and staff utilization.

C. Quality

improvement action plan: Written responses to address existing or potential problems which have been identified.

D. Documentation of

activities: The results of the quality improvement activities shall be compiled annually in report format and formally reviewed and approved by the governing body and advisory group of the home health agency. No more than one year may lapse between evaluations of the same part.

E. The licensing

authority may, at its sole discretion, request quarterly activity summaries of an agency's on-going quality improvement activities or may direct the agency to conduct specific quality improvement studies.

[7.28.2.39 NMAC - Rp 7 NMAC 28.2.39, 11/10/2020]

7.28.2.40 COMPLAINTS:

The home health agency must investigate complaints made by a patient/client, caregiver, or guardian regarding treatment or care, or regarding the lack of respect for the patient/client's property and must document both the existence of the complaint and the resolution of the complaint. The agency's investigation of a complaint(s) must be initiated within three working days.

[7.28.2.40 NMAC - Rp 7 NMAC 28.2.40, 11/10/2020]

7.28.2.41 INCIDENTS:

A. Reporting:

All home health agencies licensed pursuant to these regulations must

report to the licensing authority any of the following which has, or could threaten the health, safety and welfare of the patient/clients or staff:

(1) any serious incident or unusual occurrence;

(2) injuries of unknown origin or known, suspected or alleged incidents of patient/client abuse, neglect, exploitation, or mistreatment by staff or person(s) contracted by the home health agency.

B. Documentation:

The agency is responsible for documenting all incidents, within five days of the incident, and having on file the following:

(1) a narrative description of the incident;

(2) evidence contact was made to the licensing authority;

(3) results of the facility's investigation;

(4) the facility action, if any.

[7.28.2.41 NMAC - Rp 7 NMAC 28.2.41, 11/10/2020]

7.28.2.42 RELATED REGULATIONS AND CODES:

Facilities subject to these regulations are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

A. Health facility licensure fees and procedures, New Mexico department of health, 7.1.7 NMAC.

B. Health facility sanctions and civil monetary penalties, New Mexico department of health 7.1.8 NMAC.

C. Adjudicatory hearings, New Mexico department of health, 7.1.2 NMAC.

[7.28.2.42 NMAC - Rp 7 NMAC 28.2.42, 11/10/2020]

HISTORY OF 7.28.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

HSSD 74-17, Home Health Agency Licensing Regulations, 9/12/1974.
HSSD 77-4, Home Health Agency

Licensing Regulations, 7/22/1977. DOH 91-2 (PHD), New Mexico Regulations Governing Home Health Agencies, 5/7/1991.

History of Repealed Material:

7 NMAC 28.2 - Requirements For Home Health Agencies (filed 10/31/2001), Repealed effective 11/10/2020.

Other History:

7 NMAC 28.2 - Requirements For Home Health Agencies (filed 10/31/2001), replaced by 7.28.2 NMAC - Requirements For Home Health Agencies, effective 11/10/2020.

PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission, approved at its 10/21/2020 open meeting, to repeal its rule 17.9.560 NMAC - Service Standards for Electric Utilities (filed 3/8/2013) and replace it with 17.9.560 NMAC - Service Standards for Electric Utilities, effective 11/10/2020.

The New Mexico Public Regulation Commission, approved at its 10/21/2020 open meeting, to repeal its rule 17.10.650 NMAC - Service Standards for Gas Utilities (filed 3/8/2013) and replace it with 17.10.650 NMAC - Service Standards for Gas Utilities, effective 11/10/2020.

The New Mexico Public Regulation Commission, approved at its 10/21/2020 open meeting, to repeal its rule 17.12.760 NMAC - Customer Service Rules and Regulations for Water Utilities (filed 1/16/1990) and replace it with 17.12.760 NMAC - Customer Service Rules and Regulations for Water Utilities, effective 11/10/2020.

**PUBLIC REGULATION
COMMISSION**

**TITLE 17 PUBLIC
UTILITIES AND UTILITY
SERVICES
CHAPTER 9 ELECTRIC
SERVICES
PART 560 SERVICE
STANDARDS FOR ELECTRIC
UTILITIES**

17.9.560.1 ISSUING

AGENCY: New Mexico Public Regulation Commission.

[17.9.560.1 NMAC - Rp, 17.9.560.1 NMAC, 11/10/2020]

17.9.560.2 SCOPE: 17.9.560

NMAC shall apply to every electric utility (investor-owned, rural electric cooperative, or municipal) operating within the state of New Mexico and which is subject to the jurisdiction of the New Mexico public regulation commission as provided by the public utility act.

[17.9.560.2 NMAC - Rp, 17.9.560.2 NMAC, 11/10/2020]

17.9.560.3 STATUTORY

AUTHORITY: Public Regulation Commission Act, Section 8-8-15 NMSA 1978.

[17.9.560.3 NMAC - Rp, 17.9.560.3 NMAC, 11/10/2020]

17.9.560.4 DURATION:

Permanent.

[17.9.560.4 NMAC - Rp, 17.9.560.4 NMAC, 11/10/2020]

17.9.560.5 EFFECTIVE

DATE: November 10, 2020 unless a later date is cited at the end of a section.

[17.9.560.5 NMAC - Rp, 17.9.560.5 NMAC, 11/10/2020]

17.9.560.6 OBJECTIVE:

17.9.560 NMAC is intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities.

[17.9.560.6 NMAC - Rp, 17.9.560.6 NMAC, 11/10/2020]

17.9.560.7 DEFINITIONS:

When used in 17.9.560 NMAC unless otherwise specified the following definitions will apply:

A. "commission means" the New Mexico public regulation commission;

B. "customer means" any person, firm, association, or corporation, or any agency of the federal, state, or local government being supplied with and responsible for payment for electric services by an electric utility;

C. "electric plant means" all plant, property, or facilities owned, operated, leased, or controlled for the generation, transmission, or distribution of electricity;

D. "filed rule means" rules and regulations filed by a utility with the commission in compliance with 17.1.210 NMAC which has been made effective either through commission approval thereof or by operation of law;

E. "final notice means" personal communication with a non-residential customer by telephone, hand delivery or other electronic communications at least two days prior to the specific date of discontinuance of service or, if by mail, at least four days prior to the specific date of discontinuance of service, excluding Sundays and holidays observed by the utility, to remind the non-residential customer of the pending date of discontinuance of service.

F. "meter means", unless otherwise qualified, a device that measures and registers the integral of an electrical quantity with respect to time;

G. "meter shop means" a shop where meters are inspected, repaired, and tested and may be at a fixed location or may be mobile and shall contain facilities for protected storage of secondary standards;

H. "meter standards laboratory means" a facility which

is equipped and staffed to provide the calibration and certification of secondary standards by comparison with primary standards;

I. "premises means" a piece of land or real estate including buildings and other appurtenances thereon;

J. "primary standards means" those items of laboratory equipment from which the basic units of electricity and standard time interval can be obtained for use in a meter standards laboratory;

K. "protected storage means" an enclosed case or cabinet in a clean location free from excessive heat, moisture, and vibration for the storage and protection of secondary standards and which is accessible only to authorized personnel;

L. "secondary indicating ammeter standard means" an indicating ammeter standard which is in a semi-fixed installation in the protected storage of the meter shop and is used for calibrating the working ammeter standard; this standard remains in the protected storage at all times except when sent to a meter standards laboratory for standardization;

M. "secondary indicating voltmeter standard means" an indicating voltmeter standard which is in a semi-fixed installation in the protected storage of the meter shop and is used for calibrating the working voltmeter standard; this standard remains in the protected storage at all times except when sent to a meter standards laboratory for standardization;

N. "secondary instrument transformer standard means" an instrument transformer standard which is in a semi-fixed installation in the protected storage of the meter shop and is used for calibrating the working transformer standard; this standard remains in the protected storage at all times except when sent to a meter standards laboratory for standardization;

O. "secondary watt-hour standard means" an indicating watt-hour standard which is in a semi-fixed installation in the protected

storage of the meter shop and is used for calibrating the working watt-hour standard; this standard remains in the protected storage at all times except when sent to a meter standards laboratory for standardization;

P. “special contract means” a written agreement between a utility and a customer to establish a rate or conditions of utility service, or both, that, due to size or load characteristics or both, differs from those established for general classes of service;

Q. “utility and electric utility” has the meaning given for “public utility” or “utility” in Section 62-3-3 NMSA 1978. [17.9.560.7 NMAC - Rp, 17.9.560.7 NMAC, 11/10/2020]

17.9.560.8 [RESERVED]
[17.9.560.8 NMAC - Rp, 17.9.560.8 NMAC, 11/10/2020]

17.9.560.9 APPLICATION OF RULE:

A. Modifications. If unreasonable hardship to a utility or to a customer results from the application of any provision herein prescribed, application may be made to the commission for the modification of the provision or for temporary or permanent exemption from its requirements.

B. Rule revisions. 17.9.560 NMAC establishes standards to be followed by every electric utility in providing service to customers who are not residential customers as defined in Subsection J of 17.5.410.7 NMAC of the commission’s code of rules and regulations and in providing service to residential customers except to the extent inconsistent with 17.5.410 NMAC of the code; provided, however, that any electric utility may file rules inconsistent with the provisions herein established when permitted by the commission under the provisions of Subsection A of 17.9.560.9 NMAC above, or, for residential customers, to conform with the requirements of 17.5.410 NMAC and when so filed and approved by the commission such utility rules shall take precedence over the provisions herein established.

C. Adoption. The adoption of 17.9.560 NMAC will in no way preclude the commission from altering or amending it or from making such modifications with respect to its application as may be found necessary to meet exceptional conditions.

D. Duties. These regulations shall in no way relieve any utility from any of its duties under the laws of this state. [17.9.560.9 NMAC - Rp, 17.9.560.9 NMAC, 11/10/2020]

17.9.560.10 RECORDS AND REPORTS:

A. Location of records. The location of records shall be as prescribed in Section 62-6-17 NMSA 1978.

B. Retention of records. Records shall be retained as prescribed in 17.3.310 NMAC.

C. Data to be filed with the commission. The utility shall maintain the following documents and information on a current basis. Upon commission request, the utility shall provide the following information to the commission within 10 working days:

(1) a copy of utility’s drawings or rules, if any, published or furnished by the utility for the use of engineers, architects, electrical contractors, etc., covering meter and service installations;

(2) a map or series of maps showing the geographical location of the utility system outside the limits of an incorporated community together with a schematic drawing which shows:

(a) generating stations, with the individual unit nameplate kilowatt capability and total capability of all units shown;

(b) transmission lines, with operating and design voltages and types and sizes of conductors shown;

(c) sub-transmission lines, with operating and design voltages and types and sizes of conductors shown;

(d) utility-owned transmission and sub-transmission substations and switching stations, with the capacities and voltages shown;

(e) state boundary crossings of utility’s lines, with sources of generation from other states shown;

(f) intrastate and interstate connections with other utilities, with metering points, names of other utilities, and nature of service furnished or taken shown;

(g) names of all incorporated communities served;

(3) the name, title, address, and telephone number of the person or persons who should be contacted by the commission in connection with:

(a) general management duties;

(b) customer relations (complaints);

(c) engineering operations;

(d) meter tests and repairs; and

(e) emergencies during non-office hours;

(4) a list of those items such as meters, meter sockets, instrument transformers, enclosures, and service entrances along with all other equipment which is furnished and maintained by the utility in its regular rates for service;

(5) report detailing the results of all meters (excluding new meters) tested during the year showing:

(a) total of meters tested;

(b) percentage of breakdown of reasons for tests;

(c) number of meters found to be more than two percent fast; and

(d) number of meters found to be more than two percent slow;

(6) a list detailing all genuine customer voltage complaints and investigations along

with the corrective measures taken to correct high or low voltage system conditions;

(7) the location at which the utility keeps the various classes of records required by these rules;

(8) information regarding any generating units which are not available for service, either scheduled or nonscheduled, which may affect reliability, and the arrangements to maintain service:

(a) scheduled-by advance letter advice of scheduled maintenance by the owning utility, or if the utility is a member of any power pool the pool schedule should be furnished in advance; if a unit is not returned to service by the scheduled date, such supplemental notice as will enable the commission to be fully advised will be required;

(b) nonscheduled-by telegraph in the event a unit is not available for service for a period of 24 hours or longer due to any reason not covered by Subparagraph (a) above;

(9) A list detailing the continuity of service (short planned outages for routine maintenance, system improvements, etc., are not considered as a customer hours outage).

$$\text{Continuity} = \frac{\text{Customer hours actually served}}{\text{Maximum customer hours possible to serve}} \times \text{one hundred percent}$$

[17.9.560.10 NMAC - Rp, 17.9.560.10 NMAC, 11/10/2020]

17.9.560.11 METER REQUIREMENTS:

A. Disposition of electricity:

(1) All electricity sold by a utility shall be on a basis of meter measurement except for service of installations where the load is constant and the consumption may be readily computed.

(2) Wherever practicable, consumption of electricity within the utility itself or by administrative units associated with it shall be metered.

B. Meter reading sheets, cards, or records: The meter reading sheets, cards, or records from which the customer's bills are prepared shall show:

(1) customer's name, address, and rate schedule;

(2) identification number or description of the meter(s);

(3) meter readings;

(4) if the reading has been estimated; and

(5) any applicable multiplier or constant.

C. Meter reading interval: The meter shall be read at monthly intervals as nearly as practicable except that authority may be obtained from the commission for reading the meters at other than monthly intervals. commission approval need not be obtained where deviation from monthly meter reading schedules occurs because of the seasonal nature of the customer. As nearly as practicable utilities shall avoid sending a customer two successive estimated bills.

D. Condition of meter: No meter shall be installed which is known to be mechanically or electrically defective or to have incorrect constants or which has not been tested and adjusted, if necessary, in accordance with Subsection H of 17.9.560.14 NMAC. The capacity of the meter and the index mechanism should be consistent with the requirements of the customer.

E. Meter charts: All charts taken from recording meters shall be marked with the date of the record, the meter number, the customer's name and location, and chart multiplier.

F. Meter multiplier: If it is necessary to apply a multiplier to the meter readings the multiplier must be marked on the face of the meter register.

G. Demand meter registration: When a demand meter is used for billing the installation should be designed so that the highest demand reading used for billing should appear in the upper half of the meter's range.

[17.9.560.11 NMAC - Rp, 17.9.560.11 NMAC, 11/10/2020]

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 their 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 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 \$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 their 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 their 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 Subparagraphs (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 two percent average error determined by meter test;

(c) demand registration in excess of one percent 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 one hundred percent 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 and the heavy load registration a weight of four.

(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 percent 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 the time elapsed since the meter was installed or one-half 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 their last known address and the utility shall, upon demand within three months thereafter, refund the amount due.

(5) Back-billing:

(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.

(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.

(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.

(d) The utility shall not charge the customer interest for any amount back-billed.

(6) A utility and its special contract customer may make their own agreements respecting adjustments for errors in measurement.

(7) The utility will assist the customer in selecting the rate schedule under which the customer 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.

(8) Time periods for adjustment of bills:

(a) Residential customer class (metered usage): Refunding of an overbilling is limited to 12 months. Back-billing of an under billing is limited to six months. Customers responsible for the back-billed under-bill shall be given, at a minimum, the same time period to pay the under billing as the length of time period of the under billing.

(b) Residential customer class (zero usage or no bill): Back-billing is limited to six months. Customers responsible for the back-billed under-bill shall be given, at a minimum, the same time period to pay the under billing as the length of time period of the under billing.

(c) Non-residential small commercial customer class, defined by tariff: Refunding of an overbilling is limited to six months. Back-billing of an under billing is limited to six months. Customers responsible for the back-billed under-bill shall be given, at a minimum, the same time period to pay the under billing as the length of time period of the under billing.

(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 under-bill shall be given, at a minimum, the same time period to pay the under billing as the length of time period of the under billing.

(e) Back-billing customers is limited to 72 months for under billing that was caused by tampering or fraud by the customer.

(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.

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 17.9.560.12 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) below:

(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 that a customer tampers with, damages, or deliberately destroys 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 their contractual obligations for service or facilities subject to the regulations of the commission;

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

(8) for non-payment 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 17.9.560.12 NMAC except that a utility may not discontinue service to an existing customer solely for failure to pay 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 for obtaining service 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) Irrespective of any conflict with 17.5.410 NMAC, the following rules regarding disconnection of residential utility service may be implemented on a temporary basis by order of the commission for a period of time, up to and including, the duration of any emergency executive order issued by the governor of New Mexico

pertaining to a public health or other emergency condition under either the Public Health Emergency Response Act, Section 12-10A-1 NMSA 1978, and the All Hazards Emergency Management Act, Section 12-10-1 NMSA 1978:

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

(b) any late fees on residential accounts that would be incurred during the time period of the effectiveness of the emergency executive orders may be required to be waived;

(c) utilities may be permitted to temporarily close in-person bill payment locations provided the utility provides notice to residential customers of such closures and identifies in such notice how payment made be made, including electronically or by mail. In the event of the 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;

(d) medical certificates set to expire shall not expire for the duration of the effectiveness of any emergency executive order and may be automatically be extended for 90 days from the end of any emergency executive order; and

(e) irrespective of this rule, public utilities are not prohibited from disconnecting service to residential customers due to:

(i) an emergency;

(ii) safety;

(iii) a request to disconnect from the residential customer.

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.

[17.9.560.12 NMAC - Rp, 17.9.560.12 NMAC, 11/10/2020]

17.9.560.13 ENGINEERING:

A. Requirement for good engineering practice: The electric plant of the utility shall be constructed, installed, maintained, and operated in accordance with accepted good engineering practice in the electric industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

B. Acceptable standards: Unless otherwise specified by the commission the utility shall use the applicable

provisions in the latest edition of the publications listed below as standards of accepted good practice.

- (1) National electric safety code as compiled by the national bureau of standards.
- (2) National electrical code, NFPA No. 70, ANSI standard C-1.
- (3) American standard code for electricity meters, ANSI standard C-12.
- (4) American standard requirements, terminology and text code for instrument transformers, ANSI standard C-57.13.
- (5) Preferred voltage ratings for A-C systems and equipment, EEI Pub. No. R-6, NEMA Pub. No. 117 ANSI standard C-84.1.
- (6) Voltage levels on rural distribution system- REA bulletin 169-4.
- (7) New Mexico state electrical code.

C. Adequacy of supply:

The generating capacity of the utility’s plant supplemented by the electric power regularly available from other sources must be sufficiently large so as to meet all normal demands for service and provide a reasonable reserve for emergencies.

D. Inspection of electric plant:

Each utility must adopt a program of inspection of its electric plant in order to determine the necessity for replacement and repair. The frequency of the various inspections shall be based on the utility’s experience and accepted good practice. Each utility shall keep sufficient and reasonable records to give evidence of compliance with its inspection program.

[17.9.560.13 NMAC - Rp, 17.9.560.13 NMAC, 11/10/2020]

17.9.560.14 INSPECTION AND TESTS:

A. Request tests:

Upon request by a customer the utility shall test the meter serving that customer. The utility shall advise such customer that they may be present during the meter test. If the meter has been tested within the last 18 months

the utility may charge the customer the applicable amount provided for in its filed rules, such charge to be refunded to the customer whenever the meter proves to be in excess of two percent in error.

(1) The customer or their representative may be present when their meter is tested if such customer’s request to be present is made at the time of their request for the meter test. The utility shall give the customer reasonable advance notification as to the day, time, and place of the test.

(2) A report of the test results shall be made to the customer within a reasonable time after the completion of test, and a record of the report together with a complete record of each test shall be kept on file at the office of the utility for as long a period as prescribed in Subsection K of 17.9.560.14 NMAC.

B. Pre-installation inspections and tests:

(1) Every meter not certified by the manufacturer shall be inspected and tested in the utility’s meter shop before being placed in service, and the accuracy of each of these meters shall be adjusted to be within the tolerances permitted by Subsection H of 17.9.560.14 NMAC.

(2) If a meter is physically removed from a customer’s premises except for field testing and has not been tested during the preceding thirty-month period, it must be returned to the utility’s meter shop and inspected and tested as above before it is again placed in service.

C. Post-installation inspections and tests:

The utility shall employ such qualified personnel and shall conduct such post-installation inspections as may be necessary to insure an overall accuracy within two percent of the condition as prescribed in Paragraph (6) of Subsection H of 17.9.560.14 NMAC in the following installations:

- (1) meters with associated instrument transformers and phase shifting transformers;

- (2) kilovar-hour meters, if associated with instrument transformers;

- (3) demand meters, if associated with instrument transformers; and

- (4) direct current watt-hour meters;

- (5) The commission may order inspections when in its opinion such inspections are necessary.

D. As-found tests:

All meters shall be tested after they are physically removed from service if they have not been tested during the preceding thirty-month period. Excepted are those meters damaged beyond testing. Such tests shall be made before the meters are adjusted, repaired, and calibrated. It will not be mandatory to test meters scheduled for retirement unless there is cause to suspect that there will be a subsequent complaint involving the accuracy of the meter.

E. In-service performance tests:

(1) General: In-service performance tests must be made in accordance with Paragraph (2) of Subsection E of 17.9.560.14 NMAC. These tests may be made on the customer’s premises or in the utility’s meter shop. All self-contained single-phase meters and three-wire network meters on a utility’s system must be tested in accordance with Subparagraphs (a) through (e) of Paragraph (2) below.

(2) Periodic test schedule: In the test intervals specified below the word “years” means calendar years and the word “months” means calendar months. The basic periodic test interval shall not be longer than provided for in the following schedule.

- (a) Alternating current watt-hour meters:
 - (i) meters used with instrument transformers: polyphase meters - at least once in four years, and single-phase meters - at least once in eight years;
 - (ii) self-contained polyphase meters - at least once in six years;

(iii) self-contained single-phase meters - at least once in eight years.

(b) All self-contained single-phase meters and three-wire meters must be tested in accordance with any one of the following listed permissive test programs referred to in 8.1.8 of the standard code for electricity metering, ANSI standard C-12-1965:

- (i) periodic interval program;
- (ii) variable interval program;
- (iii) statistical sampling program.

(c) Variable interval and statistical sampling programs can be used only when specifically approved by the commission and when in accordance with the specific program adopted by commission.

(d) Var-hour meters: same as the schedule for associated watt-hour meters.

(e) Demand meters:
 (i) block-interval non-recording demand meters and registers - same as the schedule for associated watt-hour meters;

(ii) block-interval graphic watt-hour demand meters - two years;

(iii) block-interval pulse-operated recording demand meters - two years;

(iv) lagged-demand meters - same as the schedule for associated watt-hour meters.

(f) Secondary standards:

(i) portable rotating standard watt-hour meters - 12 months;

(ii) indicating voltmeters - 12 months;

(iii) instrument transformers - 10 years.

(g) working standards and instruments.

(i) portable rotating standard watt-hour meters - one month;

(ii) indicating voltmeters - six months;
 (iii) instrument transformers - 10 years.

F. Instrument transformer tests: All instrument transformers shall be tested in accordance with the applicable procedures of American standard requirements, terminology and test code for instrument transformers, ANSI standard C-57.13:

- (1) when first received except in cases where a certificate of test is furnished by the manufacturer;
- (2) when removed from service if there is subsequently found to be visual evidence of damage;
- (3) upon complaint;
- (4) while still in service if there is visual evidence of damage; and
- (5) whenever an approved check, such as the variable burden method in the case of current transformers, made whenever the meter was tested indicated that a quantitative test is required.

G. Generating station meter tests: Each generating utility may establish its own test procedures to insure the accuracy of its generating station output watt meter and watt-hour meters as per Subsection A of 17.9.560.13 and Subsection K of 17.9.560.14 NMAC.

H. Test procedures and accuracies: Meters shall be tested at the loads indicated below and adjusted as close as practicable to zero error when found to exceed the tolerances prescribed below. The test of any meter shall consist of a comparison of its accuracy with the accuracy of a standard. The commission will use the applicable provisions of the latest edition of the American standard code for electricity meters, ANSI standard C-12, as criteria of accepted good practice.

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(1) Alternating current watt-hour meters:

(a) Shop tests:		
Test Load as Approximate Percentage of Test Current*	Power Factor	Tolerances
100	1.0	+1.0%
10	1.0	+1.0%
100	0.5	+1.5%
(b) Field Tests:		
100	1.0	+1.0%
10	1.0	+1.0%

*For meters used with current transformers the current at heavy load shall be approximately one hundred percent of the secondary rating of the current transformers and at light load approximately ten percent of that rating.

(2) Direct current watt-hour meters:

Test Load as Approximate Percentage of Test Current	Power Factor	Tolerances
100		+1.5%
10		+1.5%

(3) Demand meters:

(a) Integrated (block interval) demand meters:

(i) Demand meters which are direct driven shall be tested at a load point no less than fifty percent of full scale. Tests shall be continuous for at least one demand interval and shall be started simultaneously with the demand interval of the demand meter.

(ii) Demand meters which are actuated by impulses shall be tested by transmitting enough impulses to cause the meter to register at a load point no less than fifty percent of full scale. If an impulse-actuated demand meter is equipped with a device which records the number of impulses received by the meter, and if there is frequent and accurate comparison of such record with the number of kilowatt hours registered on the associated watt-hour meter, then it is not necessary to make a periodic field test of the demand meter.

(iii) Demand meters shall be adjusted to indicate zero under no-load conditions and shall be checked to ascertain that the meter resets to zero.

(iv) Impulse devices associated with demand meters must be checked for proper operation.

(v) The demand meter shall have an accuracy of within two percent of full scale.

(vi) The time interval must be accurate within half a percent for synchronous motor timing elements and within two percent for mechanical clock timing elements.

(vii) Meters recording demand reading on a chart which provides a record of the time at which the demand occurs shall be accurate to within plus or minus four minutes in 24 hours.

(b) Lagged demand meters:

(i) Demand meters shall be tested at a load point no less than fifty percent of full scale.

(ii) Demand meters shall be adjusted to indicate zero under no-load conditions with potential applied.

(iii) The demand meter shall have an accuracy within three percent of full scale.

(iv) Meters recording demand readings on a chart which provides a record of the time at which the demand occurs shall be accurate to within plus or minus four minutes in 24 hours.

(4)

Transformers:

(a)

All current and potential transformers shall be tested in accordance with the applicable procedures prescribed in ANSI standard C-57.13.

(b)

Any utility unable to perform the above tests due to a lack of proper equipment may have its instrument transformers tested by another utility or laboratory whose testing conforms to the requirements of the commission.

