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# New Mexico Register

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

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## **The New Mexico Register**

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# New Mexico Register

Volume XXXII, Issue 1

January 12, 2021

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## Notices of Rulemaking and Proposed Rules

### COLONIAS INFRASTRUCTURE BOARD

#### NOTICE OF PROPOSED RULEMAKING

The New Mexico Colonias Infrastructure Board (Board) will hold a public hearing on Friday, February 12, 2021, from 9:00 a.m. until 10:00 a.m., and on Tuesday February 16, 2021, from 2:00 p.m. to 3:00 p.m. The public comment hearing will be conducted virtually via Zoom; the public may attend the hearing using the following methods:

February 12, 2021, 9:00 a.m. – 10:00 a.m.

Zoom meeting link: <https://zoom.us/j/93650034928>

To join the meeting by phone dial: 646-558-8656

Meeting ID: 936 5003 4928

Passcode: 514544

February 16, 2021, 2:00 p.m. – 3:00 p.m.

Zoom meeting link: <https://zoom.us/j/91731903358>

To join the meeting by phone dial: 646-558-8656

Meeting ID: 917 3190 3358

Passcode: 033322

The purpose of the rule hearing is to obtain input and public comment on the amendments proposed to the following rules:

2.91.2.11 NMAC - QUALIFIED PROJECT FINANCING

2.91.2.14 NMAC - FINANCIAL ASSISTANCE AGREEMENT

**Statutory Authority:** Legal authority for this rulemaking may be found in the Colonias Infrastructure Act, Sections 6-30-5, 6-30-6, and 6-30-8 NMSA 1978. Pursuant to NMSA 1978, Section 6-30-8, the New Mexico Finance Authority is responsible for the administration of the colonias infrastructure project fund.

#### Summary of Proposed Changes:

Amends 2.91.2.11 and parts of 2.91.2.14 NMAC to clarify the Authority's responsibility to administer the colonias infrastructure project fund and financing of projects recommended by the Board.

#### Proposed Rule Changes:

**2.91.2.11 QUALIFIED PROJECT FINANCING:** The authority may recommend structured financial assistance packages that include loans, grants and any other type of assistance authorized by the authority [~~and the board~~]. The structure, terms and conditions of the financial assistance will be determined by the authority in accordance with the policies jointly established by the board and the authority. Any variance from the policies in connection with financial assistance for any qualified project shall be approved by the authority [~~and the board~~]. Financial assistance for qualified projects may be pooled, at the sole discretion of the authority, under policies jointly established by the board and authority. [2.91.2.11 NMAC – N, 2/15/2012; A, 4/06/2021]

#### **2.91.2.14 FINANCIAL ASSISTANCE AGREEMENT:**

**A.** The [~~board, the~~] authority and the qualified entity will enter into an agreement to establish the terms and conditions of financial assistance from the [~~board~~] authority. The agreement will include the terms of repayment and remedies available to [~~the board and~~] the authority in the event of a default. The [~~board, or the~~] authority [~~– on behalf of the board,~~] will monitor terms of the agreement and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection.

**B.** The interest rate on any financial assistance extended shall be determined by the authority based on the cost of funds and ability of a qualified entity to repay a loan, and in accordance with the policies jointly established by the board and

the authority. The interest rate shall not change during the term of the financial assistance unless refinanced or unless the financial assistance is structured as a variable rate obligation.

**C.** The agreement will contain provisions which require financial assistance recipients to comply with all applicable federal, state and local laws and regulations.

**D.** In the event of default under a financial assistance agreement by a qualified entity, [~~the board, or~~] the authority [~~– on behalf of the board,~~] may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law. [2.91.2.14 NMAC – N, 2/15/2012; A, 4/06/2021]

Copies of the proposed rule may be accessed online at: <https://www.nmfinance.com/colonias-infrastructure-board/> or contact Board staff at (505) 992-9648, toll free 1-800-ASK-NMFA (1-877-275-6632).