(c) In

lieu of the utility testing of instrument transformers the commission will accept the certificate of test as furnished by the manufacturer.

(d)

Current or potential transformers shall not be installed if their accuracy does not fall within the 0.6 accuracy class as described in ANSI standard C-57.13.

(5) Meters for

measurement of purchased electricity: Utilities purchasing electricity from non-utilities or from utilities outside the state must see that the instruments and meters which are necessary to furnish complete and accurate information as to the energy purchased are installed and tested in accordance with the requirements of the commission.

(6) General:

(a)

All meters when tested shall be adjusted as closely as practicable to the condition of zero error.

(b)

All tolerances are to be interpreted as maximum permissible variations from the condition of zero error. In making adjustments no advantage of the prescribed tolerance limits shall be taken.

(c)

Meters shall not "creep," i.e., there shall be no continuous rotation of the moving element of a meter at a speed in excess of one revolution in 10 minutes when the meter load wires have been removed and voltage is applied to the potential elements of the meter.

I. Facilities and equipment for meter testing:

Each utility shall maintain a meter shop or shall have the services of a meter shop available to it for the purpose of inspecting, testing, and repairing meters. The shop shall be open for inspection by authorized representatives of the commission at all reasonable times, and the facilities and equipment as well as the methods of measurement and testing employed shall be subject to the approval of the commission. The meter shop used by a utility shall have adequate and sufficient testing equipment to comply with this rule and to conduct the tests and make repairs and adjustments in compliance with this rule.

(1) Each location at which the shop conducts tests of meters shall have a three-phase voltage supply, one phase of which shall be variable from zero volts to 270 volts.

(2) Standards: Extreme care shall be exercised in the handling of standards to assure that their accuracy is not disturbed. Each meter shop shall contain facilities for protected storage of the secondary standards which are accessible only to personnel specifically so assigned by the utility management.

(a) Secondary standards:

(i) Each shop shall have at least one indicating voltmeter with a stated accuracy within one-quarter percent of full scale. This instrument must be maintained within its stated accuracy.

(ii) Each shop shall have at least one portable rotating standard watt-hour meter with a correction of not more than one-half percent at commonly used loads. If the correction percentage varies between successive tests by more than one-quarter percent, a complete check must be made to determine the cause of such variation. If the cause of variation cannot be removed the use of the instrument should be discontinued.

(iii) Secondary standards shall be checked periodically (See Paragraph (2) of

Subsection E of 17.9.560.14 NMAC) at the national bureau of standards or at a laboratory acceptable to the commission. Secondary standards otherwise shall be kept in the protected storage of the meter shop at all times.

(iv) Secondary standards shall be accompanied at all times by a certificate or calibration card, duly signed and dated, on which are recorded the corrections required to compensate for errors found at the customary test points at the time of the last previous test.

(b) Working standards: Each shop shall have at least one portable rotating standard watt-hour meter with a correction of not more than one-half percent at commonly used loads. If the correction percentage varies between successive tests by more than one-quarter percent, a complete check must be made to determine the cause of such variation. If the cause of variation cannot be removed the use of the instrument should be discontinued. Working standards shall be checked periodically (See Paragraph (2) of Subsection E of 17.9.560.14 NMAC) by comparison with a secondary standard from the protected storage of the meter shop.

J. Records of meters: Each utility shall maintain records of the following data, where applicable, for each meter until retirement:

(1) the complete identification (number, type, voltage, amperes, number of wires, disk constant (kh), demand interval, and ratio); and

(2) the dates of installation and removal from service together with the location.

K. Meter test records: Each utility shall keep meter test records until a superseding test has been made but not less than two years or as may be necessary to comply with service rules regarding refunds on inaccurate meters. Test records shall include the following:

(1) the date and reason for the test;

(2) the reading

of the meter before making any test; (3) the accuracy "as found" at light and heavy loads;

(4) the accuracy "as left" at light and heavy loads; and

(5) a statement of any repairs made.

[17.9.560.14 NMAC - Rp, 17.9.560.14 NMAC, 11/10/2020]

17.9.560.15 STANDARDS OF QUALITY OF SERVICES:

A. Standard frequency: The standard frequency for alternating current distribution systems shall be 60 cycles per second. The frequency shall be maintained within limits which will permit the satisfactory operation of customers' clocks connected to the system.

B. Voltage limits: Each utility shall adopt and file with the commission standard nominal service voltages and for each of the several areas into which its distribution system or systems may be divided.

(1) The variations of the voltage for the various classes of service, voltage spread, and extreme tolerable voltage limits shall be in accordance with the publication EEI No. R-6, NEMA No. 117, ANSI standard C-84.1, or voltage levels on rural distribution systems REA bulletin No. 169.4.

(2) For service rendered to public utilities and others for resale, the nominal voltage spread and extreme tolerable voltage limits shall be as mutually agreed upon by the parties concerned. These limitations do not apply to special contracts in which the customer specifically agrees to accept service with unregulated voltage.

(3) Exceptions to voltage requirements: Voltage outside the limits specified will not be considered a violation when the variations:

(a) arise from the action of the elements;

(b) are infrequent fluctuations not exceeding five minutes' duration;

(c) arise from service interruptions;

(d) arise from temporary separation of parts of the system from the main system;

(e) are from causes beyond the control of the utility.

C. Voltage surveys and records:

(1) Each utility shall make a reasonable number of voltage measurements using recording voltmeters or minimum/maximum voltmeters to determine if voltages are in compliance with the requirements as stated in Subsection B of 17.9.560.15 NMAC.

(2) Voltage measurements shall be made at the customer's point of metering and at other pertinent locations on the utility system.

(3) All voltmeter records obtained under Paragraphs (1) and (2) above shall be retained by the utility in accordance with 17.3.310 NMAC and shall be available for inspection by the commission's representatives. Notations on each record shall indicate the following:

- (a) the location where the voltage was taken;
- (b) the time and date of the test; and
- (c) the results of the comparison with an indicating voltmeter.

D. Equipment for voltage measurements:

(1) Working instruments:

(a) Each utility shall have at least two indicating voltmeters with a stated accuracy within plus three percent of full scale.

(b) Each utility shall have at least two portable recording voltmeters with a stated accuracy within plus three percent of full scale.

(2) Working instruments shall be checked periodically (see Paragraph (2) of

Subsection E. of 17.9.560.14 NMAC) by comparison with a standard in a meter shop.

(3) Extreme care shall be exercised in the handling of instruments to assure that their accuracy is not disturbed.

E. Interruptions of service: Each utility shall make reasonable efforts to avoid interruptions of service, but when interruptions occur service shall be reestablished within the shortest time practicable consistent with safety.

(1) Each utility shall keep records of interruptions of service on its primary distribution circuits and shall make an analysis of the records for the purpose of determining steps to be taken to prevent recurrence of such interruptions. Such records should include the following information concerning the interruptions:

- (a) cause;
- (b) date and time; and
- (c) duration.

(2) The log for each unattended substation must show interruptions which require attention to restore service with the estimated time of interruption.

(3) Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers and shall be preceded, if feasible, by adequate notice to those who will be affected.

(4) Each utility shall report the following information:

(a) A major interruption of service is defined as an unscheduled interruption of service of more than 30 minutes in duration, affecting:

- (i) more than ten percent of a utility's New Mexico jurisdictional load or more than 100 MW of its New Mexico jurisdictional load, whichever is less; or

(ii) substantially all of a New Mexico municipality or county; or

(iii) any of the utility's customers of at least one MW (based on the most recent demand billing information on the date of the major interruption).

(b) Within two hours of the commencement of a major interruption of service (or no later than 9:00 AM the following business day for outages occurring after 4:00 PM or on a weekend), the utility division of the commission shall be notified telephonically, by facsimile or by e-mail of the occurrence with a brief description of the occurrence.

(c) Within three business days a written report shall be filed with the records division of the commission. The written report shall contain the pertinent information on the outage including, but not limited to, time of occurrence, duration, cause, facilities affected, MW of load lost, MWH of lost sales, estimated number of consumers affected, municipalities and counties wholly or partially interrupted, and actions taken by the utility to correct and prevent recurrence of the outage.

(d) Utilities that submit reports of an interruption to any coordinating council, regional transmission group or other industry review shall concurrently submit copies to the records division of the commission, including any engineering reports associated with an interruption. Each utility shall provide to commission staff all information requested by staff that is reasonably needed to assess the situation.

(5) Each utility shall identify critical customers, including facilities that require electricity to perform essential life-health-safety services, including other utility services such as natural gas compression, to establish priority of service and to minimize curtailments to these customers.

(6) Each utility shall identify an emergency coordinator to act as a single point of contact between designated emergency personnel in each

community served by the utility in the event of a system emergency.

F. Curtailment of service plan: Each utility shall have in place a plan for curtailment of service that may need to be instituted to maintain system reliability and integrity. Each plan shall be consistent with applicable NERC and other reliability standards. The plan shall identify various levels of curtailment and conditions that an electric utility must experience for each level as well as specifying the type of actions the utility must undertake to contain or reverse a potential emergency. Each plan must also prescribe the minimum documentation required at each level. The plan must also include information dissemination to customers, the public and governmental entities. Each utility will periodically review and update the plan and will submit a copy of the most current plan version to the records division of the commission as a company rule pursuant to 17.9.210 NMAC.

[17.9.560.15 NMAC - Rp, 17.9.560.15 NMAC, 11/10/2020]

17.9.560.16 SAFETY:
A. Protective measures:

(1) Each utility shall exercise reasonable care to protect its employees, its customers, and the general public from hazards to which they may be subjected.

(2) The utility shall give reasonable assistance to the commission in the investigation of the cause of accidents and in the determination of suitable means of preventing accidents.

(3) Each utility shall maintain a summary of each accident arising from its operations and make such summaries available to the commission upon request.

(4) A utility shall not connect a new electric service unless the utility has the three copies of the application for electrical inspection. This subsection is not applicable to federal installations for which a state or local inspection is not required.

B. Safety program:

Each utility shall adopt and execute a safety program fitted to the size and type of its operations. As a minimum the safety program should:

(1) require employees to use suitable tools and equipment in order to perform their work in a safe manner;

(2) instruct employees in safe methods of performing their work; and

(3) instruct employees who in the course of their work are subject to the hazard of electrical shock or drowning in accepted methods of artificial respiration.

C. Grounding of secondary distribution system:

Each utility shall comply with the applicable provisions in the national electrical safety code and the national electrical code for the grounding of secondary circuits and equipment. [17.9.560.16NMAC - Rp, 17.9.560.16 NMAC, 11/10/2020]

HISTORY OF 17.9.560 NMAC:

Pre-NMAC History. The material in this part was derived from that previously filed with the commission of public records-state records center and archives.

PSC 77-1, (Case No. 1350) Amendments to Second Revised General Order No. 5 and Second Revised General Order No. 6: Applicability of Amendments to Water Utilities, filed 4/4/1977. NMPSC Rule 560, Service Standards for Electric Utilities, filed 6/30/1988.

History of repealed material.

NMPSC Rule 560, Service Standards for Electric Utilities (filed 6/30/1988) repealed 6/15/2005. 17.9.560 NMAC - Service Standards for Electric Utilities (filed 3/8/2013) repealed 11/10/2020.

Other History:

NMPSC Rule 560, Service Standards for Electric Utilities (filed 6/30/1988) replaced by 17.9.560 NMAC, Service Standards for Electric Utilities, effective 6/15/2005. 17.9.560 NMAC - Service Standards

for Electric Utilities (filed 3/8/2013) replaced by 17.9.560 NMAC - Service Standards for Electric Utilities, effective 11/10/2020.

PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 10 GAS SERVICES
PART 650 SERVICE STANDARDS FOR GAS UTILITIES

17.10.650.1 ISSUING

AGENCY: New Mexico Public Regulation Commission.

[17.10.650.1 NMAC - Rp, 17.10.650.1 NMAC, 11/10/2020]

17.10.650.2 SCOPE: 17.10.650

NMAC shall apply to any gas utility operating within the state of New Mexico under the jurisdiction of the New Mexico public regulation commission.

[17.10.650.2 NMAC - Rp, 17.10.650.2 NMAC, 11/10/2020]

17.10.650.3 STATUTORY

AUTHORITY: Section 8-8-15 NMSA 1978.

[17.10.650.3 NMAC - Rp, 17.10.650.3 NMAC, 11/10/2020]

17.10.650.4 DURATION:

Permanent.

[17.10.650.4 NMAC - Rp, 17.10.650.4 NMAC, 11/10/2020]

17.10.650.5 EFFECTIVE

DATE: November 10, 2020 unless a later date is cited at the end of a section.

[17.10.650.5 NMAC - Rp, 17.10.650.5 NMAC, 11/10/2020]

17.10.650.6 OBJECTIVE:

A. Intentions:

17.10.650 NMAC is intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of

such demands as may be made by the public upon the utilities.

B. Modifications: If unreasonable hardship to a utility or to a customer results from the application of any provision herein prescribed, application may be made to the commission for the modification of the provision or for temporary or permanent exemption from its requirements.

C. Rule revisions: 17.10.650 NMAC establishes standards to be followed by every gas utility in providing service to customers who are not residential customers as defined in Subsection J of 17.5.410.7 NMAC and in providing service to residential customers except to the extent inconsistent with 17.5.410 NMAC provided, however, that any electric utility may file rules inconsistent with the provisions established herein when permitted by the commission under the provisions of Subsection A of 17.9.560.9 NMAC, or, for residential customers, to conform with 17.5.410 NMAC. When so filed and approved by the commission such utility rules shall take precedence over the provisions established herein.

D. Adoption: The adoption of 17.10.650 NMAC shall not preclude the commission from altering or amending it or from making such modifications with respect to its application as may be found necessary to meet exceptional conditions.

E. Duties: These regulations shall not relieve any utility from its duties under the laws of this state.
[17.10.650.6 NMAC - Rp,
17.10.650.6 NMAC, 11/10/2020]

17.10.650.7 DEFINITIONS: When used in 17.10.650 NMAC unless otherwise specified the following definitions will apply:

A. "BTU means"
British thermal unit;

B. "check flow means" a flow between twenty percent and fifty percent of the meter's rated capacity;

C. "commission means" the New Mexico public regulation commission;

D. "cubic foot of gas shall have the following meanings":

(1) when gas is supplied and metered to customers at the pressure (as defined in Subsection B of 17.10.650.14 NMAC) normally used for domestic customers' appliances and no other basis of measurement is provided for by special contract or in the utility's rules on file with the commission, a cubic foot of gas shall be that quantity of gas which at the temperature and pressure existing in the meter occupies one cubic foot;

(2) when gas is supplied to customers at other than the pressure in Paragraph (1) above, the utility shall specify in its rules or special contract the base for measurement of a cubic foot of gas (see Paragraph (2) of Subsection C of 17.10.650.9 NMAC); unless otherwise stated a cubic foot of gas shall be that quantity of gas which at temperature of 60 degrees F. and a pressure of 14.73 psia occupies one cubic foot; and

(3) the standard cubic foot of gas for testing the gas itself for heating value shall be that quantity of gas saturated with water vapor which at a temperature of 60 degrees F. and a pressure of 30 inches of mercury occupies one cubic foot; (temperature of mercury = 60 degrees F.; acceleration due to gravity = 32.17 ft. per second; density = 13.595 grams per cubic centimeter;) other bases may be used by the utility and customer when provided for by special contract;

E. "customer means"
any person, firm, association, corporation, or any agency of the federal, state, or local government being supplied with and responsible for payment for gas service by a gas utility;

F. "delivery point means" that point at which the system of the seller connects into the system of the buyer regardless of the location of the meter unless otherwise specified by written contract;

G. "filed rule means"
rules and regulations filed by a utility with the commission in compliance with 17.1.210 NMAC which have been made effective either through commission approval thereof or by operation of law;

H. "final notice means" personal communication with a non-residential customer by telephone, hand delivery or other electronic communications at least two days prior to the specific date of discontinuance of service or if by mail, at least four days prior to the specific date of discontinuance of service, excluding Sundays and holidays observed by the utility, to: remind the non-residential customer of the pending date of discontinuance of service.

I. "full rated flow means" a flow of one hundred percent of the rated capacity of a meter;

J. "gas plant means"
all facilities owned by a gas utility for the production, storage, transmission, and distribution of gas;

K. "LP-gas means"
liquefied petroleum gas;

L. "main means"
a gas pipe owned, operated, or maintained by a utility which is used for the transmission or distribution of gas, but does not include "service pipe;"

M. "meter, without other qualification, means" any device or instrument which a utility uses to measure a quantity of gas;

N. "premises means" a piece of land or real estate, including buildings and other appurtenances thereon;

O. "psia means"
pounds per square inch, absolute;

P. "psig means"
pounds per square inch, gauge;

Q. "service pipe means" the pipe that runs between a main or a transmission line and a customer's property line;

R. "special contract means" a written agreement between a utility and a customer to establish a rate or conditions of utility service,

or both, that due to size or load characteristics, or both, differ from those established for general classes of service;

S. “system emergency means” an unplanned situation in which a utility’s system or a segment of its system is in imminent danger of failure and implementation of normal curtailment or interruption procedures would not rectify the condition;

T. “therm means” the unit of heat that is equal to 100,000 British thermal units;

U. “utility and gas utility” shall have the meaning given for “public utility” or “utility” in the New Mexico Public Utility Act, Section 62-3-3 NMSA 1978;

V. “W.C. means” water column;

W. “yard line means” the pipe that runs across a customer’s property from the property line to the point of consumption;

X. “final notice means” personal communication with a non-residential customer by telephone, hand delivery or other electronic communications at least two days prior to the specific date of discontinuance of service or if by mail, at least four days prior to the specific date of discontinuance of service, excluding Sundays and holidays observed by the utility, to: remind the non-residential customer of the pending date of discontinuance of service.

[17.10.650.7 NMAC - Rp, 17.10.650.7 NMAC, 11/10/2020]

17.10.650.8 [RESERVED]

[17.10.650.8 NMAC - Rp, 17.10.650.8 NMAC, 11/10/2020]

17.10.650.9 RECORDS AND REPORTS:

A. Location of records: Records shall be located as provided in Section 62-6-17 NMSA 1978.

B. Retention of records: Records shall be retained as provided in 17.3.310 NMAC.

C. Data to be filed with the commission: The utility shall maintain the following

documents and information on a current basis and upon commission request, the utility shall provide the information to the commission within 10 working days:

(1) a statement of the standard heating value in BTU’s per cubic foot of the gas supplied by the utility in each district, division, or community served;

(2) a statement indicating the volumetric measurement base to which all sales of gas at other than standard delivery pressure except where made under special contract are corrected (see Paragraph (2) of Subsection K of 17.10.650 NMAC and Subsection B of 17.10.650.14 NMAC);

(3) a map or series of maps showing the utility’s operating area (the map shall be revised annually unless such revision is unnecessary, in which event the utility shall notify the commission that the map on file is current); the map should show:

- (a) gas production plant,
- (b) principal storage holders,
- (c) principal transmission mains by size,
- (d) system metering (supply) points,
- (e) state boundary crossings,
- (f) franchise area, and
- (g) names of all incorporated communities served;

(4) the name, title, address, and telephone number of the person who should be contacted in connection with:

- (a) general management duties,
- (b) customer relations (complaints),
- (c) engineering operations,
- (d) meter tests and repairs, and
- (e) emergencies during non-office hours;

(5) notice of accidents, explosions, and leaks:

(a) prompt notice of fatal accidents shall be given to the commission by telephone or telegraph,

(b) prompt notice of any explosion involving any of the utility’s system or products shall be given to the commission by telephone or telegraph,

(c) the utility shall maintain information regarding leaks that occur in a transmission or distribution line owned by the company or in a customer’s line for at least three years from the date the leak is discovered by the utility, and

(d) the utility shall file a report with the commission within 48 hours after exercising its option to discontinue service under Paragraph (1) of Subsection F of 17.10.650.11 NMAC;

(6) reports of heating value:

(a) each utility shall file reports showing the results of its determinations of the heating value of the gas made in accordance with Subsection F of 17.10.650.14 NMAC,

(b) when the utility obtains its gas supply from another utility which is required to supply BTU reports to the commission under this section, copies of the supplier’s reports may be submitted in lieu of compliance with the other requirements of this section, and

(c) these reports shall be provided to the commission within 10 working days of a request for such a report by the commission;

(7) the location at which the utility keeps the various classes of records required by these rules; and

(8) a report detailing the results of all meters (excluding new meters and all orifice meters) tested during the year showing:

(a) total number of meters tested;

(b) percentage breakdown of reasons for tests;

(c) number of meters found to be more than two percent fast; and

(d) number of meters found to be more than two percent slow.
[17.10.650.9 NMAC - Rp, 17.10.650.9 NMAC, 11/10/2020]

17.10.650.10 GENERAL REQUIREMENTS:

A. Disposition of gas:
(1)

Unless otherwise authorized by the commission all gas sold by a utility shall be on the basis of meter measurement except where the usage is constant and the consumption may be readily computed.

(2) Wherever practicable and exclusive of field usages, consumption of gas within the utility itself or by administrative units associated with it shall be metered.

B. Meter reading sheets, cards, or records: The meter reading sheets, cards, or records from which the customer's bills are prepared shall show:

(1) customer's name, address, and rate schedule;

(2) identification number or description of the meter(s);

(3) meter readings;

(4) if the reading has been estimated; and

(5) any applicable multiplier or constant.

C. Meter reading interval: Meters shall be read monthly except that authority may be obtained from the commission for reading the meters at other than monthly intervals. Commission approval need not be obtained where deviation from monthly meter reading schedules occurs because of changes in meter reading routes. As nearly as practicable utilities shall avoid sending a customer two successive estimated bills.

D. Condition of meter: No meter shall be installed

which is mechanically defective, has an erroneous correction factor, or has not been tested and adjusted if necessary in accordance with Subsection B of 17.10.650.13 NMAC. However, meters being transferred from one service location to another need not be so tested if the time period prescribed in Paragraph (5) of Subsection A of 17.10.650.13 NMAC has not yet expired unless the utility has reasonable grounds for believing that some particular meter may be registering improperly. The capacity of the meter and the index mechanism should be consistent with the gas requirements of the customer.

E. Prepayment meters: Prepayment meters shall not be geared or set so as to result in the charge of a rate or amount higher than would be paid if a standard meter were used except under such special rate schedule as may be filed under 17.1.210 NMAC.

F. Temporary service: When the utility renders temporary service to a customer it may require that the customer bear all the costs of installing and removing the service in excess of any salvage realized.

G. Extension plan: Each utility shall develop a plan acceptable to the commission for the installation of extensions of mains and service lines where such facilities 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. This plan must be related to the investment that can be made prudently for the probable revenue and expenses to be incurred.
[17.10.650.10 NMAC - Rp, 17.10.650.10 NMAC, 11/10/2020]

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 their 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 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 \$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 of 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 their 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, 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 the time since the meter was last tested, not to exceed six 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 their 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 months thereafter refund the amount due.

(2) **Non-registering 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 slow the utility may bill the customer for one-half of the undercharge caused by the error indicated by the test for a period of 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 their 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 accurate. For the purpose of billing adjustments the meter error shall be one-half 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 the customer 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 their 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 non-compliance 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 non-payment 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.

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

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

(3) Irrespective of any conflict with 17.5.410 NMAC, the following rules regarding disconnection of residential utility service may be implemented on a temporary basis by order of the commission for a period of time, up to and including, the duration of any emergency executive order issued by the governor of New Mexico pertaining to a public health or other emergency condition under either the Public Health Emergency Response Act, Section 12-10A-1 NMSA 1978, and the All Hazards Emergency Management Act, Section 12-10-1 NMSA 1978:

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

(b) any late fees on residential accounts that would be incurred during the time period of the effectiveness of the emergency executive orders may be required to be waived;

(c) utilities may be permitted to temporarily close in-person bill payment locations provided the utility provides notice to residential customers of such closures and identifies in such notice how payment made be made, including electronically or by mail. In the event of the 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;

(d) medical certificates set to expire shall not expire for the duration of the effectiveness of any emergency executive order and may be automatically be extended for 90 days from the end of any emergency executive order; and

(e) irrespective of this rule, public utilities are not prohibited from disconnecting service to residential customers due to:

(i) an emergency;

(ii) safety;

(iii) a request to disconnect from the residential customer.

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. [17.10.650.11 NMAC - Rp, 17.10.650.11 NMAC, 11/10/2020]

17.10.650.12 ENGINEERING:

A. Requirements for good engineering practices:

(1) The gas plant of the utility shall be constructed, installed, maintained, and operated in accordance with accepted good engineering practice in the gas industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

(e) irrespective of this rule, public utilities are not prohibited from disconnecting service to residential customers due to:

(i) an emergency;

(ii) safety;

(iii) a request to disconnect from the residential customer.

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. [17.10.650.11 NMAC - Rp, 17.10.650.11 NMAC, 11/10/2020]

17.10.650.12 ENGINEERING:

A. Requirements for good engineering practices:

(1) The gas plant of the utility shall be constructed, installed, maintained, and operated in accordance with accepted good engineering practice in the gas industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

(2) In certain instances the commission may authorize the use of pipe other than steel for low pressure transmission and distribution systems. In no case

shall a utility deviate from the use of steel pipe without first obtaining authorization from the commission.

B. Acceptable

standards: Unless otherwise specified by the commission the utility shall use the applicable provisions in the publications listed below as standards of accepted good practice for construction initiated and operations and testing procedures conducted after the effective date of Second Revised General Order No. 6, codified by 17.10.650 NMAC.

(1) American standard code for "gas transmission and distribution piping system," ASA B31.8-1968.

(2) National board of fire underwriters standard no. 59, July 1962, "the storage and handling of liquefied petroleum gases at utility gas plants".

(3) "Standard methods of gas testing," circular no. 48, national bureau of standards, 1916 (the applicable portions of the circular have been substantially reproduced in the American meter co. handbook E-4 covering the testing of positive displacement gas meters).

(4) "Testing large capacity rotary gas meters," research paper no. 1741, national bureau of standards journal of research, September 1946.

(5) "Standard method of test for caloric value of gaseous fuels by the waterflow calorimeter," American society for testing materials, standard D 900-55, 1955.

C. Acceptable

references: The following publications have not been designated as standards but may be used as guides to acceptable practice.

(1) "Accuracy of the recording gas calorimeter when used with gases of high BTU content," by John H. Eiseman, national bureau of standards, and Elwin A. Potter, gas inspection bureau of the District of Columbia, AGA publication no. CEP-55-13.

(2) "Orifice metering of natural gas," report No. 3 of the AGA gas measurement committee.

D. Adequacy of

supply: The production and storage capacity of the utility's plant supplemented by the gas supply regularly available from other sources must be sufficiently large to meet all reasonably expectable demands for firm service.

E. Inspection of gas

plant: Each utility shall adopt a program of inspection of its gas plant in order to determine the necessity for replacement and repair. The frequency of various inspections shall be based on the utility's experience and accepted good practice. Each utility shall maintain sufficient records to give evidence of compliance with its inspection program.

[17.10.650.12 NMAC - Rp, 17.10.650.12 NMAC, 11/10/2020]

17.10.650.13 INSPECTIONS AND TESTS:

A. Utility inspections

and tests: Each utility shall make inspections and tests of meters and associated metering devices as follows:

(1) Pre-installation inspections and tests: Every meter and associated metering device shall be inspected and tested in the utility's meter shop before being placed in service, and the accuracy of each meter shall be within the tolerances permitted by Subsection B of 17.10.650.13 NMAC.

(2) As-found tests: All meters and associated metering devices shall be tested before they are adjusted or repaired, after they are removed from service, except when transferred from one service location to another without testing, as permitted by Subsection D of 17.10.650.10 NMAC. Excepted are those meters which are damaged beyond testing. Such tests shall be made before the meters and associated metering devices are adjusted, repaired, or retired. It will not be mandatory to test meters scheduled for retirement unless there is cause to suspect the accuracy of the meter.

(3) Leak tests: Repaired meters and meters that have been removed from service shall be

leak tested prior to installation except when a meter is moved from one location to another without testing in cases permitted by Subsection D of 17.10.650.10 NMAC, unless the utility has reasonable grounds for believing that some particular meter may be leaking. New meters shall be leak tested, but testing may be conducted in accordance with a sampling method acceptable to the commission. Each meter tested shall be subjected to an internal pressure of at least 20" W.C. and checked for the presence of leaks by one of the following tests:

(a)

immersion test;

(b)

soap test; or

(c)

pressure drop test of a type acceptable to the commission.

(4) Request

tests: Upon request by a customer the utility shall test the meter serving them. If the meter has been tested within the last 18 months or within a shorter applicable periodic testing interval specified in Paragraph (5) of Subsection A of 17.10.650.13 NMAC, the utility may charge the customer the applicable amount provided for in its filed rules, such charge to be refunded to the customer whenever the meter proves to be in excess of two percent in error.

(a)

The customer shall be advised that the customer or their representative may be present when the meter is tested.

(b) A

complete record of each test shall be kept on file by the utility.

(5) Periodic

tests: Unless otherwise authorized by the commission each utility shall make periodic tests of meters, associated devices, and instruments to assure their accuracy. Such tests shall be scheduled within the calendar year or earlier when the interval is stated in years; or within the calendar month or earlier when the interval is stated in months. The basic periodic test interval shall not be longer than provided for in the following schedule. (Note: maintenance

<p>programs suggested by manufacturers of the following meters and devices should be followed carefully.)</p>		<p>(3) Timing devices: All recording type meters and associated instruments which have a timing element that serves to record the time at which measurements take place must be adjusted so that the timing element is not in error more than plus or minus four minutes in 24 hours.</p>
<p>(a) Positive displacement meters.</p>	<p>(b) Such application must show the results of testing meters at the periodic test intervals for several years, and the test results must show that the meters are maintaining a high degree of accuracy.</p>	
<p>(i) Up to 250 CF/hr. 10 yrs.</p>		
<p>(ii) 250 to 1500 CF/hr. seven yrs.</p>	<p>(c) The extended interval for meter tests shall be determined by the commission, and the utility shall report annually, or as may be required, the accuracy status of such meters during the extended interval.</p>	<p>(4) General:</p>
<p>(iii) 1500 to 3000 CF/hr. five yrs.</p>		<p>(a) All meters and associated metering devices when tested shall be adjusted as closely as practicable to the condition of zero error.</p>
<p>(iv) 3000 to 5000 CF/hr. two yrs.</p>	<p>(d) Any authorized extension of the basic periodic test interval is subject to cancellation at any time; upon such cancellation the test interval shall be determined by the commission, but such interval shall not be less than the requirements of Paragraph (5) of this subsection.</p>	<p>(b) All tolerances are to be interpreted as maximum permissible variations from the condition of zero error. In making adjustments no advantages of the prescribed tolerance limits shall be taken.</p>
<p>(v) Over 5000 CF/hr. one yr.</p>		
<p>(b) Orifice meters six mos.</p>		
<p>(c) Base pressure correcting devices 24 mos.</p>	<p>B. Test procedures and accuracies: Meters and associated metering devices shall be tested at the points and adjusted to the tolerances prescribed below. The test of any unit of metering equipment shall consist of a comparison of its accuracy with the accuracy of a standard. The commission will use the applicable provisions of the standard listed in Subsection B of 17.10.650.12 NMAC as criteria of accepted good practice in testing meters.</p>	<p>C. Facilities and equipment for meter testing: Each utility shall maintain or designate a meter shop for the purpose of inspecting, testing, and repairing meters. The shop shall be open for inspection by authorized representatives of the commission at all reasonable times, and the facilities and equipment as well as the methods of measurement and testing employed shall be subject to the approval of the commission.</p>
<p>(d) Base volume correcting devices 24 mos.</p>		
<p>(e) Secondary standards.</p>		
<p>(i) Test bottle, one cubic ft. 10 yrs.</p>		
<p>(ii) Dead weight testers 10 yrs.</p>		<p>(1) The area within the meter shop used for testing meters shall be designed so that the meters and meter testing equipment are protected from drafts and excessive changes in temperature. Meters to be tested shall be stored in such manner that the temperature of the meters is substantially the same as the temperature of the prover.</p>
<p>(f) Working standards.</p>	<p>(1) Positive displacement meters.</p>	
<p>(i) Bell provers three yrs.</p>	<p>(a) Accuracy at test points.</p>	
<p>(ii) Rotary displacement test meters five yrs.</p>	<p>(i) Flow Adjusted to within.</p>	
<p>(iii) Flow provers five yrs.</p>	<p>(ii) Check flow one and one-half percent</p>	<p>(ii) Working standards: Each utility shall own and maintain or have access to at least one approved bell type prover of adequate capacity, and all other equipment necessary to test meters shall be installed in the meter room.</p>
<p>(iv) Laboratory quality indicating pressure gauges six mos.</p>	<p>(iii) Not less than full rated flow one and one-half percent</p>	
<p>(6) The basic periodic test interval for positive displacement meters may be extended under the following circumstances: (a) The utility must submit a written application requesting such extension.</p>	<p>(b) Overall accuracy: The overall accuracy at check flow and the accuracy at not less than full rated flow shall agree within one percent. (2) Orifice meters: Accuracy at test points must be within two percent plus or minus.</p>	<p>(a) Means shall be provided to maintain the temperature of the liquid in the meter prover at substantially the same level as the ambient temperature in the prover room.</p>

(b) The meter prover shall be maintained in good condition and correct adjustment so that it is capable of determining the accuracy of any service meter to within one half of one percent.

(c) Each utility which has meters too large for testing on a five cubic foot bell prover may use a properly calibrated test meter or a properly designed flow prover for testing the large meters.

(3) Working standards must be checked periodically (see Paragraph (5) of Subsection A of 17.10.650.13 NMAC) by comparison with a secondary standard.

(a) Bell provers must be checked with a one cubic foot bottle which has been calibrated by the national bureau of standards or by the strapping method.

(b) Rotary displacement test meters must be checked with a bell prover of adequate capacity which has been checked as provided in Subparagraph (a) of this paragraph.

(4) Extreme care must be exercised in the use and handling of standards to assure that their accuracy is not disturbed.

(5) Each standard shall be accompanied at all times by a certificate or calibration card, duly signed and dated, on which are recorded the corrections required to compensate for errors found at the customary test points at the time of the last previous test.

(6) Each utility must have such properly calibrated orifices as may be necessary to achieve the rates of flow required to test the meters on its system.

D. Records of meters and associated metering devices:

Each utility shall maintain records of the following data, where applicable, for each meter and associated metering devices according to 17.3.310 NMAC:

(1) the complete identification--manufacturer,

number, type, capacity, multiplier, constants, and pressure rating; and (2) the dates of installation and removal from service together with the location.

E. Meter test records:

Each utility shall maintain records of meter tests for the duration set forth in 17.3.310 NMAC. The records shall include the following:

(1) the date and reason for test;

(2) the reading of the meter before making any test;

(3) the accuracy "as found" at check and full rated flow;

(4) the accuracy "as left" at check and full rated flow; and

(5) in the event the test of the meter is made by using a standard meter or prover, the utility shall retain all data taken at the time of the test in sufficiently complete forms to permit convenient checking of the test methods and calculations.

[17.10.650.13 NMAC - Rp, 17.10.650.13 NMAC, 11/10/2020]

17.10.650.14 STANDARDS OF QUALITY SERVICE:

A. Purity requirements: All gas supplied to customers shall be substantially free from impurities which may cause corrosion of mains or piping or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.

B. Pressure limits: The standard pressure of gas supplied by any gas utility to domestic or commercial customers as measured on the customer's side of any such customer's meter shall not be less than four inches nor more than 14 inches of water pressure. In the case of customers who require higher pressure than the standard established for domestic and commercial service, the utility may supply gas at the desired pressure, and the volume of such gas shall be computed on the basis of a filed rule or special contract covering gas supplied to customers

at other than standard pressure. (See Paragraph (2) of Subsection K of 17.10.650.7 NMAC).

C. Pressure surveys and records:

(1) Each utility shall make a sufficient number of pressure measurements on its mains and at the customer's meter so that it will have substantially accurate knowledge of the pressure in the low, intermediate, and high pressure system in each district, division, or community served by its distribution mains.

(2) All pressure records obtained under this section shall be retained in accordance with 17.3.310 NMAC and shall be available for inspection by the commission's representatives. Notations on each record shall indicate the following:

(a) the location where the pressure check was made, and

(b) the time and date of the check.

D. Standards for pressure measurements:

(1) Secondary standards: Each utility shall own or have access to a dead weight tester, which must be maintained in an accurate condition.

(2) Working standards: Each utility must own or have access to water manometers, mercury manometers, laboratory quality indicating pressure gauges, and field type dead weight pressure gauges as necessary for the proper testing of the indicating and recording pressure gauges used in determining the pressure on the utility's system.

(3) Working standards must be checked periodically (see Paragraph (3) of Subsection C of 17.10.650.13 NMAC) by comparison with a secondary standard.

E. Heating value:

(1) Manufactured and mixed gas: The average heating value on any one day of manufactured gas and mixed gas including liquefied petroleum gas mixed with air but excluding natural

gas when mixed with manufactured or liquefied petroleum gas for peak shaving or emergency purposes shall not exceed or fall below the standard heating value specified by the utility (see Paragraph (1) of Subsection C of 17.10.650.9 NMAC) by more than five percent.

(2) Natural and liquefied petroleum gas: The heating value of natural gas and undiluted, commercially pure liquefied petroleum gas as determined in accordance with Subsection F of 17.10.650.14 NMAC shall not exceed or fall below the standard heating value (see Paragraph (1) of Subsection C of 17.10.650.9 NMAC) by more than five percent.

(3) Adjustment of customers' appliances: Necessary adjustments of customers' appliances must be made by the utility without charge whenever the monthly average heating value of manufactured or mixed gas or natural gas or liquefied petroleum gas sold subject to thermal adjustment is more than five percent above or below the standard heating value for two successive months or whenever the heating value of natural gas or liquefied petroleum gas not sold subject to thermal adjustment is shown by two successive tests made in accordance with Paragraph (3) of Subsection F of 17.10.650.14 NMAC to be more than five percent above or below the standard heating value.

F. Heating value determination and records:

(1) Calorimeters used for the determination of the heating value of the gas sold shall be of a type acceptable to the commission.

(a) The calorimetric equipment shall be installed in a suitably located testing station acceptable to the commission and subject to its inspection.

(b) The accuracy of all calorimeters as well as the method of making heating value tests shall be acceptable to the commission. Recording calorimeters shall be tested with a standard gas at least once a year.

(c) Heating value test records shall be preserved in accordance with 17.3.310 NMAC.

(2) The utility shall determine the heating value of manufactured and mixed gas at least once daily and shall make the test during the period of the highest daily peak demands.

(3) Except for gas sold subject to thermal adjustment (to which the provisions of (2) above shall be applicable), the utility shall determine the heating value of natural gas and liquefied petroleum gas at least quarterly, provided that whenever any such quarterly test or subsequent test provided for herein indicates a heating value which is above or below the standard heating value by more than five percent, another determination of the heating value shall be made no more than 30 days thereafter.

(4) Whenever a special contract between a utility and a customer makes specific provisions for the time and manner of determination of the heating value of the gas delivered to such customer, no additional or other determinations of the heating value of such gas need be made pursuant to the foregoing provisions of this section.

G. Interruptions of service:

(1) Each utility shall keep records of interruptions of service to 50 or more of its customers on any of its distribution systems and shall make an analysis of the records for the purpose of determining steps to be taken to prevent recurrence of such interruptions. Such records should include the following information concerning the interruptions:

- (a) cause;
- (b) date and time; and
- (c) duration.

(2) Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers and shall

be preceded by adequate notice to those who will be affected.

(3) Each utility shall notify the utility division of the commission by facsimile or e-mail and confirm by letter to the records division of the commission of any interruption to the service of a major portion of any single distribution system. Each utility shall provide to commission staff all information requested by staff that is reasonably needed to assess the situation.

(4) Each utility shall identify critical customers, including facilities that require natural gas to perform essential life-health-safety services, including other utility services such as electrical generating stations, to establish priority of service and to minimize curtailments to these customers.

(5) Each utility shall identify an emergency coordinator to act as a single point of contact between designated emergency personnel in each community served by the utility in the event of a system emergency.

H. Curtailment of service plan: Each utility shall have in place a plan for curtailment of service for system emergencies. Each plan shall be consistent with applicable national and other reliability and safety standards. The plan shall identify various levels of curtailment and conditions that a gas utility must experience for each level as well as specifying the type of actions the utility must undertake to contain or reverse a potential emergency. Each plan must also prescribe the minimum documentation required at each level. The plan must also include information dissemination to customers, the public and governmental entities. Each utility will periodically review and update the plan and will submit a copy of the most current plan version to the records division of the commission as a company rule pursuant to 17.9.210 NMAC.

[17.10.650.14 NMAC - Rp, 17.10.650.14 NMAC, 11/10/2020]

17.10.650.15

SAFETY:

A. Protective measures:

(1) Each utility shall exercise reasonable care to protect its employees, its customers, and the general public from hazards to which they may be subjected.

(2) Each utility shall maintain a summary of each accident arising from its operations and make such summaries available to the commission upon request.

B. Safety program:

Each utility shall adopt and execute a safety program fitted to the size and type of its operations. At a minimum the safety program should:

(1) require employees to use suitable tools and equipment in order to perform their work in a safe manner;

(2) instruct employees in safe methods of performing their work; and

(3) instruct employees who in the course of their work are subject to the hazards of electrical shock, asphyxiation, or drowning in accepted methods of artificial respiration.

C. Customer piping:

Each customer's piping system shall be tested for leaks before original service is provided.

(1) Pressure test: If local authorities do not require a pressure test of a customer's piping as set forth in American standard installation of gas appliances and gas piping, ASA Z21.30-1964, the utility shall advise the customer of the desirability of having their plumber conduct such a test.

(2) Leakage test: Before permitting the use of gas at any location the piping system shall be tested for leaks by a method at least equal to that described in section "leakage check after gas turn on" in the American standard installation of gas appliances and gas piping, ASA Z21.30-1964.

D. Gas leaks:

(1) A report of a gas leak shall be given priority over all other service calls and shall promptly be investigated by the

utility at no charge to the customer. Repair work done by the utility on the customer's side of the delivery point may be charged to the customer at the utility's regular rate.

(2) The customer shall be advised of the charges involved prior to the commencement of repair work on their side of the delivery point.

E. Odorization: Any gas which is distributed to customers through gas mains or gas services or used for domestic purposes in compressor plants and which does not naturally possess a distinctive odor, to the extent that its presence in the atmosphere is readily detectable at all gas concentrations of one-fifth of the lower explosive limits and above, shall have an odorant added to it to make it so detectable. However, odorization is not necessary for such gas as is delivered for further processing or use where the odorant would serve no useful purpose as a warning agent. Suitable tests must be made to determine whether the odor meets the aforementioned standards. [17.10.650.15 NMAC - Rp, 17.10.650.15 NMAC, 11/10/2020]

HISTORY OF 17.10.650 NMAC:

Pre-NMAC History. The material in this part was derived from that previously filed with the commission of public records-state records center and archives.

That applicable portion of PSC 77-1, (Case No. 1350) Amendments to Second Revised General Order No. 5 and Second Revised General Order No. 6: Applicability of Amendments to Water Utilities, filed 4/4/1977. NMPSC Rule 650, Service Standards For Gas Utilities, filed 6/30/1988.

History of Repealed Material.

NMPSC Rule 650, Service Standards For Gas Utilities (filed 6/30/1988) repealed 6/15/2005. 17.10.650 NMAC – Service Standards For Gas Utilities (filed 3/8/2013) repealed 11/10/2020.

Other History.

NMPSC Rule 650, Service Standards For Gas Utilities (filed 6/30/1988)

replaced by 17.10.650 NMAC, Service Standards For Gas Utilities, effective 6/15/2005.

17.10.650 NMAC - Service Standards For Gas Utilities (filed 3/8/2013) replaced by 17.10.650 NMAC - Service Standards For Gas Utilities, effective 11/10/2020.

PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES

CHAPTER 12 WATER SERVICES

PART 760 CUSTOMER SERVICE RULES AND REGULATIONS FOR WATER UTILITIES

17.12.760.1 ISSUING

AGENCY: New Mexico Public Public Regulation Commission. [17.12.760.1 NMAC - Rp, 17.12.760.1 NMAC, 11/10/2020]

17.12.760.2 SCOPE: 17.12.760

NMAC shall apply to any water utility operating within the state of New Mexico under the jurisdiction of the new mexico public regulation commission. [17.12.760.2 NMAC - Rp, 17.12.760.2 NMAC, 11/10/2020]

17.12.760.3 STATUTORY

AUTHORITY: Section 8-8-15 NMSA 1978; Sections 62-3-1 NMSA 1978, 62-3-3 NMSA 1978, 62-3-4 NMSA 1978, 62-6-1 NMSA 1978, 62-6-4 NMSA 1978, 62-6-16 NMSA 1978, 62-6-18 NMSA 1978, 62-6-19 NMSA 1978, 62-6-20 NMSA 1978, 62-6-21 NMSA 1978, 62-6-22 NMSA 1978, 62-8-3 NMSA 1978, 62-8-10 NMSA 1978, and 62-9-1 NMSA 1978. [17.12.760.3 NMAC - Rp, 17.12.760.3 NMAC, 11/10/2020]

17.12.760.4 DURATION:

Permanent. [17.12.760.4 NMAC - Rp, 17.12.760.4 NMAC, 11/10/2020]

17.12.760.5 EFFECTIVE DATE: November 10, 2020 unless a later date is cited at the end of a section.

[17.12.760.5 NMAC - Rp, 17.12.760.5 NMAC, 11/10/2020]

17.12.760.6 OBJECTIVE: 17.12.760 NMAC is intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by water utilities under the jurisdiction of the public regulation commission, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon such water utilities. If unreasonable hardship to such a water utility or to a customer of such a water utility results from the application of any provision herein prescribed, application may be made to the commission for the modification of the provision or for temporary or permanent exemption from its requirements. The public regulation commission is not precluded from altering or amending 17.12.760 NMAC or from making such modifications with respect to its application as may be found necessary to meet exceptional conditions. These regulations shall not relieve any water utility operating within the state of new mexico subject to the jurisdiction of the public regulation commission from its duties under the laws of this state.

[17.12.760.6 NMAC - Rp, 17.12.760.6 NMAC, 11/10/2020]

17.12.760.7 DEFINITIONS: [RESERVED]

[17.12.760.7 NMAC - Rp, 17.12.760.7 NMAC, 11/10/2020]

17.12.760.8 [RESERVED] [17.12.760.8 NMAC - Rp, 17.12.760.8 NMAC, 11/10/2020]

17.12.760.9 CUSTOMER SERVICE RULES AND REGULATIONS: The customer service rules and regulations set forth in 17.12.760 NMAC establish the responsibilities and rights of jurisdictional water utilities and their

residential customers in their water service relationship. Nothing herein shall prevent any utility from adopting customer service rules and regulations which do not conflict with but which are additional to those set forth herein to cover special circumstances.

[17.12.760.9 NMAC - Rp, 17.12.760.9 NMAC, 11/10/2020]

17.12.760.10 FORMAT FOR CUSTOMER SERVICE RULES AND REGULATIONS:

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 NMAC.pdf)

B. But for the utility's ability to disconnect residential service due to an emergency, safety concerns, or by customer request, the following rules regarding disconnection of residential utility service may be implemented on a temporary basis by order of the commission for a period of time, up to and including, the duration of any emergency executive order issued by the governor of New Mexico pertaining to a public health or other emergency condition under either the Public Health Emergency Response Act, Section 12-10A-1 NMSA 1978, and the All Hazards Emergency Management Act, Section 12-10-1 NMSA 1978:

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

(2) any late fees on residential accounts that would be incurred during the time period of the effectiveness of the emergency executive orders may be required to be waived;

(3) utilities may be permitted to temporarily close in-person bill payment locations provided the utility provides notice to residential customers of such closures and identifies in such notice how payment made be made, including electronically or by mail. In the event of the 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;

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

[17.12.760.10 NMAC - Rp, 17.12.760.10 NMAC, 11/10/2020]

17.12.760.11 [RESERVED] [17.12.760.11 NMAC - Rp, 17.12.760.11 NMAC, 11/10/2020]

HISTORY OF 17.12.760 NMAC: Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives. General Order No. 42, Regulations Governing Water Utilities, filed 5/2/1984. NMPSC Rule 760, Customer Service Rules and Regulations for Water Utilities, filed 6/30/1988.

History of Repealed Material: 17 NMAC 12.760 - Customer Service Rules And Regulations For Water Utilities (filed 1/16/1990), repealed effective 11/10/2020.

Other: 17 NMAC 12.760 - Customer Service Rules And Regulations For Water Utilities filed (1/16/1990) replaced by 17.12.760 NMAC - Customer Service Rules And Regulations For Water Utilities, effective 11/10/2020.

STATE PERSONNEL BOARD

This is an amendment to 1.7.7 NMAC, Sections 8, 9 and 17 effective 1/1/2021.

1.7.7.8 ANNUAL LEAVE:
A. Employees, except those on full-time educational leave

with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay shall accrue annual leave at the rate of:

- (1) 3.08 hours per pay period if less than three years of cumulative employment,
- (2) 3.69 hours per pay period if three years or more but less than seven years of cumulative employment,
- (3) 4.61 hours per pay period if seven years or more but less than eleven years of cumulative employment,
- (4) 5.54 hours per pay period if eleven years or more but less than fifteen years of cumulative employment; or
- (5) 6.15 hours per pay period if fifteen years or more of cumulative employment.

B. For purposes of Subsection A of 1.7.7.8. NMAC, any employment in the classified or exempt service and judicial or legislative branches of New Mexico state government shall be counted in determining years of cumulative employment in the classified service.

C. For purposes of Subsection A of 1.7.7.8. NMAC, employment in programs transferred into the classified service by legislation or executive order shall count as cumulative employment.

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

E. A maximum of 240 hours of annual leave shall be carried forward after the last pay period beginning in December. However, there shall be no limit to the number of annual leave hours that shall be carried forward after the last pay period of December 2020. Any annual leave hours above 240 that are carried forward past December 2020 and are not used prior to the pay period ending July 9, 2021, shall not be carried forward beyond that pay period.

F. Annual leave shall not be used before it is accrued and

must be authorized before it is taken in accordance with agency policy.

G. Employees separating from the classified service, except by a reduction in force, shall be paid for accrued annual leave, as of the date of separation, up to a maximum of 240 hours at their current hourly rate. This payout shall not exceed 240 hours, notwithstanding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC.

H. Employees separating from the classified service as the result of a reduction in force shall be paid for all accrued annual leave, as of the date of separation, at their current hourly rate, excluding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC.

[H] I. The estate of an employee who dies while in the classified service shall be paid for the employee's total accrued annual leave, excluding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC.

[1.7.7.8 NMAC - Rp, 1 NMAC 7.7.8, 7/7/2001; A, 11/14/2002; A, 1/1/2021]

1.7.7.9 DONATION OF ANNUAL [AND/OR] OR SICK LEAVE:

A. Employees may donate annual or sick leave to another employee in the same agency for a medical emergency with approval of the head of the agency. Employees may also make and receive donations of annual leave to and from employees in the exempt service in the same agency for a medical emergency with approval of the head of the agency, as set forth by the department of finance and administration's policies for Governor exempt employees.

B. Employees may donate annual leave to the full amount of their accumulated hours.

C. In accordance with the provisions of Section 10-7-10 NMSA 1978, the donation of sick leave is governed by the following restrictions:

(1) employees who have accumulated more than six hundred hours of sick leave can transfer the additional amounts over 600 hours to another employee;

(2) the dollar value of the transferred leave shall equal fifty percent of the monetary value of the total hours transferred by the donor employee;

(3) no more than 120 hours of sick leave may be transferred by the donor in any one fiscal year, with the exception of the year in which an employee retires, when an employee may transfer up to 400 hours of sick leave;

(4) donations of sick leave may be made only once per fiscal year on either the pay date immediately following the first full pay period in January or the first full pay period in July, unless the employee is retiring.

D. An agency shall maintain the following documentation:

(1) the name, position title, and hourly rate of pay of the proposed leave recipient;

(2) a licensed health care provider's description of the nature, severity, and anticipated duration of the emergency involved which has been provided by the employee or legally authorized representative and a statement that the recipient is unable to work all or a portion of their work hours; and

(3) any other information which the employing agency may reasonably require.

E. Supporting documentation for the request to donate leave shall be kept confidential and not subject to public inspection without the written consent of the employee.