The Board will accept written public comments on the proposed amendments beginning January 12, 2021. Please submit written comments on the proposed changes to the Authority, attention Angela Quintana, Senior Program Administrator, via electronic mail at: [colonias@nmfa.net](mailto:colonias@nmfa.net), or by regular mail at 207 Shelby Street, Santa Fe, NM 87501. Written comments must be received no later than 5 p.m. on February 18, 2021. Comments received prior to the rule hearing will be posted to the Board website at: <https://www.nmfinance.com/colonias-infrastructure-board>. Persons will also be given the opportunity to present their comments at the rule hearing.

Individuals 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 Angela Quintana as soon as possible. The Board requests advance notice to provide

required special accommodations at least one week prior to the meeting or as soon as possible.

## PUBLIC SAFETY, DEPARTMENT OF

### NOTICE OF PUBLIC HEARING

The New Mexico Department of Public Safety (DPS) provides notice that it will hold a public hearing via Microsoft Teams on Tuesday, February 23, 2021, at 9:00 a.m. The members of the public may attend the Microsoft Teams meeting on a computer, mobile device or telephone. The videoconference's Meeting ID and Password, videoconference link, and telephone number are as follows:

**Join Microsoft Teams Meeting on your computer or mobile app**  
<https://tinyurl.com/nmdpsSORNA>

**Or call in (audio only)**  
+1 (505) 312-4308  
Phone Conference ID: 247 918 324#

The purpose of this public hearing is to receive public comment and input on the proposed new Rule 10.2.3 NMAC *Procedure to Contest SORNA Equivalency Determination* which establishes requirements and procedures: 1) for out-of-state registrants who establish a residence in New Mexico, to obtain judicial review of a determination by a county sheriff that the offense of which the out-of-state registrant was convicted, pursuant to state (other than New Mexico), international, federal, tribal or military law, is the equivalent of an offense listed in Subsection I of Section 29-11A-3, NMSA, 1978, and that the out-of-state registrant is required to register as a sex offender in New Mexico; 2) for the county sheriffs to follow in determining whether the offense for which an out-of-state registrant was convicted is the equivalent of an offense listed in Subsection I of Section 29-11A-3, NMSA 1978; 3) with respect to what information regarding the out-of-state registrant is to be

placed on the public and non-public facing portions of the central and local sex offender registries during the period when an equivalency determination is pending or contested.

The proposed rule is promulgated pursuant to Subsection G of Section 29-11A-5, NMSA 1978.

The proposed rule requires the sheriff of the county in which the out-of-state registrant resides, to make the determination whether the offense for which the out-of-state registrant was convicted, pursuant to state (other than New Mexico), international, federal, tribal or military law, is the equivalent of an offense listed in Subsection I of Section 29-11A-3, NMSA 1078, on the basis of clear and convincing evidence. The proposed rule sets forth a procedure by which the petitioner may ask the sheriff to reconsider his or her initial determination, and provides that a petitioner aggrieved by a final decision of a sheriff may petition the district court for a writ of certiorari in accordance with Rule 1-075. The proposed rule requires the sheriff and the department to refrain from placing any information regarding the out-of-state registrant in the public facing portion of the local and central registries while an equivalency determination is pending, or on appeal.

Interested persons may comment at the public hearing or submit written statements to DPS c/o Katherine Garcia, 4491 Cerrillos Road, P.O. Box 1628, Santa Fe, NM 87504, or by electronic mail to: Katherine.Garcia@state.nm.us. All mailed written statements must be received no later than February 23, 2021, or at the public hearing. Early submission of written statements is encouraged. Interested persons may also comment in writing at the public rule hearing.

Copies of the proposed rule may be obtained prior to the hearing at all DPS district, field, and regional offices, at the DPS website, <http://www.dps.state.nm.us>, on the sunshine

portal, or by contacting Katherine Garcia by telephone at (505) 470-2343 or by email at Katherine.Garcia@state.nm.us.

Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing, including a reader, amplifier, qualified sign language interpreter or any form of auxiliary aid or service are asked to contact Katherine Garcia at (505)470-2343 as soon as possible and no later than February 13, 2021. DPS requires at least ten calendar days advance notice to provide special accommodations.