F. The agency shall transfer the leave to the leave account of the employee converting the dollar value of the donor's leave based on the donor's hourly rate of pay to hours of leave based on the recipient's hourly rate of pay.

G. The recipient of donated leave may not use such leave until first exhausting all accrued

annual and sick leave, compensatory time and personal leave day.

H. Donated leave shall revert to the employees who donated the leave on a prorated basis when the medical emergency ends or the employee separates from the agency. [1.7.7.9 NMAC - Rp, 1 NMAC 7.7.9, 7/7/2001; A, 11/14/2002; A, 7/5/2005; A, 1/1/2021]

1.7.7.17 PERSONAL LEAVE DAY:

A. Employees in career status are entitled to [~~+~~ two] personal leave [~~day~~ days] each calendar year. The personal leave [~~day~~ days] will be consistent with the employee’s normal workday. Such leave must be requested and approved in advance.

B. [~~The~~ Each] personal leave day must be taken during consecutive hours.

C. The personal leave [~~day~~ days] must be taken by December 31 or [~~it~~ they] will be lost.

D. Employees who do not take [~~the~~ their] personal leave [~~day~~ days] shall not be paid for [~~it~~ them] upon separation from the classified service. [1.7.7.17 NMAC - Rp, 1 NMAC 7.7.17, 7/7/2001; A, 11/14/2002; A, 10/15/2008; A, 1/1/2021]

SUPERINTENDENT OF INSURANCE, OFFICE OF

**TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 32 COVERAGE FOR CONTRACEPTION**

13.10.32.1 ISSUING AGENCY: Office of Superintendent of Insurance (“OSI”). [13.10.32.1 NMAC - N, 01/01/2021]

13.10.32.2 SCOPE:
A. Applicability. This rule applies to every insurer who issues an individual or group health insurance policy, health care plan or certificate of health insurance that provides a prescription drug benefit for a resident of this state. Herein,

each such insurer is referred to as “Insurer.”

B. Exceptions. This rule does not apply to:

(1) An excepted benefits plan as defined in Section 59A-23G-2 NMSA 1978.

(2) Medicare supplemental health insurance as defined by Section 1882(g)(1) of the Federal Social Security Act; or

(3) Any coverage supplemental to the coverage provided pursuant to Chapter 55 of Title 10 United States Code Annotated and similar supplemental coverage provided to coverage pursuant to a group health plan. [13.10.32.2 NMAC - N, 01/01/2021]

13.10.32.3 STATUTORY AUTHORITY: Sections 59A-22-42, 59A-23.7.14, 59A-46-44 and 59A-47-45.5 NMSA 1978. [13.10.32.3 NMAC - N, 01/01/2021]

13.10.32.4 DURATION: Permanent. [13.10.32.4 NMAC - N, 01/01/2021]

13.10.32.5 OBJECTIVE: To clarify contraceptive coverage requirements. [13.10.32.5 NMAC - N, 01/01/2021]

13.10.32.6 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section. [13.10.32.6 NMAC - N, 01/01/2021]

13.10.32.7 DEFINITIONS:
A. Unless inconsistent with a term defined in this rule, or the usage of a term in this rule, the definitions in 13.10.29 NMAC apply.

B. “provider” means, in addition to the definition in Paragraph (13) of Subsection P of 13.10.29.7 NMAC, pharmacists authorized to prescribe hormonal contraception directly to patients pursuant to 16.19.26.14 NMAC. [13.10.32.7 NMAC - N, 01/01/2021]

13.10.32.8 COVERAGE REQUIREMENTS:

A. Oral contraceptives. An insurer satisfies its obligation to cover a sufficient number and assortment of oral contraceptives to reflect the variety of oral contraceptives approved by the federal food and drug administration only if its plan covers contraceptive pills of differing hormone combinations at differing strengths that reflect the variety of unique combinations approved by the federal food and drug administration.

B. Immediate post-partum long acting reversible contraception. Included in the description of clinical services covered by this rule is immediate (pre-discharge) post-partum long acting reversible contraception.

C. Six-month dispensing. An insurer shall provide coverage and shall reimburse a health care provider or dispensing entity on a per unit basis for dispensing a six-month supply of contraceptives, provided that the contraceptives are prescribed and self-administered. Nothing in this rule shall be construed to require a health care provider to prescribe six months of contraceptives at one time or permit an insurer to limit coverage or impose cost sharing for an alternate method of contraception if an insured changes contraceptive methods before exhausting a previously dispensed supply.

D. Coverage for prescription contraceptive drugs and devices. An insured, an insured’s designee, or an insured’s health care provider may submit a request to an insurer for coverage of a noncovered contraceptive drug or device pursuant to Subsections C and D of Section 59A-22-42 NMSA 1978. Such request shall indicate whether the covered contraceptive drug or device is not available or is medically necessary for the insured. An insurer may require that the request for coverage be in writing. If the insured’s health care provider determines that the use of a non-covered drug or device is medically necessary, the health care provider’s determination shall be final.

E. Sexually transmitted infections. An insurer is obligated to provide contraceptives for the prevention of sexually transmitted infections.

F. Confidentiality of services. An insurer shall maintain confidentiality of claims and services pursuant to state and federal law, including the Domestic Abuse Insurance Protection Act, Sections 59A-16B-1 et seq. NMSA 1978. [13.10.32.8 NMAC - N, 01/01/2021]

13.10.32.9 PROVIDER ACCESS:

A. Access. If an insurer’s plan limits coverage of contraceptive services and supplies to in-network providers, the Insurer shall establish and maintain a network for these services and supplies that meets the access and adequacy standards set forth in state and federal network adequacy law.

B. Limited access requirements. If an insurer’s plan network lacks a sufficient number or type of participating providers or facilities to provide a particular covered contraceptive service or supply in a timely manner appropriate for the covered person’s condition, the insurer shall allow the covered person to obtain the covered service or supply from a provider or facility within reasonable proximity of the covered person at no greater cost than if the service or supply were obtained from in-network providers and facilities. [13.10.32.9 NMAC - N, 01/01/2021]

13.10.32.10 COVERAGE FOR CONTRACEPTION WHERE A PRESCRIPTION IS NOT REQUIRED:

A. If a prescription is not required for the purchase of a contraceptive, an insurer shall not charge a member for a purchase at an in-network pharmacy, and shall provide a process for the member to obtain reimbursement for an out-of-network purchase.

B. An insurer’s website and evidence of coverage handbook shall clearly explain the

process a covered person shall use to submit a claim for reimbursement for the purchase of non-prescription contraception drugs or devices. The reimbursement process is subject to these requirements:

(1) An insurer shall allow a covered person at least 90 days from the date of purchase to submit a request for reimbursement.

(2) An insurer shall reimburse a covered person within 30 days of receipt of a timely and complete reimbursement request submitted electronically, by email, or by fax, and within 45 days of receipt of a timely and complete reimbursement request submitted by U.S. mail.

(a) A reimbursement request that is transmitted electronically, via email, or fax, pursuant to the insurer’s instructions, is deemed received by the insurer on the date of receipt, unless the covered person receives notice of a transmission error.

(b) A request for reimbursement is complete if it contains the covered person’s name and address, their plan identification number, and a paid receipt explicitly delineating the purchased services or supplies.

(c) An insurer may require a covered person to use a specific claim form for a reimbursement request. [13.10.32.10 NMAC - N, 01/01/2021]

13.10.32.11 COVERAGE

DISPUTES: A dispute between an insurer and a covered person concerning a request to grant coverage for a contraceptive supply or service shall be processed in accordance with Sections 59A-23-12.1, 59A-47-47.1, 59A-22B-5, 59A-22-42, or 59A-46-52 NMSA 1978, as applicable, or 13.10.17 NMAC. [13.10.32.11 NMAC - N, 01/01/2021]

13.10.32.12 TRANSPARENCY OF COVERAGE:

A. Forms. An insurer shall provide each covered person with a contraceptive coverage summary that clearly explains the

scope of contraceptive coverage and how to access this benefit at least annually. The coverage summary through written materials or links to an insurer’s website and a toll free number must include the following information:

(1) whether covered services or supplies are available from in-network and out-of-network providers;

(2) whether there are any limitations on contraceptive services or supplies;

(3) that the coverage required shall not be subject to:

(a) cost sharing for insureds;

(b) utilization review;

(c) prior authorization or step-therapy requirements; or

(d) any other restrictions or delays on the coverage;

(4) if elected by the insurer, that brand-name pharmacy drugs or items are subject to cost sharing when at least one generic or therapeutic equivalent is covered within the same method of contraception without patient cost sharing, unless the insured’s health care provider determines that a particular drug or item is medically necessary;

(5) that coverage will be provided for a six-month supply of prescribed and self-administered contraceptives;

(6) a list of the covered contraceptive drugs and devices, as well as clinical services, that are covered without cost-sharing;

(7) a description of the process and forms required to address coverage disputes in Sections 59A23-12.1, 59A-47-47.1, 59A-22B-5, 59A-22-42, or 59A-46-52 NMSA 1978, as applicable, or 13.10.17 NMAC; and

(8) a description of the process and forms related to coverage for contraception where a prescription is not required.

B. Drug formulary requirements. An insurer shall identify on its publicly available drug formulary any cost-sharing free contraceptive drugs and devices. [13.10.32.12 NMAC - N, 01/01/2021]

13.10.32.13 NONDISCRIMINATION: An Insurer who is legally obligated to provide contraceptive supplies or services shall do so without discriminating against the covered person on the basis of race, color, national origin, sex, sexual orientation, gender expression or identity, marital status, age, citizenship, immigration status, or disability. This includes, but is not limited to, providing coverage for of any method of over-the-counter contraception without regard to the sex, or gender identity or expression, of the covered person. [13.10.32.13 NMAC - N, 01/01/2021]

13.10.32.14 RULES FOR HSA QUALIFYING PLANS: An insurer who issues a health benefit plan that qualifies as a health savings account (“HSA-qualifying plan”) is subject to this rule. A deductible under an HSA-qualifying plan for over-the-the counter contraceptive supplies or services and voluntary male sterilization shall not exceed the minimum amount required to preserve the covered person’s ability to claim tax exempt contribution and withdrawals from the covered person’s health savings. [13.10.32.14 NMAC - N, 01/01/2021]

13.10.32.15 PENALTIES: In addition to any applicable suspension, revocation or refusal to continue any certificate of authority or license under the Insurance Code, a penalty for any violation of this rule may be imposed against an insurer in accordance with Sections 59A-1-18 and 59A-46-25 NMSA 1978. [13.10.32.15 NMAC - N, 01/01/2021]

13.10.32.16 SEVERABILITY: If any section of this rule, or the applicability of any section to any person or circumstance, is for any

reason held invalid by a court of competent jurisdiction, the remainder of the rule, or the applicability of such provisions to other persons or circumstances, shall not be affected. [13.10.32.16 NMAC - N, 01/01/2021]

History of 13.10.32 NMAC:
[RESERVED]

WORKFORCE SOLUTIONS DEPARTMENT

This is an amendment to 11.1.2 NMAC, Sections 2, 3, 6 through 10 and 12 through 19, effective 11/10/2020.

11.1.2.2 SCOPE: All contractors, subcontractors, employers or any person acting as a contractor who employs laborers or mechanics ~~on public works projects.] to perform work on a public building, public works or public road projects.~~ [11.1.2.2 NMAC- Rp, 11.1.2.2 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.3 STATUTORY AUTHORITY: Section 13-4-11 ~~through 13-4-15 and Section 13-4D-4 NMSA 1978 [(2009)].~~ [11.1.2.3 NMAC - Rp, 11.1.2.3 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.6 OBJECTIVE: The purpose of this rule is to define regulations necessary for the application of prevailing wage rates for laborers and mechanics employed on public works projects in the state including procedures for the predetermination of wages, the adoption of job classification descriptions, procedures for the enforcement of the Public Works Minimum Wage Act (PVMWA), and procedures for the disposition of appeals brought under the Public Works Minimum Wage Act. Regulations pertaining to apprentices and permanent job classifications and descriptions for public works projects are also contained in this rule. [11.1.2.6 NMAC - Rp, 11.1.2.6 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.7 DEFINITIONS:
A. “Alteration” means any change made to any part of or any system within an existing public building, public work, or public road other than a “repair” as hereinafter defined.

~~[A:]~~ **B. “Base wage rate”** means the straight time hours and hourly rate paid each laborer or mechanic.

C. “Contract” means any written agreement made by the state or any political subdivision of the state for or including provisions for the alteration, construction, demolition, maintenance, or repair of any public building, public work, or public road that makes use of any public funds.

~~[B:]~~ **D. “Craft”** means a particular construction trade.

~~[C:]~~ **E. “Director”** means the director of the division.

~~[D:]~~ **F. “Division”** means the labor relations division of the workforce solutions department.

~~[E:]~~ **G. “Fringe benefit”** means payments made by a contractor, subcontractor, employer or person acting as a contractor, if the payment has been authorized through a negotiated process or by a collective bargaining agreement, for: holidays; time off for sickness, injury, personal reasons or vacation; bonuses; authorized expenses incurred during the course of employment; health, life and accident or disability insurance; profit-sharing plans; contributions made on behalf of an employee to a retirement or other pension plan; zone, incentive, and subsistence pay and any other compensation paid to an employee, or for the direct benefit of an employee. ~~[other than wages unless otherwise addressed separately in the applicable collective bargaining agreement, which shall be controlling in accordance with Subsection E of 11.1.2.12 NMAC.]~~ Payments made to an approved apprentice program are not fringe benefits.

~~[F:]~~ **H. “Labor organization”** means an organization of any kind, or an agency or employee representation committee or plan,

in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

[G.] L. “Locality” means one or more counties in the state of New Mexico.

[H.] J. “Prevailing wage and benefits” means the hourly wage rate and other benefits as determined by the director to be received by paid to, or for the benefit of, employees for worked work performed by the employee on under public works projects or contracts, including any apprentice training contributions.

K. “Project” means any coordinated activity involving the alteration, construction, demolition, installation, maintenance, or repair of any public building, public work, or public road, and shall include all contracts related to, and employers involved in, the work to be done as a result of the coordination.

L. “Public funds” means every contract or project in excess of \$60,000 that the state or any political subdivision thereof if a party to for construction, alteration, demolition, or repair, or any combination thereof.

M. “Public works” means any facility for the use, enjoyment, or benefit of the public that is altered, constructed, demolished, installed, maintained, or repaired and is funded in whole or in part with public funds or public financing, public grant, and including any form of tax bond financing.

N. “Repair” means to correct any damage or defects within, or to replace any obsolete system, part or portion, of a public building, public work or public road.

[H.] O. “Secretary” means the secretary of the department of workforce solutions.

[H.] P. “Similar nature” means contract work performed on projects as defined in 11.1.2.18 NMAC.

[K.] Q. “State” means the state of New Mexico.

[H.] R. “Wage” means the basic hourly rate of pay.

S. “Willfully” means an intentional or deliberate violation of a known duty, and shall include the failure to rectify a violation within a reasonable time after notice of the violation, or repeated violations after receiving notice of a violation.

[11.1.2.7 NMAC - Rp, 11.1.2.7 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.8 PREAMBLE:

A. Every contract or project in excess of \$60,000 that the state or any political subdivision thereof is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads of the state and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, which shall be based upon the wages and benefits that will be determined by the director to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the state or locality, and every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project unconditionally and not less often than once a week and without subsequent unlawful deductions or rebate on any account, at wage rates and fringe benefit rates not less than those determined by the director to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

B. Consistent with the provisions of 11.1.2.12 NMAC the director shall determine prevailing wage rates and prevailing fringe benefit rates for respective classes of laborers and mechanics employed on public works projects at the same wage rates and fringe benefit rates used in collective

bargaining agreements between labor organizations and their signatory employers that govern predominantly similar classes or classifications of laborers and mechanics for the locality of the public works project and the crafts involved.

[11.1.2.8 NMAC - Rp, 11.1.2.8 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.9 RESPONSIBILITIES AND DUTIES:

A. The director shall:

- (1)** coordinate the administration of the Public Works Minimum Wage Act;
- (2)** annually determine the prevailing wage and fringe benefit rates and the rate for the employer contributions to the public works apprentice and training funds, and publish said rates;
- (3)** [ensure] pursue enforcement of the payment of prevailing wages and fringe benefit rates;
- (4)** adopt standard job classifications applicable on public works projects; and]
- (5)** adopt appropriate wage [rates] rate for all apprentices on public works projects;
- (6)** issue electronic correspondence of the appropriate wage rate decision or decisions to the requesting agency within five business days of receipt by the director of such agency’s request;
- (7)** furnish the contracting agency and the contractor or employer with posters or written summaries containing the minimum wage rates of all employees for posting at each particular project site;
- (8)** notify the contracting agency and the contractor or employer when the contractor or employer has failed to comply with any requirement of the PWMWA and of the obligation of the contracting agency to withhold the payment of funds to the contractor or to ensure that all laborers and mechanics working on the project are paid according to the prevailing wage;
- (9)** request certified payrolls by letter or by

issuing a subpoena at the director's discretion, if appropriate payments have not been made by an employer:

(10) notify the contracting agency and the contractor or employer of the right of the contracting agency to terminate the contract when a determination is made by the director of a willful failure of the contractor or employer to comply with the PWMWA.

B. The contracting [agencies] agency, or its agent, shall:

(1) [All agencies proposing to contract for work to be performed subject to this act must submit] Submit a request to the director, in the manner prescribed by the division, not less than three weeks before the initial advertising date, for a wage rate decision applicable to the work to be performed. The request [must] shall contain the following information:

(a) name, title and signature of requesting officer;

(b) department or agency requesting decision;

(c) date of request;

(d) full description and estimated cost of each of the several classifications of construction as set out in 11.1.2.10 NMAC.

(e) location (city or other description) of project site; and

(f) proposed advertising date and date by which bids are to be submitted.

~~[(2)]~~ The director shall issue an electronic correspondence of the appropriate wage rate decision or decisions to the requesting agency within five working days of receipt by the director of such agency's request.]

~~[(3)]~~ (2) [The contracting agency or its agent, i.e., architect or engineer, shall electronically] Electronically submit, to the director [of the labor relations division] the notification of award and list of subcontractors [forms. Any changes or additions of subcontractors

shall also be electronically submitted to the director by the contracting agency or its agent, i.e., architect or engineer within 10 business days. If the project is canceled, the contracting agency is required to notify the division electronically within 10 business days of cancellation.] within five business days of the execution of the contract.

(3) Electronically submit to the director any changes or additions made to the list of subcontractors within 10 business days of the change or addition.

(4) Electronically submit to the director notice of any cancellation of the project within 10 business days of the cancellation.

~~[(4)]~~ (5) [The contracting agency shall ensure that] Include wage rate decisions [are contained] in advertised specifications for every contract subject to the [Public Works Minimum Wage Act] PWMWA.

~~[(5)]~~ If a collective bargaining agreement is in effect governing the service sought, that agreement will define minimum wages and benefits that must be paid in order for a bidder to be considered responsible.]

(6) Include in the advertised specifications and the contract a requirement that the contractor or any tier of the subcontractors must agree to pay the prevailing wages and benefits in order for a bidder to be considered responsible and that the contractor must, within 3 days of the award, submit to the director a signed statement of intent to pay prevailing wages and fringe benefits on a form provided by the director.

~~[(6)]~~ (7) [In order to ensure compliance by contractors and all tiers of subcontractors with the wage decisions, contracting agencies shall include] Include in the advertised specifications and the contract between the agency and the contractor for all work subject to the terms of the [Public Works Minimum Wage Act] PWMWA a provision

requiring contractors and all tiers of subcontractors to maintain certified weekly payroll records that are to be updated weekly, provided to the contracting agency on a monthly basis and to the director, upon request. The prime contractor is responsible for the submission of copies of certified payroll records by all subcontractors. The director may require disclosure of any information necessary to ensure compliance by all contractors at all tiers with the requirements of the [New Mexico Public Works Minimum Wage Act] PWMWA.

~~[(7)]~~ (8) The contractual provision shall require that all payrolls be numbered, starting with number one for the first payroll at the beginning of the job and continuing in numerical order until the job is completed. The advertised and contractual provision need not require any particular form for contractor or subcontractor forms. The advertised and contractual provision need not require any particular form for contractor or subcontractor payrolls [; provided, all]. The certified payrolls must contain the following information:

(a) the employee's full name need only appear on the first payroll on which the employee's name appears;

(b) the employee's classification (or classifications);

(c) the employee's hourly wage rate (or rates); the employee's hourly fringe benefits; subsistence and zone pay when applicable, and [where applicable,] the employee's overtime hourly wage rate (or rates);

(d) the daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted);

(e) the itemized deductions made;

(f) the net wages paid; [and]

(g) the identifying number of the wage rate decision issued on the project by the director:

(h) statement of compliance form;

(i)
fringe benefit statement, when applicable; and

(j)
annualization of fringe benefit worksheet.

~~[(8)]~~ The contractual provision shall require that all payrolls be numbered, starting with number one for the first payroll at the beginning of the job and continuing in numerical order until the job is completed.]

(9) Include in the advertised specifications and the contract between the agency and the contractor for all work subject to the terms of the PWMWA a provision requiring contractors and all tiers of subcontractors to maintain the full social security number and current address of each employee and provide them to the director upon request for purposes of an investigation or audit of compliance with prevailing wage requirements

(10) Include in the advertisement for bidding and the contract between the agency and the contractor a provision requiring the contractors and all tiers of subcontractors to provide a signed statement with the certified payrolls demonstrating the disbursement of all fringe benefits paid to or on behalf of each employee of the contractor or subcontractor.

(11)
Electronically notify the director within 10 business days if the contracting agency makes a finding or determination that the employees of the contractor or subcontractors are not being paid the prevailing wages or benefits required or if the contractor or subcontractors are otherwise failing to perform in accordance with the requirements of the PWMWA.

(12) Withhold payments to the contractor, if the contractor or any subcontractor is otherwise failing to perform in accordance with the requirement of the PWMWA, until such time as the employees have all been paid sums that are due or to the contracting agency may pay the employees of the contractor or subcontractor directly

any sums that are due.

(13)
Require that the contractor and all subcontractors and their tiers shall maintain legible copies of the certified weekly payrolls prepared in accordance with these regulations for a minimum of three years from the date of the final payment and for so long as is required to resolve any disputes or claims regarding the payment of wages or benefits to employees of the contractor or subcontractor that remain pending after one year and subject to all other state or federal requirements for the retention of such records by the contractor.

(14) Comply with the lawful requests of the director and cooperate with the director regarding the inspection of the project and the acquisition of all requested documentation regarding the project necessary to assure that all employees of contractors and subcontractors working on the project have been paid.

~~[(9)]~~ (15)
[The contractual provision shall require] Require that the contractor and each of [his] the subcontractors [shall] submit [a sworn statement] an affidavit of wages [paid] , fringe benefits and subsistence and zone payments made prior to the final payment by the contracting agency on a project, which shall be [substantially] in the following form:

I hereby certify that the above information is correct and that all workers I employ on this public works project were paid no less than the Prevailing Wage Rate(s) as determined by the Department of Workforce Solutions, Labor Relations Division for this project as identified by the State Wage Decision Number. I understand that contractors who violate Prevailing Wage Laws (i.e., incorrect job classification, improper payment of prevailing wages, or overtime, etc.), are subject to debarment procedures and shall be required to pay back any wages due to workers. (Ref. Labor Relations Division Public Works Minimum

Wage Act Policy Manual (11.1.2 NMAC) & Public Works Minimum Wage Act (13-4-11 through 13-4-18, NMSA 78)). I, _____, being first duly sworn on oath under penalty of perjury, swear that the foregoing information is true and correct.

Contractor's signature. Date

Notary: Subscribed and sworn to before me at _____ this _____ day of _____, 2____

Notary Public
(Signature) (Date)
My commission expires:

~~[(10)]~~ The contractual provision shall require that the contractor and all subcontractors and their tiers shall maintain legible copies of the certified weekly payrolls prepared in accordance with these regulations:

~~[(11)]~~ The sworn statement of wages paid must be filed prior to the final payment to a contractor. Bond monies and retainage will be released only to contractors who have filed sworn statements pursuant to the provisions of these regulations. Any contractor or subcontractor who files a false statement or refuses to file any statement or record required to be filed under these regulations, shall be considered as non-compliant and shall be subject to debarment proceedings. All contractors shall keep all certified payroll records for the duration of time not less than 12 months after the completion of the project that is being performed by the contractor, and subject to all other state or federal requirements for the retention of such records by the contractor.

~~[(12)]~~
Contracting agencies shall comply with requests from the director to inspect all projects and to inspect all documentation associated with those projects.]

C. Contractor and subcontractor shall:

(1) — Contractors and all contracting tiers on projects must file a sworn statement of wages paid.

(2) — The minimum wage rates must be posted by the contractor or subcontractor in a prominent, easily accessible place at the site of each particular project.

(3) — The director shall furnish the contracting agency with a poster containing the minimum wage rates. Said poster is to be forwarded to the contractor for posting at each particular project site.

(4) — The contractor and subcontractor shall comply with all requirements imposed by the Public Works Minimum Wage Act and these regulations.]

(1) Pay employees, including apprentices, the prevailing wage and fringe benefits determined to be due pursuant to the prevailing wage rate determination for the project.

(2) Post the prevailing wage and fringe benefits for all employees provided by the director in a prominent, easily accessible place at the site of each particular project.

(3) Submit to the contracting agency on a monthly basis, and to the director within 10 business days of a request by the director for the purposes of an investigation or audit of compliance with prevailing wage requirements, certified payrolls and a signed statement showing the disbursement of all fringe benefits paid to or on behalf of each employee of the contractor or subcontractor. The prime contractor is responsible for the submission of copies of certified payrolls of all subcontractors.

(4) Comply with all requirements imposed by the PWMWA and these regulations.

(5) Submit to the contracting agency an affidavit of wage, fringe benefits, and subsistence and zone payments made to the employees, in the form required by the director, prior to the final payment by the contracting agency on a project.

(6) Maintain certified payrolls and documents regarding the disbursement of fringe benefits for a minimum of three years from the date of final payment to the contractor and so long as is required to resolve any disputes or claims of employees or the director regarding the payment of wages or benefits to employees of the contractor or subcontractor.

(7) Maintain a valid LEF registration at the time bids are due and for the duration of the project in accordance with Section 13-4-13.1 NMSA 1978. [11.1.2.9 NMAC - Rp, 11.1.2.9 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.10 CLASSIFICATION OF TYPES OF CONSTRUCTION:

A. Classifications of construction work

(1) Type "A"
The street, highway, utility and light engineering construction classification shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridle paths, athletic fields; highway bridges, median channels, and grade separations involving highways; parks, golf courses, viaducts; uncovered reservoirs; canals, ditches and channels (including linings other than concrete linings); earth dams under 1,000,000 cubic yards, telephone and electrical transmission lines and site preparations, including traffic signalization and street lighting, which are part of street, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, including appurtenances thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stub-outs), providing such utility construction is outside the property line, or more than five feet from a building or heavy engineering

structure, whichever is closer, provided, however, with regard to electrical utilities such construction shall include construction to the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure. Furthermore, this limitation will not apply to independent main lines and service out-lets (stub-out regardless of proximity to building or heavy engineering structure; construction and installation of pipelines (except cross-country transportation mainline pipelines), including municipal-type utility distribution pipelines, for the distribution of petroleum or natural gas, up to the first metering station or connection with the transportation mainline pipeline; provided, "First metering station or connection" means that point which divides cross-country transportation mainline transmission lines or higher pressure lateral and branch lines from lower pressure distribution systems.

(2) Type "B"
The general building classification shall include the construction, alteration, repair and demolition of buildings, including office buildings, warehouses, industrial and commercial buildings, institutional and public buildings and all air-conditioning, conduit, heating and other mechanical and electrical works and site preparation for buildings or heavy engineering projects under this classifications; except that construction, alteration, repair and demolition of buildings under the scope of this classification shall not include construction, alteration, repair and demolition of buildings under the class "C" classification of Subsection A of 11.1.2.10 NMAC, of these regulations; stadia; and shall include electrical, gas, water, sewer lines and other such utility construction which are part of projects under this classification and included within the property line or less than five feet from the building or heavy engineering structure, whichever is closer, provided, however, with regard to electrical utilities such construction shall include construction from the

first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure.

(3) Type “C”

The residential building construction classification shall include the site preparation and construction, alteration; repair and demolition of residential buildings and shall include all structures intended for residential occupancy, be it by owners of said properties or tenants, including, but not limited to, single detached buildings, duplexes, tri-plexes, quad-plexes, residential condominium buildings, apartment buildings not to exceed four stories in height; and shall include electrical, gas, water, sewer lines and other such utility construction which are part of projects under this classification and included within the property line or less than five feet from the building, whichever is closer, provided, however, with regard to electrical utilities such construction shall include construction to the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure.

(4)

Type “H” The heavy engineering construction classification shall include construction, alteration, repair and demolition of heavy engineering work such as railroad and geothermal projects, power generating plants, pump stations, natural gas compressing stations; covered reservoirs and sewage and water treatment facilities; concrete linings for canals, ditches and channels; concrete dams; earth dams of 1,000,000 cubic yards or over; radio towers, ovens, furnaces, kiln, silos, shafts and tunnels (other than highway shafts and tunnels), hydroelectric projects: and well drilling, telephone and electrical transmission lines which are part of general building and heavy engineering projects; mining appurtenances such as tipples, washeries and loading and discharging chutes, and specialized structures for testing, launching and recovering space and other

rocket-type missiles; construction and installation of cross-country transportation mainline pipelines for the distribution of petroleum or natural gas, up to the first metering station or connection with the distribution pipelines; provided, “first metering station or connection” means that point which divides cross-country transportation mainline transmission lines or higher pressure lateral and branch lines from lower pressure distribution systems.

B. On contracts

which involve more than one classification of construction, as defined in 11.1.2.10 NMAC the director shall issue predeterminations, including therein the appropriate wage rates for each classification of construction where none of the classifications comprises 80% of the total contract cost. Where one classification comprises eighty percent or more of the total contract cost, the predetermined rate for that classification shall be used for the entire contract.

[11.1.2.10 NMAC - Rp, 11.1.2.10 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.12 PREDETERMINATION OF WAGE RATES:

A. Not later than July [30] 31 of each year, ~~[interested parties may]~~ labor organizations and their signatory employers shall submit to the director ~~[for consideration]~~ signed copies of their current collective bargaining agreements [and other data collected during the preceding 12-month period.] that will be in effect during any portion of the following calendar year. Each labor organization or signatory employer submitting a collective bargaining agreement shall include a separate list that sets forth the wage and fringe rates as well as the apprenticeship contributions for all trades covered by the collective bargaining agreement, listed by type A, B, C, and H construction project, as identified in Section 11.1.2.10 NMAC above. In addition, interested parties may submit to the director for consideration, no later than July 31

of each year, collective bargaining agreements, interested party wage and fringe rate survey data, other written data collected during the preceding 12 month period, personal opinions and arguments supporting changes to the prevailing wage rates and prevailing fringe benefit rate determination. Submissions must be made as provided in the following subparagraphs:

(1) Collective

bargaining agreements ~~[filed with the division]~~ submitted to the director must be accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury, and which:

(a)

certifies that the agreement filed is fully executed and in effect, unless it is a signed original agreement or photocopy thereof, or a printed copy of a fully executed agreement showing the names of the signatory parties or associations except in the case of a printed agreement the director may require certification; and

(b)

names or otherwise identifies all New Mexico counties within the jurisdiction of the local union or unions signatory to the agreement;

(2) Interested

parties wishing submit information for employees not covered by a collective bargaining agreement must provide the following information to the ~~[division on a form to be furnished by the]~~ director: name and address of the employer or interested party, the number of hours worked by workers in each classification, the classification of each worker, the hourly rate actually paid each worker, the project type, the fringe benefit rate actually paid each worker, and, if practical, the counties in which work was performed. The information filed with the division must be accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury. The director shall consider any

information provided during the 12 month period preceding ~~[June 30]~~ July 31 of each year. Information from sources other than applicable collective bargaining agreements shall only be considered consistent with the provisions of the ~~[Public Works Minimum Wage Act]~~ PWMWA.

~~B.~~ The director may, consistent with the methodology set forth in Subsection D of 11.1.2.12 NMAC, determine that the rate established by a collective bargaining agreement is the general prevailing wage rate for each craft, classification or type of worker for any project in which a collective bargaining agreement has been filed with the division in accordance with 11.1.2.12 NMAC and that collective bargaining agreement covers the same or most similar class or classification of laborer or mechanic as set forth in 11.1.2.18 NMAC.

~~C.~~ In setting the general prevailing wage rate, the director shall give due regard to information obtained during the director's determination of the prevailing wage rates and the prevailing fringe benefit rates and may consider the written data, personal opinions and arguments of interested parties where no applicable collective bargaining agreement is submitted.

~~D.~~ For each classification the general prevailing wage rate shall be determined as follows:

~~(1)~~ If a collective bargaining agreement covering the same or most similar class or classification of laborer or mechanic as set forth in 11.1.2.18 NMAC has been filed with the division in accordance with 11.1.2.12 NMAC, then the collective bargaining agreement establishes the general prevailing wage rate except as provided in Paragraph (2) of Subsection D of 11.1.2.12 NMAC.

~~(2)~~ If the prevailing wage rates and prevailing fringe benefit rates cannot reasonably and fairly be determined in a locality because no collective bargaining agreements exist, then the director

shall determine the prevailing wage rates and prevailing fringe benefit rates for the same or most similar class or classification of laborer or mechanic in the nearest and most similar neighboring locality in which collective bargaining agreements exist.

~~E.~~ The director shall determine the employers' contribution requirements under the provisions of the Public Works Apprentice and Training Act, and that information shall be part of all public works construction projects.]

B. In setting the general prevailing wage rate, the director shall give due regard to information obtained during the director's determination of the prevailing wage rates and the prevailing fringe benefit rates and may consider the written data, personal opinions, and arguments of interested parties where no applicable collective bargaining agreement is submitted.

C. If there are no collective bargaining agreements that exist in the locality on which the director can rely in setting the prevailing wages and fringe benefits, the director shall determine the prevailing wage rates and prevailing fringe benefit rates in the nearest and most similar neighboring locality and use the rates from the adjoining locality where a collective bargaining agreement exists and is in effect.

D. In order to protect the privacy of employees with respect to whom any wage information pertains, except pursuant to lawful process or to the exercise of the director's enforcement obligation under the PWMWA, neither the labor and industrial commission nor the director or any member of the director's staff, shall disclose to any person, an employee's social security number or date of birth with respect to whom wage information is received, submitted, or otherwise in the possession of the director, without having received prior written consent of the employee.

~~[F.]~~ E. In order to protect the privacy of employees with respect

to whom any wage information pertains, except pursuant to lawful process or to the exercise of the director's enforcement obligations under the Public Works Minimum Wage Act, neither the labor and industrial commission nor the director or any member of the director's staff, shall disclose to any person the employee's social security number or date of birth with respect to whom wage information is received, submitted, or otherwise in the possession of the director without having received the prior written consent of the employee.

[11.1.2.12 NMAC- Rp, 11.1.2.12 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.13 PROCEDURE FOR ADOPTION OF WAGE RATES:

A. When the director has determined the proposed prevailing wage and fringe benefit rates applicable in the state for public works projects in accordance with ~~[Subsection D of]~~ 11.1.2.12 NMAC, the proposed prevailing wage and fringe benefit rates shall be subject to a public hearing before the secretary or a hearing officer designated by the secretary.

B. The time, date and place of said public hearing will be established at the discretion of the secretary. Notice of the subject matter, the action proposed to be taken, the time, date and place of the public hearing, the manner in which interested persons may present their views, and the method by which copies of the proposed rates may be obtained, shall be published once at least 30 days prior to the hearing date in a newspaper of general circulation. Such notice shall also be mailed or emailed by the director to all known interested parties at least 30 days prior to the hearing date along with a copy of the proposed rates. Interested parties shall include without limitation the state highway department, incorporated cities and counties and their respective school boards or authorities, state institutions of higher learning and other contracting agencies which

with regular frequency undertake public works projects subject to the Act, and all other persons (including labor organizations, contractors and contractor associations) who make written request to the director to receive notice as provided in this section. Any objections to the proposed prevailing wage rates may be communicated to the director by an interested party either orally at such public hearing or in writing delivered to the director or the director's designee on or before the date of such public hearing.

C. The director shall consider fully all data, views, or arguments submitted in support of or in opposition to the proposed prevailing wage and fringe benefit rates before deciding to approve, modify or reject the prevailing wage and fringe benefit rates proposed by the director for public works projects.

D. The adoption of wage and fringe benefit rates by the director shall constitute an "action" which shall be appealable to the labor and industrial commission, sitting as the appeals board, pursuant to Subsection A of Section 13-4-15 NMSA 1978, and as described in 11.1.2.17 NMAC.

(1) Consistent with the right of appeal granted to any interested person by Section 13-4-15, NMSA 1978, the director shall not adopt the issued wage rates for 15 days following their issuance, while an appeal, if any, to the labor and industrial commission, sitting as the appeals board, is pending, or before the effective date of the decision by the labor and industrial commission pursuant to Subsection D of 11.1.2.17 NMAC.

(2) The labor and industrial commission is designated, pursuant to Section 9-26-6, NMSA 1978, to hear appeals of the adoption of wage rates and shall conduct such appeals and render its decision pursuant to the procedures described in 11.1.2.17 NMAC.

E. The adopted prevailing wage rates shall not be effective until they have been filed in accordance with the State Rules Act.

[11.1.2.13 NMAC- Rp, 11.1.2.13 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.14 EFFECTIVE DATE OF WAGE RATES:

A. The wage and fringe benefit rates become effective once they are adopted and published, in accordance with 11.1.2.13 NMAC.

B. If an appeal is filed pursuant to Subsection D of 11.1.2.13 NMAC, then the director shall adopt the wage rates, as modified by the labor and industrial commission, following expiration of the stays provided by Paragraph (2) of Subsection D of 11.1.2.13 NMAC.

C. Except as provided in Subsection D of 11.1.2.14 NMAC, each discrete public works project shall be governed by one wage and fringe rate decision, which shall remain effective for the duration of the project.

D. New wage rate decisions shall be issued for all contracts on which bids have not been submitted before the date on which a new wage determination becomes effective provided that any such new decision shall not supersede any previously issued decision unless such new decision is received by the contracting agency at least 10 days prior to the date on which bids are to be submitted. Wage and fringe rate corrections or changes to decisions rendered shall not be issued without allowing the requesting agency at least 10 days' notice before the date bids are to be submitted.

E. All decisions will remain in effect until their expiration date or until modified, corrected, rescinded or superseded by the director.

F. The procurement of services pursuant to state price agreements or other methods that serve to establish long-term pre-determination of the price of services shall ~~[not have an impact on]~~ alter the obligations of ~~[contract]~~ contracting agencies and contractors to adhere to the requirements of the ~~[Public Works Minimum Wage Act]~~ PWMWA and these regulations.

[11.1.2.14 NMAC - Rp, 11.1.2.14

NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.15 PROCEDURE FOR INVESTIGATION OF VIOLATIONS:

~~[A. — When a violation is reported or detected, the director shall convey all relevant information to the contracting agency. The director has a non-discretionary duty, once probable cause of a violation is found, to request all payroll records in question from either the subcontractor or the prime contractor and the contractor or subcontractor shall provide legible copies of the requested certified payroll records within 10 business days, when requested by the director.~~

~~(1) — The director shall investigate a complaint filed by any adversely affected interested party or that party's agent regarding violations of the Public Works Minimum Wage Act, as long as the complaint is received by the director before the contract is closed out between the contracting agency and the prime contractor on any public works project. (Closed out is defined as: when the contracting agency has made final payment on the project).~~

~~(2) — The provisions of this subsection do not limit any worker's right to make a claim for payment of prevailing wages, nor do the provisions of this subsection diminish the prime's or subcontractor's duty to cooperate with the division.~~

~~(3) — If the contractor or subcontractor has not complied with the director's request for certified payroll records or if the director determines that a violation of the Public Works Minimum Wage Act has occurred and not been rectified, payment to the contractor in proportion to that owed to the non-compliant contractor or subcontractor, shall be withheld by the contracting agency until compliance has been secured pursuant to the certification procedure outlined in Subsection A and B of Section 13-4-14 NMSA-1978. The contracting agency may, if necessary, request the attorney general, through the director to take~~

legal action to ensure compliance with the act and the regulations contained herein.

~~**B.** In the event voluntary compliance by the contractor cannot be achieved, the director and the contracting agency shall undertake appropriate enforcement action as provided in the Public Works Minimum Wage Act.~~

~~**C.** Any adversely affected interested party or that party's agent may appeal any determination, finding or action of the director to the labor and industrial commission pursuant to the procedures set forth in 11.1.2.17 NMAC.]~~

A. The director shall investigate a complaint filed by any adversely affected party, any interested party, or an agent thereof, regarding potential violations of the PWMWA and shall give priority to complaint involving open projects before the contracting agency has made final payment on the project.

B. The director shall determine if there is a probable cause violation and convey all relevant information to the contracting agency, prime contractor and bonding companies.

C. If the director determines there is probable cause of a violation, an investigation shall be undertaken and the director shall request, or subpoena, all certified payroll records and other relevant financial records from either the subcontractor or the prime contractor. The director has a non-discretionary duty, upon probable cause to request all payroll records in question from either the prime contractor or the subcontractor. The contractor or subcontractor shall provide legible copies of the requested records within 10 business days of the receipt of the director's written request or subpoena. If the director does not receive records pursuant to the initial request or the subpoena, the director may suspend the contractor's LEF registration and order the withholding of funds from the prime contractor of the project. If an LEF registration is suspended due to non-response, the contractor shall submit a new registration and

registration fee to the division upon compliance with the director's record request.

D. The director shall, within 30 days of the filing of a complaint by any employee, contracting agency, contractor, or other interested person, or any agent thereof, giving reliable allegations establishing probable cause of violations of the PWMWA commence an investigation of the allegations contained within the complaint. The director shall within 75 days after the filing of the complaint, make a determination supported by findings of fact and conclusions of law, whether there has been an underpayment of wages or fringe benefits or other violation of the PWMWA, including the amount due and owing by any contractor or subcontractor to any employee. If the complaint is of significantly complex nature, or involves multiple projects or job sites, the director may extend the time in which the determination is to be made by up to six months by providing a written notice and explanation to all parties.

E. The director shall provide the contractor, subcontractor, employer, or other persons against whom the complaint has been made an opportunity to respond to the complaint and provide exculpatory evidence prior to issuing the determination.

F. If it is determined that there has been an underpayment of wages or fringe benefits or other violation of the PWMWA, the director shall make demand for the payment of the amount due and notify the contracting agency of the amount determined to be due. In the absence of a voluntary withholding of accrued payments from the contractor, subcontractor, employer or other person until the laborers and mechanics employed on the project receive a payment for the amount of the underpayment of wages or fringe benefits or other violation of the PWMWA. If no violation is found, the investigation will be closed and notice sent to all parties.

G. The director shall

certify to the contracting agency, and the employer involved, the names of persons or firms in violation of the PWMWA, specifying the amounts due to each employee. The director shall also promptly notify the contracting agency and the employer if the investigation determines that the failure of the employer to comply with the PWMWA was found to be willful.

H. Mediation may be requested by any party at any time throughout the investigation by submitting a written request to the director.

I. Any adversely affected interested party or that party's agent may appeal any determination, finding, or action of the director to the labor an industrial commission pursuant to the procedures set forth in 11.1.2.17 NMAC.

[11.1.2.15 NMAC - Rp, 11.1.2.15 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.16 PROCEDURE FOR ENFORCEMENT ACTIONS:

A. The director may cancel, revoke, or suspend the registration of any party required to be registered pursuant to the PWMWA for failure to comply with the registration requirements or for good cause, pursuant to Section 13-4-14.2 NMSA 1978.

B. The director shall determine when good cause exists to cancel, revoke, or suspend the registration of any party. A determination of good cause to cancel, revoke, or suspend the registration of any party may include, but is not limited to, frequent or substantive violations of the PWMWA.

C. The director shall include the name of a person or firm who has willfully violated the PWMWA on a list to be distributed to all departments of the state, pursuant to Section 13-4-14 NMSA 1978.

D. Prior to taking any enforcement action pursuant to Subsections A, B, or C of 11.1.2.16 NMAC, the director shall provide a notice of contemplated action to the party setting out the basis for the proposed enforcement action.

(1) The notice of contemplated action from the director shall be provided at least 15 days prior to any final enforcement action taken by the director.

(2) Any party who receives a notice of contemplated action may provide a written response to the director for consideration prior to the director's final enforcement action.

(3) The director shall consider the written response provided by a party prior to taking any final enforcement action.

(4) After consideration of the response, the director may continue with the final enforcement action as proposed in the notice of contemplated action.

E. Any final enforcement action by the director in cancelling, revoking, or suspending the registration of any party or including the names of persons or firms who have willfully violated the Act on a list to be distributed to all department of the state, may be appealed pursuant to Section 13-4-15 NMSA 1978 and 11.1.2.17 NMAC.]

A. If the contractor or subcontractor has not complied with the director's request for certified payroll records or if the director determines that a violation of the PWMA has occurred and not been rectified, notice shall be given to the contracting agency and the contractor or subcontractor that payment to the non-compliant contractor or subcontractor in an amount sufficient to pay the laborers and mechanics working on the project shall be withheld by the contracting agency until compliance has been secured.

B. If the director determined that any laborer or mechanic employed on the site of the project has been, or is being, paid at a rate less than the rates required and in the absence of a voluntary resolution, the contracting agency shall, within 30 days of the director's determination, by written notice, terminate the right of the contractor, subcontractor, or employer who failed to pay appropriate wages to proceed with the work or with part of the work

as to which there has been a failure to pay the required wages or fringe benefits. The contracting agency shall prosecute the work to completion by contract or otherwise. The contractor, subcontractor, or employer, or a person acting as surety thereof, shall be liable to the state for any excess costs as a result of the termination of the contractor's, subcontractor's, or employer's right to proceed with the work.

C. The director may cancel, revoke, or suspend the registration of any party required to be registered pursuant to the PWMWA for failure to comply with the registration requirements or for good cause, pursuant to Section 13-4-14.2 NMSA 1978. The director shall determine when good cause exists to cancel, revoke, or suspend the registration of any party. Frequent violations or a single substantive violation of the PWMWA could be good cause to cancel, revoke, or suspend the registration of any party.

D. The director shall include the name of any contractor or subcontractor who has willfully violated the PWMWA on a list to be distributed to all department of the state, pursuant to Section 13-4-14 NMSA 1978. The cancellation, suspension, or revocation shall remain in effect for three years, unless the contractor or subcontractor promptly corrects the action that led to the cancellation, suspension, or revocation of the registration and complies with any requirements imposed by the director as conditions of reinstatement.

E. If the director determines that there was an underpayment of wages or fringe benefits, the contractor, subcontractor, or employer shall be liable to any affected employee for \$100 for each calendar day the contractor, subcontractor, or employer willfully failed to pay appropriate wages in violation of the PWMWA. In addition, if the aggregate underpayment of wages or fringe benefits is greater than \$500, the contractor, subcontractor, or employer responsible for the underpayment

shall be liable to any affected employee for three times the amount of the employee's unpaid wages or fringe benefits.

F. Prior to taking any enforcement action, the director shall provide notice of contemplated action to the contractor, subcontractor, or employer, setting out the basis for the proposed enforcement action.

(1) The notice of contemplated action shall be provided at least 15 days prior to any final enforcement action taken by the director.

(2) Any party who received a notice of contemplated action may provide a written response to the director for consideration prior to the final enforcement action.

(3) The director shall consider the written response provided by a party prior to taking any final enforcement action.

(4) After consideration of the response, the director may continue with the final enforcement action as proposed in the notice of contemplated action.

G. Any determination, finding, or action of the director in enforcing the PWMWA may be appealed to the labor and industrial commission by any interested party pursuant to Section 13-4-15 NMSA 1978 and 11.1.2.17 NMAC. The decision of the director shall be final 15 days after issuance unless an appeal is filed pursuant to 11.1.2.17 NMAC. Once the decision is final, the director may then proceed to the remedies available under 13-4-14 NMSA.

H. Mediation by parties: Upon completion of the investigation, the director may schedule a settlement meeting between the parties. During the settlement meeting, the parties shall be notified of the preliminary conclusions of the investigation, including any potential amounts owed. If a settlement is agreed to by the parties, the investigator shall prepare the settlement agreement for signature by all parties and, upon any payments due, shall close the

investigation.

I. The provisions of this section do not limit any worker's right to pursue a claim for payment of any prevailing wages that may be due nor do the provisions of this section diminish the contractor or subcontractor's duty to cooperate with the division.

J. Nothing in this section shall prevent the director, with probable cause, to immediately certify to the contracting agency pursuant to 13-4-14 NMSA 1978 and exercise the release of any assurance of payment required under 13-4-14 NMSA 1978. [11.1.2.16 NMAC - N, 12/31/2016; A, 11/10/2020]

11.1.2.17 PROCEDURE FOR DISPOSITION OF APPEALS:

A. Purpose and scope: The regulations contained in this part set out the procedures by which appeals may be filed, and by which the labor and industrial commission, sitting as the appeals board, hears and decides appeals pursuant to Section 13-4-15 NMSA 1978. The intent of this part is to clarify and implement the responsibilities and rights of all interested parties as set out in the Public Works Minimum Wage Act, Sections 13-4-11 through 13-4-17 NMSA 1978

B. Filing the appeal:

(1) The notice of appeal shall, consistent with Subsection A of Section 13-4-15 NMSA 1978, be filed with the director within 15 days after a determination, finding, rule, or regulation has been issued or any other action taken, and notice of the action has been given pursuant to [Subsection B of 11.1.2.13] Section 16 of 11.1.2 NMAC of these rules and regulations or otherwise. The filing of the notice of appeal shall immediately stay the effectiveness of the determination, finding or action appealed from which the appeal was taken until the appeal is resolved and a written decision is prepared and served by the labor and industrial commission.

(2) The appellant shall, within 10 days after

filing the appeal, file with the labor and industrial commission, [~~sitting as the appeals board,~~] in care of the office of the director, a concise statement of all determinations, findings or actions of the director with which the appellant disagrees and from which the appeal is taken, and a brief setting forth the reasons and authorities on which the appeal is based. [~~Five copies of the said statement and brief shall be filed with the labor and industrial commission, sitting as the appeals board.~~]

(3) Within 10 days after the filing of the statement and brief [~~described in Subsection B of 11.1.2.17 NMAC,~~] the director shall file [~~by way of an answer, with the labor and industrial commission, sitting as the appeals board, his~~] a response setting forth the director's justification and authorities relied upon for the determination, findings, or action being appealed from which the appeal is being taken. [~~Five copies of the said answer shall be filed with the labor and industrial commission, sitting as the appeals board, and one copy shall be served upon the appellant.~~]

(4) Any interested person other than the appellant, directly affected by the determination, finding or action of the director, such as, contractors, contracting agencies, labor organizations and contractors' associations, may intervene and file a statement and [a] brief [~~in support of his position, in the manner provided in Paragraph (2) of Subsection B of 11.1.2.17 NMAC supra,~~] and may participate in the hearing conducted by the labor and industrial commission [~~, sitting as the appeals board, as described in Subsection C of 11.1.2.17 NMAC.~~]

(5) The [~~labor and industrial~~] commission [~~, sitting as the appeals board,~~] shall furnish copies of the statements, briefs, and answers filed in the appeal to the attorney general, and may request the attorney general to appoint independent counsel to represent it at the hearing.

C. Conducting the hearing:

(1) The hearing shall [~~consistent with Subsection C of Section 13-4-15 NMSA 1978, be conducted by the labor and industrial commission, sitting as the appeals board,~~] be conducted by the commission within 40 days after the filing of the appeal.

(2) The [~~labor and industrial~~] commission [~~, sitting as the appeals board,~~] shall decide all matters brought before it by a quorum which shall consist of two members. Prior to a hearing, the commission shall designate a chairman who shall conduct the meetings and rule on the admissibility of all evidence submitted by and objections of any participant.

(3) The [~~labor and industrial~~] commission [~~, sitting as the appeals board,~~] shall not be required to follow strict rules of evidence and shall have authority to admit any evidence which it concludes has probative value, but irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(4) The [~~labor and industrial~~] commission [~~, sitting as the appeals board,~~] shall make its decision as to the validity or invalidity of the determination, finding, or action of the director based on substantial evidence on the whole record made before it. The appellant shall present his case first, subject to opportunity to present evidence in rebuttal.

(5) The appellant shall present evidence first, any interested party shall present its evidence next and after the director has presented evidence in support of the determination, findings or action that is the subject of the appeal, the appellant shall have the opportunity to present evidence in rebuttal of any evidence presented by the director or any interested person.

(6) Each party shall be given an opportunity by the commission to make a closing statement in support of the position of the party regarding the determination, findings, or action that is the subject of the appeal.

(7) The commission may adjourn, continue, or reschedule the hearing on the appeal as deemed necessary to afford all parties a fair and reasonable opportunity to be heard.

D. Decision by the labor and industrial commission:

(1) The [labor and industrial] commission [-sitting as the appeals board,] shall, pursuant to Subsection C of Section 13-4-15 NMSA 1978, enter and file its decision, containing a concise statement of the principal reasons upon which the decision is based including findings of fact and conclusions of law within 10 days after the close of the hearing [-enter its decision and produce a concise statement of the principal reasons upon which the decision is based] and promptly mail copies of the decision and statement to the participants [at] of the hearing.

(2) The effective date of the decision by the [labor and industrial] commission [-sitting as the appeals board,] shall be stayed [until] for 30 days [after issuing the decision and statement, and may be further stayed pending review in a district court pursuant to Subsection D of Section 13-4-15 NMSA 1978, if and as determined by the court.] from the date of the filing of the decision to allow any party the opportunity to file an appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. [Decisions of the labor and industrial commission may be appealed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.] In the event of an appeal to the district court, the decision of the commission shall be further stayed pending a review and determination by the court.

[11.1.2.17 NMAC - Rp, 11.1.2.16 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.18 JOB CLASSIFICATIONS AND DESCRIPTIONS:

The job classifications and descriptions for public works projects shall be as follows:

A. Asbestos worker or heat and frost insulator: The preparation, alteration, application, erection, assembling, molding, spraying, pouring, mixing, hanging, adjusting, repairing, dismantling, reconditioning, maintenance, finishing or weatherproofing of cold or hot thermal insulations with such materials as may be specified when those materials are to be installed for thermal purpose in voids, or to create voids, or on either piping, fittings, valves, boilers, ducts, flues, tanks, vats and equipment, or on any hot or cold surfaces for the purpose of thermal control, or to be installed for sound control on mechanical devices; equipment; piping and surfaces related in an integral way to the thermal insulation of such mechanical devices, except for materials applied inside sheet metal ducts and fittings. This work also includes all labor connected with:

(1) insulation for: temperature control (excluding batt, blown-in and sprayed-on insulation); personnel protection/safety; prevention of condensation; fire proofing of building penetrations.

(2) distribution of, cleanup of, and removal from surfaces as described above, which surfaces will be reinsulated with (excluding demolition which is covered under the laborers classification) the materials they apply.

B. Boilermaker: Assembles prefabricated boiler parts and fittings to build steam boilers, tanks, vats and other vessels made of ten gauge or heavier metal, and installs catwalks, platforms, stairways and ladders which are erected on, and supported by storage tanks for liquid or gas when such tanks were erected by boilermakers, and installs all catwalks, platforms, stairways and ladders which are erected on and exclusively supported by a pressure vessel.

C. Bricklayer, blocklayer, stonemason: Constructs partitions, fences, walks, fireplaces, chimneys, smokestacks, etc., using brick, structural tile, concrete and

other types of structural block. This classification shall include the setting of stone, marble, slate, and artificial stone. All cutting, grouting and pointing of materials listed above shall be a part of this classification. May also build or repair brick, block, or stone retaining walls, cutting or placing of brick in mortar or other similar material.

D. Carpenter/lather: Sets batterboards, builds and sets forms for concrete, or structural stud except as provided elsewhere. Builds and erects wood and metal products for the framing of structure or building, including bearing and non-bearing walls, framework in buildings, including partitions, floor and ceiling joists, studding, and rafters. Installs wood subflooring and hardwood flooring. Builds wood stairways, cabinets, steps, etc. Installs wood or premanufactured molding, paneling, doors, windows, etc., products and components related to office interiors - partitions, draperies, shelving, panels, doors, (metal, wood, etc.); including hardware; insulation around concrete slabs. Install pin metal or steel studs and wood furring (except on roofs). Carpenters may shoot grades for surveying and attaches "sheetrock" and similar wallboard materials to walls and ceilings. Installs insulation material in walls, ceilings, and under floors of buildings where such insulation is not laid in cement or other plastic materials. Sets all woodworking equipment and operates same. Builds forms and structural element for pre-cast and pre-stressed concrete of all types and shapes on project site. Erects [wood,] self-supporting scaffolding. Installs light iron and metal furring such as rods, channels and other bars or systems to which metal lath, rock lath or other materials used as a substitute for lath are to be attached. Installs metal lath, rock lath, and other materials used as a substitute for lath. Installs metal plastering accessories such as corner beads, door and window casing beads, metal picture mold, chair rails and other metal plastering accessories which are covered and serve as a

ground or guard, except that metallic corner beads, when installed by using plastic material, shall be installed under the “plasterer” classification. Cuts wood materials using a stationary or portable power saw of one or more horsepower. Sharpens by use of files, all types of saws and saw blades used for the cutting of wood materials.

E. Carpenter (millwright): Performs work necessary to assemble, level, align, secure, dismantle, adjust and maintain permanent stationary pumps, motors, generators, turbines, fans, compressors or torque converters which require precision leveling and alignment of such equipment. Installs reduction gear boxes, fluid drives, and speed increasers, including the connection of same to pump or compressor coupling. May align and secure other direct drive motors and machines requiring precision alignment. [~~Installs, repairs~~] Installation, repair, or removal of all pulleys, sheaves, sprockets, gears and flywheels including all belts, cables and chains. Fabricates [~~and~~] or installs all templates, soleplates, grout pads and wedge blocks for all machinery requiring foundation or bolts. Installs all machinery, equipment and conveying devices in all classes of plants, factories, buildings, amusement parks, mills, shops stores, warehouses and construction or mining sites.

F. Carpenter (piledriver): Rigs piledriving equipment, signals pile rig and guides pile and leads to point pile is driven, aligns and plumbs pile using tape and level during driving; splices piles before, during and after driving, cuts off piles, realigns piles after driving. In “piledriving” operations, handles wood, metal, sheetpiling, steel H-beams, concrete, or pipe, fastens them to cable of wench or piledriver, shifts timber piles with cant hook, cleans and points pile with axe or shovel. May drill pilot holes.

G. Cement mason (composition or mastic - finishing machine operator): Finishes concrete to a specified finish and grade on

footings, floors, walks, steps and all concrete surfaces by using tools of the trade such as trowels, floats, screeds, etc. Sets to grade and aligns screeds one board high. Sets to grade and aligns forms for sidewalk, curbs and gutters. Fabricate, cut, bend and tie reinforcing steel and mesh to be placed within the forms for sidewalk, curbs and gutters. Patching, filling of voids and rubbing of concrete to a specified finish, which requires the use of power tools and tools of the trade. Bushhammer and related finish procedure. Concrete saw operation when used on new construction to saw control joints. Vibrating screeds and rollers to achieve final level of concrete. Gunite, in cement mason operation, when it is less than one and one-half inches in thickness, the handling and control of the nozzle shall be the work of the “cement mason.” All work involving the laser screed including the ride-on, laser-guided, vibratory screeding machine that establishes grades by laser which disperses concrete by auger and thoroughly vibrates and consolidates the concrete. Applies coloring material to concrete, also uses mastic to level and waterproof concrete, where tools of the trade are involved. Operates troweling and floating machines which are used in the finishing of concrete. Cementitious insulation, screed wet material to required thickness and darby joints to leave a surface suitable for roofing. [~~May perform other related duties pertaining to concrete construction.~~]

H. Electrician classifications and description - Outside:

(1) Groundman (outside): Assists “lineman” and “equipment operator” in their tasks except that the “groundman” does not climb poles or towers.

(2) Equipment operator (outside): Operates power driven equipment used in the erection and installation of materials and apparatus outlined under the “lineman” classification. Includes directional boring to install underground pipe, conduit or cable.

(3) Lineman or technician (outside):

(a) Performs all electrical construction work outside of isolated plants and the property lines of any given property, but not electric signs, and not street electrical decorations, except when messenger or guy wire is necessary for support and when fed and controlled from the street.

(b) Street lighting, traffic signalization, and related wiring when fed and controlled from the street. All line work consisting of wood, concrete or metal (or substitutes therefore), poles or towers, including wires, cables or other apparatus supported therefrom. Line work in public, private or amusement parks.

(c) All work necessary to the assembling, installation, erection, operation, maintenance, repair, control, inspection and supervision of all electrical apparatus, devices, wires, cables, supports, insulators, conductors, ducts and raceways when part of distributing systems outside of buildings, railroads and outside and directly related railroad property and yards. Installing and maintaining the catenary and trolley work on railroad property, and bonding of rails. All underground ducts and cables when they are installed by and are part of the system of a distributing company, except in power stations during new construction, including ducts and cables to adjacent switch racks or substations. All outdoor substations and electrical connections up to and including the setting of transformers and all connecting of the secondary buses thereto, and all other related work.

(4) Cable splicer (outside): Splices or terminates power cables which are designed to be used for voltages above 2,000. Splices or terminate gas or liquid filled power cables, when part of a distribution system outside of buildings.

I. Electrician classifications and descriptions - Inside:

(1) Wireman or technician (inside): Installs wiring for automatic doors. Plans and executes the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete installation of wiring systems on commercial, industrial, and residential jobs, except electrical work which is incidental to the installation of elevators and escalators and is described under "elevator constructor".

Analyzes proposed telephone and communication systems during the pre-installation stage to detect any basic conflicts in either equipment arrangements or plant facilities. Isolates trouble conditions in inoperable telephone communications systems. Installs a variety of equipment relating to telephone interconnect communication systems and devices including private branch exchange (PBX-PABX), key equipment and associated devices.

(2) Cable splicer (inside): Splices or terminates power cables which are designed to be used for voltages above 2,000. Splices or terminates gas or liquid filled power cables.

J. Low voltage electrician classification: [~~Installer~~] Low voltage technician: Installs pathways (j-hooks) and wiring for low voltage cabling coax or fiber optic and terminates ends of the different types of cables levels and tests. This work includes voice, data security, access control, building automation and video surveillance. Repairs and services inter-communications systems, i.e. speakers, buzzers, microphones, signal lights or other units or [~~component~~] components that are an integral part of such system.

K. Elevator constructor: Assembles and installs machinery and devices incidental to a complete elevator or escalator installation, including elevator cars, cables, counterweights, guide rails, hoisting machinery, etc. Installs all electrical wiring which is incidental to

the installation of automatic elevators and escalators with the exception of power feed wires to the controller, which shall be classified as a task of "electricians". Steel trusses, girders, and supports for escalators, where riveted or welded and metal frames and bucks for elevator door openings shall be installed under the "ironworker" classification.

L. Elevator constructor helper: Assist elevator constructor in the performance of all phases of their work.

M. Glazier: Installs metal window and door frames without glass, curtain wall systems, window wall systems, cable net systems, canopy systems, structural glazing systems, unitized systems, interior glazing systems, photovoltaic panels and systems, suspended glazing systems, louvers, skylights, entranceway systems including doors and hardware, revolving and automatic door systems, patio doors, store front systems including the installation of [~~all metals, column covers, panels and panel systems;~~] glass hand rail systems, decorative metals as part of the glazing system, and the sealing of all architectural metal and glass systems for weatherproofing and structural reasons, using vinyl, molding, rubber, lead, sealants, silicone and all types of mastics in wood, iron, aluminum, sheet metal or vinyl sash, doors, frames or any materials of the above systems as part of the glazing systems. Installs glass, including plate and window glass, mirrors, beveled plate, rough ribbed, wire, figured, colored, art and other type glass or substitute for glass when set in sash, frames, doors, skylights, etc., when set with putty, molding or other methods which are common to the glazing trade.

N. Ironworker: Installs reinforcing iron and steel for concrete structures. Installs fabricated steel members such as girders, columns, beams, and bracing in structures to form the steel framework. Installs metal stairways, catwalks, ladders, and decking. Installs ornamental iron and steel. Erects structural steel

radio and television towers. Sets wall bearing steel bar joists in building structures. Performs layout work for rods within project area. Fastens rods in place with wire or fasteners; bends or adjusts as required. Selects and places steel bars or spirals in concrete forms to reinforce concrete; fastens rods together with wire or patented fasteners; may cut rods with hack-saw or oxyacetylene torch. May bend rod, using rod bending machine, performs layout work and proper placing of steel in the concrete forms. May prefabricate reinforcement assembly for placement complete in forms. Works as a member of a group that raises and places fabricated or precast concrete beams or structural steel members, such as girders, plates, columns, and units them permanently to form a completed structural steel framework. Heats rivets, signals erection crane, splices cables, rigs equipment. May include dismantling and erecting large units of equipment. May suspension bridge cables. Erects, trims, and fits together by means of bolts and clamps, iron grills, grating, and special stairways. Erects ornamental enclosures and other iron work not included in structural ironwork. Fastens ironwork to walls of buildings by means of bolts, brackets or anchors. Fastens newel posts, balauzer, and other parts of stairways by fastening to supports or embedding them in sockets. Forges, welds, drills and cuts as needed. [~~May perform other Ironworker-related duties;~~]

O. Painter (brush): Applies paint, stain, lacquer, varnish, etc., to surfaces in, on or around building structures, using appropriate brushes, rollers, sprayers or trowels. Does preparation of surfaces to receive paint, including sandblasting, small patching, sanding and spackling. Mixes and prepares paints and other materials which are to be applied by painters. Seals, sands and varnishes hardwood flooring. Paints structural steel framework of bridges; guard rails and cables of bridges; and all other surfaces requiring paint. .May erect and rig stages and platforms from

which painters are to work, including swing stage scaffolding, bosun's chairs, mechanical, staging, cornice or roof hooks, scaffolding, and other devices and apparatus necessary to provide safe forking conditions for painters. Operates gasoline-powered compressor striping machine and walking type sprayers for striping parking lots, etc. [~~May perform other Painter related duties.~~]

P. Paperhanger:

Applies wallpaper, fabric, or other materials used in the same manner as wallpaper, to the interior of rooms. Performs work necessary to prepare surfaces to receive wallpaper or other similar material including removal of old wall paper.

Q. Drywall [~~finisher/~~ finisher or taper: Prepares drywall type construction to receive paint, texture, etc. by pointing, taping, bedding, texturing, skimming, wire brushing, stripping, wax, or acid application and finishing.

R. Plasterer: Applies interior and exterior plastering of cement, stucco and stone imitation or any patented materials when cast. Applies acoustical plaster or materials used as substitutes for acoustical plaster, as well as the preparatory pointing and taping of drywall surfaces to receive these finishes. Applies scratch and brown coats on walls and ceilings where tile, mosaic or terrazzo is to be applied. Molds and sets ornamental plaster and trim and runs ornamental plaster cornice and molding. Install metal corner beads when stuck by using plastic materials. Applies guniting, in plastering operations, when it is one and one-half inches in thickness, the handling and control of the nozzle should be the work of the plasterer. Spray fire proofing material on steel beams^[7] or columns. Trowel or sprayed on foam insulation on walls before stucco, etc. Patching outside concrete walls. [~~May perform other Plasterer related duties.~~]

S. Plumbers and pipefitters: Fabricates and installs piping, and tubing systems, including installation of all necessary hangers and supports, which are to conduct

water, steam, air, and other fluids or gases in and around buildings. Also installs vacuum piping systems.

Installs drainage and sewage lines (laterals) from buildings to the point of attachment to mains. Installs plumbing fixtures, such as sinks, faucets, drinking fountains, commodes, etc. Installs refrigeration equipment. Performs cutting, welding and burning which is incidental to the work of plumbing or pipefitting, except as is described under "lead burner". May do other work in connection with the installation and testing of heating and cooling apparatus and control devices.

T. Plumbers and pipefitters (lead burner): Performs cutting, burning and welding operations on lead pipes, tanks, reservoirs, etc.

U. Roofer: Installs, installs alters or repairs roof systems on new or existing roof decks to create a weatherproof and waterproof protective membrane, with or without insulation, using asphalt, pitch, tar, sealants, single ply or multiple ply materials, felt, shakes, shingles, roof tile, slate, coatings, urethane, urethane foam, metal or any other approved roofing materials, including the preparatory work necessary to bring such surfaces to a condition where roofing can be installed, sealed, or repaired. Includes cutting, shaping fabricating and installing or wood, metal or other approved materials for fascias, soffits, copings, cornices, canals, flashing, gutters, leaders, rainwater downspouts, pans, prefabricated chimneys, at or near roof lines, metal flues, prefabricated roof curbs. Installs roofing insulation, and other necessary waterproofing and damp proofing on walls and floors below ground. May perform other water-proofing operations using methods which are common to the roofing trade. Handles all roofing materials at job site and performs all roofing clean-up. Tears off old roof when roof is to be replaced.

V. Sheet metal worker: Fabricates and installs heating and air conditioning ducts and other ductwork. Fabricates and installs

hangers, brackets, etc., used in the installation of sheet metal, and installs grills, registers, etc., which are part of duct systems. Fabricates or installs architectural sheet metal in and around buildings, including metal panel systems, canopies, awnings, exhaust louvers, and cupolas. Installs warm air furnaces except where necessary piping for gas or oil is performed under the plumbing and pipefitting classification. Performs the testing, measuring, adjusting of air and hydronic flows in a building to meet design specifications and local building codes to ensure thermal comfort, indoor air quality, and system energy efficiency are optimized, performs periodic inspections of fire, smoke and combination fire and smoke dampers and conducts differential pressure measurements across, and force testing of stairwell egress doors and performs the functional testing and general required maintenance of smoke control systems and is responsible for recognizing the proper installation, application, and usage of smoke control systems. May install other heating and cooling devices which are in connection with duct systems.

W. Soft floor layer: Cleans and prepares floors and other surfaces to which linoleum and floor tile is to be applied. Lays carpets. Applies appropriate cement to floors and surfaces and installs materials such as sheet rubber, sheet vinyl, asphalt tile, cork tile, linoleum, rubber tile, artificial turf and other resilient floor coverings. Rolls finished floors and surfaces to smooth and press down coverings which have been applied. Mixes and pours liquid seamless floor covering on floor, gyms, etc. Installs decorative or protective trim to and adjoining the above materials including the attaching of cap strips, nosing, and slats.

X. Sprinkler fitter: Fabricates, assembles, and installs all piping and auxiliary devices which are necessary for the complete installation of sprinkling systems for fire protection in buildings.

Y. Tile setter: Applies glazed, unglazed, mosaic, and other ceramic tiles which are used as a surface on floors, walls, ceilings and other surfaces and which must be set to a specified grade. Applies and floats all setting beds which these tiles are set into. Levels and plumbs these tiles to the specified grade.

Z. Tile setter helper: Handles and mixes materials to be used in floating beds, generally assists tile setter by delivering materials, cleaning and caring for tools [~~and such other tasks or may be directed by the "tile setter"~~].

AA. Power equipment operators - group I performs the following tasks or operate the following equipment:

(1) Concrete paving curing machine (Bridge type): Operates self-propelled machine and operates pump on the machine which sprays curing compound on freshly poured concrete. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(2) Fireman: Hand strokes or fires by gas or oil, a portable or semi-portable steam boiler, such as is used on steam shovels, pile drivers, cranes, dredges, hoisting equipment and asphalt plants.

(3) Oiler: A service man who lubricates mechanical equipment, gives signals to operator when applicable, changes oil, greases and filters, refuels equipment. May assist mechanic, head oiler or operator in assembling, setting up, adjusting, maintaining (including operation of steam cleaners) and repairing all types of construction equipment. May, when servicing equipment, drive a truck which carries fuels, oils and greases. May use the tools of the trade at and under the direction of a mechanic, head oiler or operator.

(4) Screedman: Manipulates handwheels or other devices to raise or lower screeds of asphalt machine. Regulated width of screed and depth of material. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(5) Scale operator such as (bin-a-batch).

(6) Tractor (under 50 drawbar h.p. without attachments): Operates a small diesel or gasoline powered rubber-tired, farm -type tractor, with no attachments, to pull by drawbar, seed drills, etc. May oil, grease, or otherwise service and make necessary adjustments.

(7) Industrial locomotive brakeman: A semi-skilled operator who hooks and unhooks various cars, throws switches, operates car dumps, signals locomotive operator, manipulates controls of loading devices (hopper conveyors, etc.) and assists locomotive operator. May oil, grease or otherwise service and make necessary adjustments.

(8) Helpers: mechanic, welder, grease truck and crane oiler.

AB. Power equipment operators - group II performs the following tasks or operate the following equipment:

(1) Tractor (under 50 drawbar h.p. with attachments): Operates a small diesel or gasoline powered rubber-tired or crawler tractor. May be used with attachments such as dozer, tampers, posthole diggers, postdrivers, etc. May be used to pull brooms, sleds, trailers, etc. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(2) Air compressor (315 c.f.m. and over): Keeps compressor fueled, oiled, clean and ready for service. Keeps oilers and air lines working properly, full of proper oil, sets and checks valves on oiler, sets and checks air pressure, cut off valve and gauges, checks and maintains air tools, keeps moisture drained from air tanks, checks governor, sets throttle to avoid compressor damage. Checks and repairs air brakes on compressor and repairs air hose.

(3) Pumps (six inch intake or over): Operates water pump which pumps water for roadway, prewetting, pumping by

transmission line from water source to job area or other use. May oil, grease, prime, or otherwise service and make necessary adjustment to equipment as needed.

(4) Mixer, concrete (one cubic yard and less): Operates a small, portable concrete mixing machine to mix sand, gravel, cement and water to make concrete. Starts power unit and does or oversees loading of materials. Controls the mixing by levers to discharge concrete from drum. This small machine is sometimes charged by shoveling in the proportions of materials directly into the mixing drum and some others have a skip into which materials are shoveled before being hoisted into the mixing drum. Rinses drum with water to remove adhering concrete. May oil, grease or otherwise service and make necessary adjustments as needed.

(5) Roller (sheepsfoot or pneumatic self-propelled without dozer): Operates a diesel or gasoline driven self-propelled machine used for compaction. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(6) Service truck operator (head oiler-type b/c work): An operator of a truck equipped with high pressure grease and oil dispensing equipment. Maintains service records and performs preventative maintenance and visual inspection. Reports vehicle discrepancies to foreman or mechanic.

(7) Screening plants: Operates a screening plant to sort and segregate material. Regulates flow of material through chute to screener. May perform other related work. May oil, grease, or otherwise service and make necessary adjustments or repairs to equipment as needed.

(8) Belt type conveyors (material and concrete): Operates an endless belt-type conveyor that is a machine designed so the belt operates between a head pulley and tail pulley which are located on the opposite ends of the

conveyor frame. The belt rides on carrier rollers so formed in shape and positioned that the belt forms a trough to carry the loose material. The operator starts and stops the belt as necessary, maintains the carrier rollers and belt splices, regulates belt speed for correct loading for efficient operation and belt life, maintains belt alignment to insure the belt is not loaded on one side which results in excessive belt wear. Conveyors are used efficiently in confined areas particularly in the placement of concrete with portable type conveyors. (Conveyor systems which are part of a plant shall be operated by the plant operator). May oil, grease or otherwise service and make necessary adjustments.

(9) Concrete paving joint or saw machine or grinder span type: Operates a self-propelled machine which travels on paving form or pavement and cuts grooves for expansion and contraction joints in freshly poured concrete or cured pavement. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(10) Hoist (one drum): Operates a single drum machine powered by air, electric, gasoline or diesel. Actuates valves, levers, brakes or other control devices which regulates linepull, hold or line release in accordance with signals received by sight, hearing or other signaling devices as necessary. Machines are used for various pulling and hoisting operations on construction work such as to hoist and lower material in various elevations or to hoist and lower material in construction and assembly. May oil, grease or otherwise service and make necessary adjustments.

(11) Air tugger
(12) Elevating belt type loaders: Operates a self-propelled or tractor-drawn elevating grader, bucket, or belt loader. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(13) Lumber stacker: Operates machine designed to straddle bundles or stacks of lumber or other objects suitable to be

handled by this specialized machine, hoists and moves materials to various locations. May oil, grease or otherwise service and make necessary adjustments.

(14) Winch truck: Drive a heavy duty gasoline or diesel truck equipped with a winch and gin poles or other hoisting devices. Shifts winch gears in accordance with signals from helper on ground. May service and make necessary adjustments for proper operation of equipment.

(15) Front end loader (under two cubic yards): Operates a runner tired or crawler-type tractor with an attached bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading trucks. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(16) Fork lift: Operates a machine powered by gasoline, diesel or electric power that is equipped with a vertical hoisting and lowering device that may be canted forward and reverse of vertical center by means of control devices. Machine is equipped with fork lifting and designed to slide under loads, machine is used for lifting and transporting loads. May oil, grease or otherwise service and make necessary adjustments.

(17) Power plant (electric generator or welding machine): Operates a diesel or gasoline driven machine that generates A.C or D.C. current of 15 K.W. or more used for lighting and electrical power. Keeps cycle and synchronization control board in adjustment adhering to manufacturers specifications. Keeps governor relay in adjustment. Operates welding machine in bank, for arc-welding, uses armature dressing stone as required and resets welding heats as required. May oil grease or otherwise service and make necessary adjustment. May perform other related duties. (Electric power plants, when the principal use is to furnish electric power for camp sites, shall be excluded).

(18) Cat head winch
(19) Oiler with CDL
(20) Concrete curbing machine
(21) Inside and outside material and personnel elevators
(22) Industrial locomotive motorman: An operator of gasoline, diesel or electric powered railroad locomotive used to push, pull or switch railroad cards of various designs loaded with muck, concrete, aggregate, or other applications suitable for rail transport. May oil, grease or otherwise service and make necessary adjustments.

AC. Power equipment operators - group [H] III performs the following tasks or operate the following equipment:

- (1) Bituminous distributors**
- (2) Boilers**
- (3) Asphalt Retort heater:** Operates a stationary or portable piece of equipment designed to apply heat to a tank, tank car, or tank truck containing asphalt. Starts fire, controls heat applied to tank by regulating burners. Starts, stops and controls flow of recirculating pumps. Maintains desired temperature in asphalt, regulates valves for discharge of asphalt from tank. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.
- (4) Mixer, concrete (over one (1) cubic yard):** Operates a large, portable or sometimes stationary concrete mixing machines to mix sand, gravel, cement and water to make concrete. Starts power unit and oversees the loading of proper proportions of materials into the skip and then manipulates levers that control feeding of material into mixing drum. Starts drum rotating to mix materials; manipulates lever to discharge concrete from drum, either by tilting drum forward or by opening a discharge chute. Rinses drum with water to remove adhering concrete. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(5) Concrete paver mixer (single drum): Operates a paving machine that mixes and dumps concrete, the machine consisting primarily of a skip, concrete mixer, and a boom equipped with a traveling bucket and a power plant, all mounted upon a crawler or wheel unit. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(6) Drilling machine (cable, core or rotary): Sets up and operates a portable cable, core, diamond or rotary drill for the purpose of drilling water wells or exploratory drilling. May drill pilot holes for piling. May oil, grease, or otherwise service and make necessary adjustments.

(7) Shaft and tunnel type equipment:

(a) Refrigeration: Operates a plant designed to circulate brine or other refrigerant through piping system to freeze specified areas for purpose of drilling, trenching, boring, blasting and stabilizing formations to permit such operations. Maintains pressures, vacuum, intercooling and other related functions. May keep brine or other refrigerants at proper levels in supply tanks.

(b) Slusher operator: Operates hoist as described under one or two drum hoist to raise and lower, drag and release a bucket similar to dragline bucket without a bottom in it. To move loose material into dump chute or other purposes. Sheaves to control line direction are usually secured to roof, side or face of excavation by rock bolts. May oil, grease or otherwise service and make necessary adjustments.

(c) Jumbo form or drilling stage: Operates a specialized machine usually mounted on rails or rubber-tired wheels which has surrounding it, expandable, retractable forms. Drilling stage consists of one or more drilling stages from which drilling operations at the phase are performed for blasting. The operator positions machine for drilling, removes it for

blasting, connects and disconnects air and water lines from the source as needed. May oil, grease or otherwise service and make necessary adjustments.

(8) Trenching machine: Operates a power-driven machine that digs trenches for sewer, water, drainage, oil and gas pipelines, footings, etc. The trenching machine is mounted on crawler treads or rubber tires with the digging equipment usually consisting of an endless chain or wheel or edged buckets that excavate and deposit the material on a conveyor belt which in turn discharges the material at the side of the trench. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(9) Pumpcrete machine: Operates a concrete pumping machine that pumps fresh concrete from mixer to forms that mold fresh concrete. Sets up pump, operates power unit of pump and allows fresh concrete to flow into hopper or pump. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(10) Guniting machine: Operates a machine designed to pump dry sand and cement mixture forced under high air pressure to various areas specified for guniting treatment. May oil, grease or otherwise service and make necessary adjustments.

(11) Concrete slip-form paving machine: Operates a self-propelled machine with long forms attached which move along with the machine. Machine vibrates, screeds, spreads and finishes the surface. Operates a roto-mill machine (machine with plane to smooth). May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(12) Mechanical bull floats

(13) Concrete paving spreader: Operates a self-propelled machine that rides on the paving forms. Operates controls to spread fresh concrete evenly over subgrade or in concrete forms. May oil, grease or otherwise service

and make necessary adjustments to equipment as needed.

(14) Concrete paving finishing machine: Operates self-propelled machine which travels on subgrade or paving forms and levels fresh concrete to approximate grade and contour by pushing and pulling screeds over the surface. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(15) Subgrade or base finisher: Sets and adjusts machine to grade or string line. Operates necessary controls for grading, cutting and finishing subgrade or treated and untreated base material. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(16) Concrete paving sub grader: Operates a machine that finishes subgrade. Machine runs on concrete paving forms or subgrade and is equipped with knives or blades to loosen material and eject same from subgrade. May oil, grease or otherwise service equipment as needed.

(17) Concrete paving form grader: Operates a machine that controls subgrade under forms used in concrete paving and is equipped with knives or blades to loosen dirt and eject same from the form line grade. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(18) Concrete paving gang vibrator: Operates a self-propelled machine which travels on paving forms and operates levers to lower multiple vibrator heads into freshly poured concrete. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(19) Concrete paving longitudinal float: Operates a self-propelled machine which travels on paving forms and moves levers to strike off the concrete to correct elevation. Machine has one or more screeds traveling longitudinally. Operates milling machine (makes ridges). May oil, grease or otherwise

service and make necessary adjustments to equipment as needed.

(20)

Bituminous finishing machines
 forklift

(21) Certified

(22) Asphalt distributor: Sets spray bar and operates valves and levers of distributor to control distribution of oil or bituminous liquid, also may drive truck on one-man operated distributor. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(23) Asphalt

paving or laydown machine: Manipulates controls of paving machine that spreads and levels asphaltic concrete. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

AD. Power equipment operators-group IV performs the following tasks or operates the following equipment:

(1) Front end

loader (two through ten cubic yards): Operates a rubber tired or crawler-type tractor with an attached bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading trucks. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(2) Rollers

steel wheeled (all types): Operates a self-propelled machine with steel flat wheels which is used to compact and smooth earth fills, flexible bases, bituminous roads surfaces. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Bulldozer:

Operates a tractor with a concave steel scraper blade mounted in front of the chassis to level, distribute and push earth; regulates height of blade. Uses tractor as a pusher in loading earth carrying equipment. May oil, grease or otherwise service and make minor repairs to equipment as needed.

(4) Scrapers

(motor or towed): Operates a tractor or self-propelled machine to pull

a steel bowl-like scoop (scraper) mounted on wheels that scrapes up earth and transports it to a designated place; manipulates necessary scraper controls. May oil, grease or otherwise service and make necessary adjustments to equipment as needed, twin bowl scraper and quad eight or nine pushers (\$.35 over base rate). Three bowl scraper (\$.60 over base rate).

(5) Batch

or continuous mix plant (concrete, soil, cement or asphalt): Sets up and operates a large portable or stationary plant for batching concrete, soil-cement or asphaltic materials and aggregates; responsible for control of mixture and plant. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(6) Bobcat

with hydraulic backhoe with buckets up to one (1) and one quarter cubic yards.

(7) Backhoes

with buckets up to ¾ cubic yard-Type B/C work.

(8) Small

Articulating Truck

AE. Power equipment operators-group V performs the following tasks or operates the following equipment:

(1) Concrete

paver (double drum): Operates a paving machine that mixes and dumps concrete, the machine consisting primarily of a skip, concrete mixer and a boom equipped with a traveling bucket and a power plant, all mounted upon a crawler or wheel unit. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(2) Hoist

(two drums): Operates a two drum machine powered by air, electric, gasoline or diesel. Actuates valves, levers, brakes or other control devices which regulates linepull, hold or line release in accordance with signals received various pulling and hoisting operations on construction work such as: to hoist and lower material in various elevations; to hoist and lower material in construction and assembly. May oil, grease or otherwise service

and make necessary adjustments.

(3) Cat cranes

(4) Hysters

(5) Forklifts

over 20,000 lbs. lifting capacity

(6) Auto fine

grader

AF. Power equipment operators-group VI performs the following tasks or operates the following equipment:

(1) Mucking

machine (all types): Operates a machine designed especially to work in confined spaces, generally operated by air or electric power to minimize air pollution, underground. Rocker shovel types have front-mounted buckets that are loaded by being pushed into the material and lifted over the machine and dumped into an attached car, or lifted to a point that gravity dumps the material from the back of the loaded bucket onto a conveyor belt that runs over the machine to a dumping point or into attached car. This type mucking machine usually operates on tracks or are crawler mounted. The bucket is hinged to a boom which in turn is hinged to a turntable on the main frame which allows the main frame to travel in one direction while the swinging action of the bucket can reach out to the sides to remove such loose material generally called muck. These machines are especially suited for underground, emptying into conveyors or into cars. May oil, grease or otherwise service and make necessary adjustments.

(2) Tractor

with hydraulic backhoe.

(3) Backhoes

with buckets up to one and one quarter cubic yards- Type B/C work.

(4) Service

truck operator (head oiler-type a/h work): An operator of a truck equipped with high pressure grease and oil dispensing equipment, which may have gasoline and diesel fuel tanks, who lubricates, changes oil and filters and refuels equipment. Maintains service records and performs preventative maintenance and visual inspection. Reports vehicle discrepancies to foreman or mechanic.

(5) Motor grader (rough): Operates motor grader. Blade is mounted on a carrying and turning circle under the frame of the machine. Equipment is used in leveling dirt to grade and in laying asphalt and flexible base materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

AG. Power equipment operators-group VII performs the following tasks or operates the following equipment:

(1) Steam engineers
 (2) Front end loader (over 10 cubic yards): Operates a rubber tired or crawler-type tractor with an attached bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading trucks. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(3) Concrete pump (snorkel type)

(4) Mining machine

(5) Concrete batching plant operator

(6) Asphalt plant operator

(7) Crushing plant operator- Operates a crusher to control flow of materials through plant. Regulates flow of rock through chute to crusher. May perform other related work. May oil, grease, or otherwise service and make necessary adjustments or repairs to equipment as needed.

(8) Hot plant operator

(9) Roof Bolting Machine

(10) Shuttle Car Operator

AH. Power equipment operators-group (VIII-All shovel type equipment that does not require a State of New Mexico crane license) performs the following tasks or operates the following equipment:

(1) Side boom: Operates a diesel or gasoline powered rubber-tired or crawler-

tractor on which is mounted a side boom attachment with necessary hoisting devices. Positions tractor, manipulates control levers, clutches, brakes, and other controls to raise or lower boom, raise or lower load. By tractor motivation, loads may be transported to desired location. May oil, grease or otherwise service and make necessary adjustments.

(2) Crane (crawler or mobile under ten tons): Operates crane type equipment to hoist and move materials and perform other related operations. Such equipment is used for pouring concrete, setting steel or other miscellaneous tasks for which crane type equipment is required. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Backhoes with buckets over one and one quarter cubic yards- Type B/C work.

(4) Backhoes over a 3/4 yard bucket—Type A/H work.

(5) Derrick, cableway: Operates guy, stiff leg or other derrick, cableway. (Derricks are distinguished from cranes by being stationary and being supported by cables, or structural member, but may be repositioned to higher levels as construction progresses). Derricks use a hoist as described in building hoists, two drums and up, but may vary with different designs, as the source of power for line pull, hold or release through sheaves on the particular derrick or cableway for lifting and moving materials to higher, lower, or the same levels in construction. The operator controls in accordance with signals received by sight, hearing or other signaling devices. If necessary may oil, grease or otherwise service and make necessary adjustments.

(6) Track or excavator backhoe

(7) Pipemobile

(8) Pile driver: Operates the basic machine, and applicable hammer controls to which pile driving attachments are attached. Pile driving attachments normally

consists of leads, to service as a guide for the weight, hammer or extractor. The drop hammer is a weight hoisted by cable along the leads and released to fall by gravity onto the pile. Steam, compressed air, hydraulic, sonic and diesel hammers ride along the leads resting on top of pile or pile cap striking blows on the down stroke of the hammer, from its power source, onto the pile being driven. The extractor is a steam or air hammer that strikes its blows on the upstroke of the hammer equipped with devices for attachment onto the piling to be pulled. May drill or jet pilot holes. May oil, grease or otherwise service and make necessary adjustments.

(9) Mine hoists: Operates hoists used in mining operations and in compliance with the department of mines regulations. Hoists and lowers men and materials in shafts and inclines in accordance to authorized signals. May oil, grease or otherwise service and make necessary adjustments.

(10) Motor grader (finish)

(11) Mechanic and welder: Assembles, sets up, adjust and maintains and repairs all types of construction equipment, such as internal combustion engines, air compressors, pumps, concrete mixers, heavy earth moving equipment, rock crushers and paving equipment.

(12) Mole operator: Operates a horizontal boring machine which is the vertical rotating cutter head which deposits muck onto conveyor that passes over the machine to a dump point. The operator controls the elevation and direction and travel by hydraulic rams. The machine is a specialized piece of machinery for tunnel boring. May oil, grease or otherwise service and make necessary adjustments.

(13) Mobile pipeline inspection camera

(14) Operator^[f] or rigger

(15) Crane inspector

(16) Continuous mining machine

rodder (17) VAC jet

instructor (18) Equipment

equipment robotics operator/mechanic (19) Heavy

pressure waterjet cutting tool system operator/mechanic (20) Ultra high

blasting machine operator/mechanic (21) Vacuum

environmental maintenance mechanic (22) Master

AI. Power equipment operators-group IX: operate [Hydraulic] hydraulic cranes with less than 150 feet of boom and over ~~ten~~ 10 tons but less than 100 tons lifting capacity including boom trucks (NM, Class II, license required).

AJ. Power equipment operators-group X: operate [Hydraulic] hydraulic cranes and boom trucks (100 tons and over); cranes and draglines with booms and jibs over 150 feet through 199 feet; \$.75 above base rate per hour additional; cranes 200 feet and over \$1.00 additional; tower cranes (NM, Class I Crane License Required).

AK. Truck drivers group I:

(1) Pickup truck 3/4 ton or under: Drives a light truck for transporting small loads of construction materials, tools or equipment. May service and make necessary adjustments for proper operation of equipment.

(2) Service station attendant: Maintains service station. Washes, lubricates, fuels and otherwise services vehicles and equipment. Changes and repairs tires and tubes. Operates and maintains service station equipment.

(3) Swamper or rider helper: Assists truck driver. Shares with a driver the duties of loading and unloading a truck, shifting articles about on truck, handling cumbersome articles and may drive to relieve driver.

AL. Truck drivers-group II:

(1) Bus or taxi: Drives a bus or taxi to transport employees to and from construction project. May oil, grease, or otherwise

service and make necessary adjustments to equipment as needed.

(2) Dump or batch truck: Drives a truck, under eight cubic yards, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

(3) Flatbed (bobtail) two ton and under: Drives a truck for transporting loads of construction materials or equipment. May load and unload truck. May service and make necessary adjustments for proper operation of equipment.

AM. Truck drivers-group III:

(1) Dump trucks (including all highway and off highway): Drives a truck, eight cubic yards and under 16 cubic yards, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

(2) Tank truck: Drives a truck or truck with trailer or semi-trailer, on which is mounted a tank, under 3,000 gallons, for transporting loads of liquid products or construction material. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Flatbed (bobtail) over two tons: Drives a truck for transporting loads of construction materials or equipment. May load and unload truck. May service and make necessary adjustments for proper operation of equipment.

AN. Truck driver-group IV:

(1) Distributor (asphalt): Only drives truck equipped with tank and controls for regulating distribution of bituminous materials. Does not operate levers or valves (See Power Equipment Operators-Group III). May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(2) Heavy tire repairman

(3) Lumber

carrier: Drives truck that hauls logs and lumber with truck trailer or bobtail.

(4) Transit mix or agitator (two or three axle bobtail equipment): Drives a truck upon which is mounted a concrete mixer. Drives truck under loading hopper to receive sand, gravel and cement. Fills water tank and starts and stops mixer. Drives truck to location for unloading. Dumps concrete into chute leading to forms. Cleans mixer drum. May service and make necessary adjustments for proper operation of equipment.

(5) Scissor truck

(6) Trailer or semi-trailer dump: Drives a truck to which is attached a trailer or semi-trailer dump used in transporting construction materials.

(7) Field equipment servicemen

AO. Truck driver-group V:

(1) Dumpster or dumptor: Operator of a self-propelled, four-wheeled, rubber-tired truck type machine which is used in hauling of materials. Machine is normally used off the highway, working around rock crushers or excavation. Being reverse steer, the operator rides facing the dump-bed which is dumped by release of safety lock and sudden stop of machine, which causes off center loading of truck bed to dump. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(2) Tank truck: Drives a truck or truck with trailer or semi-trailer, on which is mounted a tank, 3,000 to 6,000 gallons, for transporting loads of liquid products or construction material. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Lowboy, light equipment: Drives a truck to which is attached a trailer with a low frame or bed upon which light equipment or material is hauled. May service and make necessary

adjustments for proper operation of equipment.

(4) Euclid type tank wagon under 6,000 gallons.

AP. Truck driver-group VI:

(1) Vacuum truck

(2) Dump trucks (including all highway and off highway): Drives truck, 16 cubic yards and under 22 cubic yards, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

AQ. Truck driver VII:

(1) Transit mix or agitator (semi or four axle equipment): Drives a truck upon which is mounted a concrete mixer. Drives truck under loading hopper to receive sand, gravel and cement. Fills water tank and starts and stops mixer. Drives truck to location for unloading. Dumps concrete into chute leading to forms. Cleans mixer drum. May service and make necessary adjustments for proper operation of equipment.

(2) Flaherty truck type spreader box: Drives a self-propelled vehicle, consisting primarily of a hopper mounted on pneumatic-tired wheels, used to spread crushed aggregate on bituminous roadway material. May service and make necessary adjustments for proper operation of equipment.

(3) Slurry truck driver

(4) Bulk cement driver

(5) Semi doubles driver

(6) Four axle bobtail driver

(7) Dump trucks (including all highway and off highway): Drives truck, 22 cubic yards and under 36 cubic yards, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

(8) Head field equipment servicemen.

AR. Truck driver VIII:

(1) Diesel-powered transport (non-self-loading) 10 yards and over: Drives diesel powered Euclid Turnarocker, Terra Cobra, D.W.-10, D.W.-20 Le Tourneau pulls and similar diesel powered equipment when used to haul material and assigned to a "teamster".

(2) Lowboy, heavy equipment: Drives a truck to which is attached a trailer with a low frame or bed upon which light equipment or material is hauled. May service and make necessary adjustments for proper operation of equipment.

(3) Tank truck: Drives a truck or truck with trailer or semi-trailer, on which is mounted a tank 6,000 gallons and over, for transporting loads of liquid products or construction material. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(4) Semi-trailer drivers (flatbed or van, tandems)

(5) Light equipment mechanic

(6) Dump trucks (including all highway and off highway): Drives truck, 36 cubic yards and over, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

AS. Truck driver IX:

(1) Warehouseman: Maintains warehouse for construction supplies and materials. May operate necessary equipment and machinery within warehouse area.

(2) Cardex men

(3) Expediter

(4) Lowboy (heavy equipment double gooseneck equipment mechanic

(5) Heavy equipment mechanic

(6) Welder (body and fender man)

AT. Semi-skilled laborers Group II:

(1) Carpenter tender: Performs labor such as

hand handling of materials used by carpenters. Assists in erecting and removing of forms, removes nails and clears lumber.

(2) Concrete [worker/] worker or buggy operator: Pours and performs other work in relation to the lining with concrete. Operates buggy by pushing or pulling by hand between mixer or other source to site of work.

(3) Fire watch: a laborer who watches the work area for fires when craftsmen are cutting or welding.

(4) Scaffold tender: Tends to the scaffold builder.

(5) Certified flagman: Supervises flag and signing personnel. Prepares revision to the traffic control plan.

(6) Bleacher seating: Unloads, moves to place of erection, assembles and installation of all stadium seating.

(7) Fence builder: Digs post holes, pours concrete for posts, sets posts, stretches fencing material [~~and performs all aspects of building fences of all types~~].

(8) Guardrail builder: Attaches and assists in the installation of guardrails, (other than guardrails on bridges) guardrail posts, informational signs and metal fencing; including barb wire, woven wire, and chain link which is used to define right of way, medians or driving lanes or provide safety for such areas. May require the use of small hand tools such as hammer and spud wrench.

(9) Form stripper: Strips, cleans and oils all types of concrete forms.

(10) Gabian basket builders: Assembles wire baskets for rip rap.

(11) Rip rap stoneman: One who places stones into gabian baskets.

(12) Drywall, stocking and handling: Carries and handles of all materials by hand to a point adjacent to place of erection. Assists in placement of materials.

(13) Fly ash

vacuum operator: Installs vacuum lines and operates nozzle of vacuum hose at power plants in the cleanup of ash.

(14)

Landscaping and planter: Duties include site development, soil preparation, rototilling, fine grading, soil amending, installation of plants, seeded and sodded grasses, gravel and bark mulches. Installation of landscape sprinkler systems including landscape irrigation backflow preventers, and all components downstream including pipe, valves, low voltage control wiring, irrigation controllers, sprinkler heads, and drip components. May operate small behind and stand-on only landscape equipment (including miniskid steers with attachments). Maintenance of landscapes including weeding, mowing, and irrigation repair. Duties do not include electrical work, fencing, concrete retaining walls or other work that is generally performed by skilled craftsmen.

(15) Manhole

builder: Constructs a means of permanent access to water, electrical and sewer lines for maintenance purposes.

(16) Tool

room person: manages, inspects and coordinates all tool room activities and exchanges.

(17) Rodmen:

holds survey rod.

AU. Skilled laborers:**Group III:****(1) Air and**

power tool man (not a carpenter's tool): A worker who uses a tool driven by compressed air, gas or electric power to perform such work as breaking old pavement, loosening or digging hard earth, trimming bottom and sides of trenches, breaking large rocks, driving sheeting, chipping concrete, trimming or cutting stone, calking steel plates, or compaction of earthen backfill. Install plastic and PVC linings on ponds. Rotary man operates a hand-held device to make cuts on road with a person holding a nozzle to fill cuts with oil.

(2) Asphalt

raker: Distributes asphaltic road-

building materials evenly over road surface by raking and brushing materials to correct thickness; may control straight edge to regulate width and depth of materials; directs "asphalt shovelers" when to add or take away material to fill low spots or to reduce high spots. Applies color to tennis courts, etc. by using a squeegee. Applies epoxy on concrete floors to seal.

(3) Asphalt

heaterman: Tends a stationary or portable liquid asphalt kettle, starts fires (usually fuel oil) under the kettle, controls heat applied to the kettle by regulating dials or burners, maintains desired temperature in asphalt, and regulates valves for discharge of asphalt from kettle.

(4) Asphalt

jointman: Cleans and pours asphalt joints in concrete paving with nozzle or can. Takes care of asphalt kettle heaters.

(5) Chain saw-

man: Operates a power driven chain saw to clear areas of timber. Falls trees, and sometimes cuts the fallen trees into short sections to facilitate their removal.

(6) [Oxy/] Oxy

or Gasoline torch operators: Uses cutting torch only for demolition work on steel or other metal structures.

(7) Cutting

[~~torch/~~ torch or welding torch operator or burner person: Uses cutting torch only for demolition work on steel or other metal structures.

(8) Gunit

rebound men: A laborer who shoots gunit into place.

(9) Concrete

power buggy operator: Drives self-propelled buggy to transport concrete from mixer or source of supply to place of deposit. Operates levers to dump load.

(10)

Sandblaster: Cleans and prepares surfaces by the use of sandblasting equipment other than preparation for painting (see painter).

(11) Potman:

Cleans screens and feeds sand to hopper or pot of sandblasting machine.

(12) Wagon,

air track, drill and diamond driller (outside): Sets up and operates air driven drilling mechanism that drills holes into concrete or rock. Levels machine by placing timbers under wheels. Inserts and fastens drill steel in chuck. Adjusts angle of drill tower and bolts into position. Controls drilling and speed of drill by moving levers. May make other adjustments to equipment as needed.

(13) Multi-plate

setter: Assembles large diameter metal culverts by bolting together semi-circular pieces of metal to form a complete circle, and bolts each section of this circle to similar sections which are placed adjacently, repeating these processes until the required length of culvert is formed.

(14) Concrete

burner: Operates a device used to burn holes, etc., through concrete. This device consists of a consumable aluminum-magnesium rod inside a small iron pipe. Oxygen is forced through the pipe under pressure, and the end of the assembly is lighted. The concrete is melted by the intense heat of the device.

(15) Tenderers

(to cement mason and plasterer): Assists in the pouring of concrete by spreading concrete, cleaning and caring of cement mason's tools, mixes mortar used in the patching of concrete [~~and performs other tasks as may be directed by cement masons or plasterer~~]. Mixes mortar for plasterers and delivers same to location where plasterers are working. Sets up scaffolding as directed by foreman where necessary, and cleans and cares for tools and equipment used in the preparation and application of plaster.

(16)

Mortar mixer and mason tender: Mechanically mixes mortar ingredients to proper consistency and delivers to mason on scaffold or at site of work. Keeps materials supplied to mason [~~and assists according to directions of mason~~].

(17) Batching

plant scaleman: Manually operates a stationary or portable batching scale that weighs out concrete materials.

Adjusts scales for required weight of the materials. Operates controls that admit materials separately from storage hoppers to weighing bins. Observes scales or indicators that show when proper amount of materials have been made. Discharges materials from weighing bin into truck or other carrier or mixer. He may measure materials by volume instead of weight.

(18) Concrete touch-up man: Prepares the surfaces of concrete masonry which is not to be finished (using tools other than those normally used by “cement masons”) by patching holes and broken corners, and removing high spots and defective concrete.

(19) Concrete sawman—coring machine: Operates a power driven, hand guided, water-cooled saw or diamond driller which is used to cut through slabs of concrete, except as otherwise provided elsewhere.

(20) Curbing machine, asphalt or cement: Operates a machine which applies asphalt or concrete along the edge of highways or parking aprons to form a small curb.

(21) Metal form setter-road: Fits together, aligns and grades metal road forms for holding concrete in place on road and street surfaces. Dismantles, moves and cleans forms after concrete hardens.

(22) Grade setter/checker: Keeps stakes and stringline set in place out in front of trenching machine so that machine will cut ditch in correct location. Sets stakes so that pipelayers can fine-grade ditch and measure from the batter board down to correct depth of ditch.

(23) Gunite, pumpreteman and nozzleman: Assists operator and handles the equipment and directs the placing of concrete or mortar that is moved by pressures or pneumatic equipment, such as gunite. May fine-grade and place wire mesh at times.

(24) Vibrator operator (hand type): Lowers hose-like flexible shaft of vibrator

into newly poured concrete. Starts power unit and holds shaft, allowing hammerhead on shaft to vibrate, thus compacting the concrete. Air, electric or gasoline operated vibrators are used.

(25) Vibratory compactor (hand type): Operates hand guided vibratory or impact compactor. Adjusts levers, throttles and other devices necessary for operation.

(26) Hod carrier: Assists brickmasons, stonemasons and blockmasons by preparing mortar mix, either by hand or machine, delivers material to masons on scaffold, operates small material moving equipment such as power buggy, hoists, mortar mix pumps and other similar equipment. May erect and dismantle bricklayer scaffolds.

(27) Pipelayer: Unloading, handling, distribution and installation, concrete, corrugated metal pipe and corrugated and smooth wall plastic pipe, PVC and polyethylene pipe. Receives pipe lowered from top of trench; joins pipe ends; adjusts pipe to line and grade; seals joints with cement or other sealing compound. Lowers pipe.

(28) Plaster spreader operator: Mixes plaster to be used in a machine which is designed to apply plaster to surfaces by means of a hose. Handles and maintains hose, places and moves machine, and services and maintains machine.

(29) Jack hammer and chipping hammer operator: Operates jackhammer, chipping hammer, whether powered by air or electric or any other means.

(30) Tamper operator: Performs the compacting of soil using walk/stand behind equipment.

(31) Scaffold builder: Erects and dismantles all types of scaffolding, except wood scaffolding, for job site.

(32) Powderman tender: Carries powder or other explosive to blaster or powderman and assists by placing prepared explosive in hole, connecting lead wire to blasting

machine, and performing other duties as directed.

(33) Water pump tender: fuels and tends to all water pumps under 6” for the purpose of moving water on the job site.

(34) Certified scissor lift [f] or man lift operator: Person who completes competent person training certification in the operation of scissor and man lifts.

AV. Specialty laborer:
Group IV:

(1) Asbestos abatement remover: A person who has proper certifications for removal of asbestos from pipes, ceiling and other parts of existing buildings, either by scraping or by using pressure by water. In addition, this definition includes a person who cleans up and disposes of asbestos after it has been removed.

(2) Toxic and hazardous waste remover: Person who has the proper certification for the removal of toxic and hazardous materials.

(3) Lead base paint remover: Person who has the proper certifications for the removal of lead base paints.

(4) Powderman and blaster: Prepares blasting material and inserts this material into predrilled holes. Performs electrical wiring necessary for detonation and assures that all charges have detonated before other workmen resume work in the area made hazardous by the charges.

(5) Pest technician (Licensed by the Bureau of Rodent Management): Technician certified for the removal and handling of rodents and pests.

(6) Radiation worker II: Person that completes proper training for work in areas containing radiation.

AW. Unskilled laborers:
Group I:

(1) Chainman, stake driver, stake hopper: Carries supplies, drags chain, holds survey rod, drives stakes and assists surveyor in other related duties.

(2) Building and common laborer: A general term used on construction work covering many unskilled occupations. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer; shoveling and placing concrete; applying coats of oil to inside face of forms; stripping forms; working on rock crusher to feed trap; opening cement sacks at batch plant; [~~lowering pipe into ditch for pipelayers;~~] working with dirt crew to move construction layout stakes; working as flagman, signalman or spotter to control traffic; serving as dumpman; spreading hot asphaltic material over roadbed with shovel; operating hand concrete buggy or wheelbarrow; helping painter to prepare surfaces for painting and cleaning paint equipment. Does not include roofing cleanup.

(3) Concrete buggy operator (hand): Operating buggy by pushing or pulling by hand between mixer or other source to site of work.

(4) Flagman: Flagman is stationed at strategic locations to control flow of traffic by hand held flags or other hand held warning device.

(5) Window washer: Cleans and washes windows.

(6) Unloading of furniture and fixtures: Unloads furniture and fixtures from trucks and moves them to the place of installation or storage.

(7) Heat tenders: Fuels and tends to heaters use on the job sites.

AX. Underground laborers: Group I:
Tunnel workers:
Outside laborer, minimum tunnel, labor, dry houseman and hand muckers, top landers, trackmen.

AY. Underground laborers: Group II:
Chuck tender,
cable or base tenders, concrete laborers, dumpmen, whirley pump operators, tenders on shotcrete, gunniting and sandblasting, tenders core and diamond drills, pot tenders,

concrete specialist (1) including finishing, grouting, patching, and curing, concrete specialist tender (2), applying of concrete processing materials, concrete worker, (including all chipping and finishing underground).

AZ. Underground Laborers: Group III:
Shaft Miner,
tunnel miner, air tigger operators, collapsible form movers and setters, machine men and bit grinders, nippers, powdermen and blasters, reinforcing steel setters, timbermen (steel or wood tunnel support, including the placement of sheeting when required), tunnel liners, plate setters, all cutting and welding incidental to miners' work, vibrator men, internal and external, unloading, stopping and starting of moran agitator cars, diamond and core drill operators, shotcrete operator, gunnrite nozzelmen.

[11.1.2.18 NMAC - Rp, 11.1.2.17 NMAC, 12/30/2016; A, 11/10/2020]

11.1.2.19 APPRENTICES:
A. Requirements of apprentices:

(1) All apprentices shall be properly indentured.

(2) Apprentices used on public works projects shall be in training and in compliance under registered apprenticeship standards and written apprenticeship agreements, and their employment shall be in accordance with the provisions of such apprenticeship standards and apprenticeship agreements.

(3) [Every apprentice] Apprentices shall be employed only at the work of the trade to which [he is] they are indentured.

(4) Certification showing registration status of apprentices must accompany the first full payroll on which each apprentice first appears. Certification on any registered apprentice shall be made by the contractor, and verification may be obtained from the Labor Relations Division, Apprenticeship Office.

B. Method of establishing apprentice wage rates: Every apprentice shall be paid a wage rate applicable to his craft and classification in accord with the wage rates established by the approved apprenticeship program.

C. Apprenticeship contribution rates: the director shall consider the apprenticeship contribution rates set forth in the collective bargaining agreements that are received and reviewed in setting the annual wage and fringe benefit rates and shall determine the contribution requirements for employers under the provisions of the Public Works Apprentice and Training Act and Public Works Apprentice and Training Act Policy Manual. The apprenticeship contribution rate to be included in the table set forth in 11.1.2.20 NMAC shall be a fixed rate based on the contribution rates set forth in the submitted collective bargaining agreements. The amount of any apprentice contribution, which is included in the fringe rate shown in this schedule, may be deducted from the fringe benefit rate to be paid to, or on behalf of, an employee.

D. Apprentices participating in an approved apprenticeship program registered with the apprenticeship office who are required to attend unpaid training sessions during weeks in which they are not otherwise receiving compensation may be eligible to receive unemployment benefits for the training weeks under 51-1-1 et seq. NMSA as long as all other unemployment eligibility requirements are met.

[11.1.2.19 NMAC - Rp, 11.1.2.19 NMAC, 12/30/2016; A, 11/10/2020]

End of Adopted Rules

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Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE**
EXECUTIVE ORDER 2020-073
**RENEWING THE STATE OF
PUBLIC HEALTH EMERGENCY
INITIALLY DECLARED IN
EXECUTIVE ORDER 2020-004,
OTHER POWERS INVOKED IN
THAT ORDER, AND ALL OTHER
ORDERS AND DIRECTIVES
CONTAINED IN EXECUTIVE
ORDERS TIED TO THE
ONGOING PUBLIC HEALTH
EMERGENCY**

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 (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of October 15, 2020 the Centers for Disease Control and Prevention (“CDC”) reported over 7.8 million people have been infected in the United States, with over 200,000 related deaths, and the New Mexico Department of Health has reported over 34,958 positive COVID-19 cases and 922 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example,

on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons 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, hereby ORDER and DIRECT:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, and 2020-064 shall be renewed and extended through November 13, 2020.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was

tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding and the following orders: Executive Order 2020-012; Executive Order 2020-016; Executive Order 2020-020; Executive Order 2020-021; Executive Order 2020-025; Executive Order 2020-037; Executive Order 2020-039; Executive Order 2020-056; Executive Order 2020-063; Executive Order 2020-072.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect October 16, 2020 and shall remain in effect until November 13, 2020 unless renewed, modified, or until the Governor rescinds it.

**DONE AT THE EXECUTIVE
OFFICE THIS 16TH DAY OF
OCTOBER 2020**

**ATTEST:
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE**

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE OF
NEW MEXICO**

**MICHELLE LUJAN GRISHAM
GOVERNOR**

**GOVERNOR,
OFFICE OF THE**
EXECUTIVE ORDER 2020-075
**FOURTH AMENDED ORDER
DIRECTING INDIVIDUALS
TRAVELING TO NEW MEXICO
TO SELF-ISOLATE OR SELF-
QUARANTINE FOR A LIMITED
PERIOD AND DIRECTING THE
NEW MEXICO DEPARTMENT
OF HEALTH TO INITIATE
LAWFUL ISOLATION AND
QUARANTINE PROCEEDINGS
FOR INDIVIDUALS WHO DO
NOT SELF-ISOLATE OR SELF-
QUARANTINE**

WHEREAS, on March 11, 2020, Executive Order 2020-004 declared a statewide public health emergency pursuant to the Public Health Emergency Response Act and invoked gubernatorial powers under the All Hazard Emergency Management Act. See 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, Executive Order 2020-004. That Order is incorporated by reference herein.

WHEREAS, despite the best efforts of our State and local governments and the citizens of New Mexico, COVID-19 has continued to spread and ongoing efforts are still necessary to mitigate and contain the spread of COVID-19.

WHEREAS, many of the current confirmed positive cases of COVID-19 in New Mexico have resulted from interstate and international travel to New Mexico. Because some individuals infected with COVID-19 are asymptomatic or have very mild symptoms, travelers may be unaware they are carrying the virus. For this reason, persons arriving in New Mexico from out of state must self-isolate for a period of time sufficient to ensure that the public health and safety is not jeopardized.

WHEREAS, the All Hazards Emergency Management Act vests my office with the authority to take all actions necessary to protect the public health, safety and welfare and to direct State agencies to provide aid during an emergency response. NMSA 1978, § 12-10-4(B)(3); NMSA 1978, § 12-10-10(A).

WHEREAS, during a declared state of public health emergency, the Public Health Emergency Response Act authorizes the New Mexico Department of Health to isolate or quarantine individuals or groups as necessary to prevent or limit the spread of a threatening communicable

disease, subject to certain statutory procedures. See NMSA 1978, §§ 12-10A-7 to -11.

THEREFORE, for the reasons set forth above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby order and direct as follows:

1. The terms “self-isolate” or “self-quarantine” refer to the voluntary physical separation of a person or group of people in a residence or other place of lodging. Any person who is self-isolating or self-quarantining may only leave a residence or place of lodging to receive medical care and should not allow non-household members into the residence or place of lodging except for individuals designated by the New Mexico Department of Health, or individuals providing medical care or emergency response. Any other persons visiting the residence or place of lodging of an isolated or quarantined person are directed to then self-isolate or self-quarantine for a period of no less than 14 days. All persons self-isolating or self-quarantining shall be responsible for all costs associated with the isolation or quarantine.

2. I direct all persons who have arrived in New Mexico from a state with a positive test rate higher than 80 per 1,000,000 residents or a test positivity rate greater than or equal to 5%, over a seven-day rolling average, or from outside the United States to self-isolate or self-quarantine for a period of at least 14 days from the date of their entry into the State of New Mexico or for the duration of their presence in the State, whichever is shorter.

3. All persons entering New Mexico from a state with a positive test rate lower than 80 per 1,000,000 residents, and a test positivity rate lower than 5%, over a seven-day rolling average, are advised to self-isolate or self-quarantine. New Mexico residents

are further advised that they should be tested for COVID-19 within 5 to 7 days after their return to New Mexico from one of these states.

4. Any New Mexico state employee who vacations in another state and is required to self-quarantine upon reentering New Mexico will not be eligible for the paid leave provided by the Families First Coronavirus Response Act.

5. This Order’s direction to self-quarantine does not apply to persons employed by airlines; those performing public safety or public health functions; military personnel and their dependents; federal employees; those employed by a federal agency or national defense contractor; emergency first responders; health care workers; New Mexico residents who have left the State to obtain medical care; New Mexico residents who have left the State for less than twenty-four hours for matters attendant to parenting responsibilities; minor children who visit or live part-time with a parent residing in a neighboring state; New Mexico residents who attend or work in an elementary, middle school, or high school in a neighboring state; non-New Mexico residents who commute into New Mexico to attend or work in an elementary, middle, or high school; persons arriving in the State pursuant to a Court order, persons who are employed or contracted by an “essential business,” as defined by the operative public health order addressing mass gathering restrictions and business closures. Notwithstanding the foregoing, any person who leaves or enters the State for matters unrelated to their employment, military service, medical care, parenting responsibilities, out-of-state parental visitation, education, or Court order shall self-quarantine upon arriving or returning to this State.

6. Individuals who do not comply with the self-isolation and self-quarantine directives set forth above shall be subject to involuntary isolation or quarantine

by the New Mexico Department of Health under the Public Health Emergency Response Act.

7. The New Mexico Department of Health may issue additional protocols for circumstances involving “essential businesses,” as defined by the Department of Health’s Public Health Orders.

8. The New Mexico Department of Health shall, with the cooperation and assistance of all other executive agencies, to take all necessary steps to ensure the screening and appropriate isolation and quarantine of individuals covered by this Order. This will include making temporary holds of individuals or groups, obtaining court orders requiring isolation or quarantine in compliance with the provisions of the Public Health Emergency Response Act, and imposing any civil or criminal penalties warranted under the Public Health Emergency Response Act and the Public Health Act when individuals do not self-isolate or self-quarantine as required by this Order.

9. I further direct the New Mexico Department of Health to post all information necessary to implement the directives in this order on its website.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect on October 29, 2020 and shall remain in effect through the duration of the public health emergency declared in Executive Order 2020-004 and any extensions of that emergency declaration or until it is rescinded.

DONE AT THE EXECUTIVE OFFICE THIS 29TH DAY OF OCTOBER 2020

**ATTEST:
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE**

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

**MICHELLE LUJAN GRISHAM
GOVERNOR**

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
ACTING SECRETARY BILLY J.
JIMENEZ**

OCTOBER 22, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders Limiting Businesses and Non-Profit Entities’ Operations and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order continues some loosened restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; **all New Mexicans should be staying in their homes for all but the most essential activities and services.** When New Mexicans are not in their homes, they must strictly adhere to social distancing protocols and wear face coverings to minimize risks. These sacrifices are the best

contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries;

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and

D. September 3, 2020 Public Health Emergency Order Clarifying that Polling Places Shall be Open as Required in the Election Code and Imposing Certain Social Distancing Restrictions on Polling Places.

3. The October 16, 2020 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders Limiting Businesses and Non-Profit Entities’ Operations and Providing Additional Restrictions on Mass

Gatherings Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through November 13, 2020;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to over 34,000 and confirmed cases in the United States have risen to more than 7.8 million, with significant recent spikes in cases in some of our neighboring states;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Billy J. Jimenez, Acting Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including

hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities;

d. Grocery stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

g. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

h. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, grooming, daycare, or boarding services;

j. Media services;

k. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

m. Hardware stores;

n. Laundromats and dry cleaner services;

o. Funeral homes, crematoriums and cemeteries;

p. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

q. Businesses providing mailing and shipping services;

r. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the

United States government, or any federal entity;

s. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

t. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) "Close-contact businesses" include barbershops, hair salons, gyms, group fitness classes, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, bowling alleys, ice skating rinks, and personal training services.

(3) "Food and drink establishments" include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, "breweries" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-26.1; "distillers" are those businesses licensed pursuant to NMSA 1978, Section 60-6A-1 ; and "wineries" are those businesses licensed pursuant to NMSA 1978, Section 60-A-11.

(4) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(5) "Close-contact recreational facilities" include indoor movie theaters, indoor museums with interactive displays or exhibits and other similar venues, miniature golf, arcades, amusement parks, aquariums, casinos, concert venues, professional sports venues, event venues, bars, dance clubs, performance venues, go-kart courses, automobile racetracks, adult entertainment venues, and other places of recreation or entertainment. For purposes of this section, a "bar" is defined as any

business that generated more than half of its revenue from the sale of alcohol during the preceding fiscal year.

(6) "Outdoor recreational facilities" include outdoor golf courses, public swimming pools, outdoor tennis courts, youth programs, youth livestock shows, u-pick produce operations and corn mazes, horseracing tracks, botanical gardens, outdoor zoos, and New Mexico state parks.

(7) "Places of lodging" means all hotels, motels, RV parks, and short-term vacation

(8) "Retail space" means any business that sells goods or services directly to consumers or end-users and includes the following "essential businesses" identified in the categories above: l(d), l(k), l(m), and l(n).

(9) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, parade, organized amateur contact sport, or other grouping that brings together more than five (5) individuals in a single room or connected space, confined outdoor space or an open outdoor space. "Mass gathering" does not include the presence more than five (5) individuals where those individuals regularly reside. "Mass gathering" does not include individuals who are public officials or public employees in the course and scope of their employment.

(10) "COVID-Safe Practices" ("CSPs") are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers." This document may be obtained at the following link <https://cv.nmhealth.org/covid-safe-practices/>.

I HEREBY DIRECT AS FOLLOWS:

(1) Except as provided elsewhere in this Order, all "mass

gatherings” are hereby prohibited under the powers and authority set forth in the Public Health Act. An indoor or outdoor parade of any sort is a mass gathering; parades are therefore prohibited under this Order.

(2) “Essential businesses” may open but must comply with the pertinent “COVID-Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers” and any identified occupancy restrictions. “Essential businesses” identified as a “retail space” must close by 10:00 p.m. and must remain closed until at least 4:00 a.m. A “retail space” may not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Further, an “essential business” identified as a “retail space” may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(3) “Close-contact businesses” may operate at up to 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Bowling alleys may open for league play only and must adhere to occupancy restrictions and all applicable CSP’s including wearing masks. Ice skating rinks may operate for athletic training and practice by reservation only.

(4) “Close-contact recreational facilities” must remain closed.

(5) “Food and drink establishments” may provide dine-in service, but they may not exceed more than 25% occupancy of the maximum occupancy in any enclosed space on the premises, as determined by the relevant fire marshal or fire department. “Food and drink establishments” choosing to provide indoor dining must

ensure that there is at least six feet of distance between tables. No more than six patrons may be seated at any single table. No bar or counter seating is permitted. Dine-in services shall be provided only to patrons who are seated at table, and patrons may not consume food or beverage while standing. In order to provide any indoor dining after October 30, 2020, “food and drink establishments” must complete the NM Safe Certified training offered at <https://nmsafecertified.org>, as well as comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks. All “food and drink establishments,” regardless of noncompliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables in outdoor seating areas must be spaced at least six feet apart. No more than six patrons may be seated at any single table. Patrons must be seated in order to be served food or drink unless ordering food for carryout. No bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law. Any “food and drink establishment” that is permitted to serve alcohol must close for in-person service by 10:00 p.m. and must remain closed until at least 4:00 a.m. “Food and drink establishments” may provide delivery service after 10:00 p.m. but no customers are permitted on the premises.

(6) “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not be

used as a venue for non-religious events. “Houses of worship” may not exceed 40% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department.

(7) “Outdoor recreational facilities” may operate provided they comply with the pertinent “All Together New Mexico: COVID-Safe Practices for Individuals and Businesses.” Further, state parks shall only be open to New Mexico residents. Visitor centers and any other large enclosed indoor spaces at state parks shall remain closed. As a condition of entering a state park, all visitors must demonstrate proof of residency through one of the following means: a New Mexico license plate on their vehicle; a New Mexico driver’s license or ID card; a valid New Mexico vehicle registration; a federal document attesting to residency; or a military identification. The State Parks Division is directed to extend the use of annual camping passes that were purchased after March 2019 for a period determined by the State Parks Division related to the original expiration date due to the closure of State Parks to camping. In addition, public swimming pools are limited to the concurrent use of not more than ten (10) persons. Play and splash areas shall be closed. Horseracing tracks may not allow spectators.

(8) “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 60% of maximum occupancy. All other “places of lodging” shall not operate at more than 25% of maximum occupancy. Healthcare providers who are engaged in the provision of care to New Mexico residents or individuals utilizing “places of lodging” for extended stays, as temporary housing, or for purposes of quarantining shall not be counted for purposes of determining maximum occupancy.

(9) Any business that is not identified as an “essential

business,” “close-contact business,” “food and drink establishment,” “house of worship,” “close-contact recreational facility,” “outdoor recreational facility,” or “place of lodging” may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department.

(10) Any entity, including businesses and houses of worship, operating pursuant to this public health order must comply with the pertinent “COVID-Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers” and also any identified occupancy restrictions.

(11) Private educational institutions serving children and young adults from pre Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction described in the document “Reentry Guidance” published by New Mexico’s Public Education Department on June 20, 2020 and as updated from time to time thereafter, and shall operate with a maximum occupancy of 25% of any individual enclosed indoor space, such as any classroom, as determined by the relevant fire marshal or fire department, with the occupancy restriction herein to govern in the event of any discrepancy with the “Reentry Guidance.”

(12) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking. Masks with vents shall not satisfy this requirement.

(13) The New Mexico Department of Health, the New Mexico Department of

Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(14) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A-6.

(15) Any “food and drink establishment,” “close-contact business,” “place of lodging,” “retail space,” or other business that poses a significant public health risk, as determined by the Department of Health, must close for a period of two weeks following the occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Notwithstanding this provision, a “retail space” may be permitted to continue operating if the Department of Health, after consultation with the Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations.

(16) All state-run museums must close.

I FURTHER DIRECT as follows:

(1) This Public Health Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Public Health Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this

Public Health Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Public Health Order shall take effect on October 23, 2020 and remain in effect through November 13, 2020.

I FURTHER ADVISE the public to take the following preventive precautions:

- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- **Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.**
- **Avoid crowds.**
- **Avoid all non-essential travel including plane trips and cruise ships.**

DONE AT THE EXECUTIVE OFFICE THIS 22ND DAY OF OCTOBER 2020

ATTEST:
/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

/S/ BILLY J. JIMENEZ, ACTING
CABINET SECRETARY OF
THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH

**HEALTH,
DEPARTMENT OF**

**AMENDED NOTICE OF PUBLIC
HEARING**

The New Mexico Department of Health will hold a public hearing on the proposed Wholesale Prescription Drug Importation Program developed pursuant to the Wholesale Prescription Drug Importation Act 26-4-1 to 26-4-10 NMSA 1978. The public hearing will be held on December 2, 2020 at 9:30 a.m. via Cisco WebEx online and telephone conference, and written comments will be received until December 1, 2020 at 5pm. Verbal comments will be accepted and recorded during the hearing.

The hearing is being held via Cisco WebEx online and by telephone conference due to the concerns surrounding coronavirus and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders and various Public Health Emergency Orders limiting mass gatherings due to COVID-19.

Pursuant to the Wholesale Prescription Drug Importation Act, 26-4-1 to 26-4-10 NMSA 1978, the hearing will be conducted to receive public comments regarding the proposed Wholesale Prescription Drug Importation Program prior to submission of the program for federal approval. A Prescription Drug Importation Advisory Committee was created consisting of the Secretary of Health, the Executive Director of the Board of Pharmacy, the Secretaries of Human Services and General Services and the Superintendent of Insurance, to advise the Department of Health on developing and implementing a program for the importation of eligible prescription drugs from Canada. Through the advisory committee, the department developed a drug importation program that complies with the requirements of

21 U.S.C Section 384 that will be formally submitted to the Secretary of the United States Department of Health and Human Services for certification of the proposed program. The proposal will include the following:

- How the program will comply with the requirements of 21 U.S.C. Section 384.
- Description of the cost savings of these prescription to New Mexico consumers.
- How the program will ensure that selected eligible imported prescription drugs meet standards for safety and effectiveness set forth by the US Food and Drug Administration.
- How the program will ensure compliance with the tracking and tracing verification and identification requirements of 21 U.S.C. Sections 360eee and 360eee-1.
- Prohibition of the distribution, dispensing, or sale of the imported prescription drugs outside of NM.
- Recommendation of an administrative charge to ensure funding of the program that does not impact consumer savings.
- Identification of an audit function.

Any interested member of the public may attend the hearing and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: please call 1-408-418-9388. Your telephone comments will be recorded. To access the hearing via internet: please go to Webex.com; click the "Join" button; click the "Join a meeting" button; enter the following meeting number and password where indicated on screen-Meeting number (access code): 146 053 2913 #, Meeting password: QcZMPFPs225; click the "OK" button. You may also provide comment via Chat during the live streaming.

The foregoing are summaries of the proposed program. The proposed program includes various additional

substantive revisions not identified here. Free copies of the full text of the proposed rule may be obtained online from the Department's website at <https://www.nmhealth.org/about/phd/>.

Written public comments may also be submitted to the mailing address shown below. Please submit any written comments regarding the proposed rule to the attention of:

Aryan Showers
Director, Office of Policy and Accountability
Runnels Building
1190 South S. Francis Drive
Santa Fe, NM 87505
Aryan.showers@state.nm.us
505-470-4141

All written comments will be published on the agency's website at <https://www.nmhealth.org/about/phd/> within 3 days of receipt and will be available at the New Mexico Department of Health Office of General Counsel for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**HUMAN SERVICES
DEPARTMENT
INCOME SUPPORT DIVISION**

NOTICE OF PUBLIC COMMENT

The United States Department of Health and Human Services requires the New Mexico Human Services Department to meet certain Temporary Assistance for Needy Families (TANF) work participation requirements. To assist in meeting these requirements, federal regulations (45 CFR 261.40) allow New Mexico to decrease its work participation rate percentage by the

number of percentage points that the FY 2020 caseload fell in comparison to the FY 2005 caseload. This is termed the TANF Caseload Reduction Credit. The total Federal expenditures and Maintenance of Effort (MOE) expenditures that are included in this report are subject to change due to fluctuations during year end budget close out and increases in MOE funding.

The estimated changes and corresponding methodologies are reported in the proposed TANF Caseload Reduction Credit Report which is available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>. If you do not have Internet access, a copy of the proposed report may be requested by contacting Stephanie Roybal with the Income Support Division's Work and Family Support Bureau (WFSB) at stephaniea.roybal@state.nm.us. If you are a person with a disability and you require this information in an alternative format, please contact the American Disabilities Act Coordinator, at (505) 827-7701 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats.

The proposed comment period will begin at 8:00 a.m. on November 10, 2020 and end at 4:00 p.m. on December 10, 2020. Individuals wishing to comment on the TANF Caseload Reduction Credit Report should contact Stephanie Roybal with the Human Services Department, Income Support Division, Work and Family Support Bureau by email stephaniea.roybal@state.nm.us. All comments will be posted to the agency website within 3 days of receipt.

Interested persons may address written or recorded comments to:

Human Services Department
Income Support Division
Work and Family Support Bureau
Attn: Stephanie Roybal
P.O. Box 2348
Santa Fe, NM 87504-2348

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

**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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The New Mexico Register is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941

2021 New Mexico Register

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