## SUPERINTENDENT OF INSURANCE, OFFICE OF

### NOTICE OF PROPOSED RULEMAKING

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance ("Superintendent"), pursuant to the New Mexico Insurance Code, Sections 59A-1 -1 et seq. NMSA 1978 ("Insurance Code") and 13.1.4 NMAC, proposes to adopt a new rule, 13.10.31 NMAC, PRIOR AUTHORIZATION, and to repeal conflicting parts of 13.10.17 NMAC GRIEVANCE PROCEDURES

**PURPOSE OF THE PROPOSED NEW RULE IS:** to establish and standardize oversight, reporting, transparency and confidentiality procedures for prior authorization processes.

**STATUTORY AUTHORITY:** Section 59A-15-20 NMSA 1978; Sections 59A-22B-1 through 59A-22B-7 NMSA 1978; and Sections 59A-57-1 through 59A-57-11 NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed rule are available by electronic download from the OSI website (<https://www.osi.state.nm.us/index.php/idms/>) or the New Mexico Sunshine Portal.

OSI will hold a public video/ telephonic hearing on the proposed rule on February 16, 2021 at 9:00 a.m.

Join via Video: <https://us02web.zoom.us/j/2916274744>

Join via telephone: 1-346-248-7799  
Meeting ID: 291 627 4744

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the video/telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on February 16, 2021. Responses to written comments or oral comments will be accepted through 4:00 pm on February 26, 2021. Comments may be submitted via email to [OSI-docketfiling@state.nm.us](mailto:OSI-docketfiling@state.nm.us) or may be filed by sending original copies to:

OSI Records and Docketing, NM  
Office of Superintendent of Insurance  
1120 Paseo de Peralta, P.O. Box 1689,  
Santa Fe, NM 87504-1689

**Docket No.: 20-00058-RULE-LH**  
IN THE MATTER OF ADOPTION  
OF PRIOR AUTHORIZATION  
REGULATIONS IMPLEMENTING  
CHAPTER 59A, ARTICLE 22B  
NMSA 1978

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day.

**SPECIAL NEEDS:** Any person with a disability who is in need of a reader,

amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Gutierrez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

ISSUED this 12<sup>th</sup> day of January 2021  
/S/RUSSELL TOAL

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### **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.

### LIVESTOCK BOARD

**This is an amendment to 21.32.2 NMAC, Sections 7 and 9, effective 1/12/2021.**

#### 21.32.2.7 DEFINITIONS:

**A. “Board”** means the New Mexico livestock board.

**B. “Dairy”** means a cattle facility in New Mexico where the primary business is milking cows and the owner has been issued a milk permit number by the New Mexico department of agriculture (NMDA) and includes any confined feeding facilities, which are part of the dairy or the dairy owner’s operation under the NMDA permit number.

**C. “Dairy cattle”** means cattle of one of the dairy breeds developed chiefly for milk production.

**D. “Director”** means the executive director of the New Mexico livestock board.

**E. “Feedlot”** means a confined feeding facility in New Mexico where the primary business is that of feeding cattle for slaughter. For the purposes of 21.32.2.10 NMAC below, the owner must have, for the feedlot, a general permit for concentrated animal feeding operations under the National Pollution Discharge and Elimination System (NPDES) of the United States environmental protection agency.

**F. “Inspector”** means any duly authorized or commissioned officer of the livestock board.

**G. “Livestock or animal”** means horses, asses, mules, cattle, bison, sheep, or goats.

**H. “New Mexico livestock”** means any livestock raised or pastured or fed within the state of New Mexico.

**I. “Person”** means an individual, partnership, association, or operation.

**J. “Confined feeding”** shall include a dairy calf or dairy heifer growing facility, in which the owner must have a general permit for concentrated animal feeding operations under the National Pollution Discharge and Elimination System (NPDES) of the United States environmental protection agency. [3/1/1999; 21.32.2.7 NMAC - Rn & A, 21 NMAC 32.2.7, 7/31/2000; A, 1/12/2021]

#### 21.32.2.9 ALTERNATIVE TO BRANDING CATTLE IN A NEW MEXICO DAIRY

**A.** In accordance with Subsection F of Section 77-9-3 NMSA 1978, of the Livestock Code of New Mexico, the alternate means of identification for dairy cattle shall be the use of plastic ear tags that meet the following specifications and contained information:

(1) The tag must not be smaller than a medium sized tag that measures two and one-half inches by three inches (2 1/2” x 3”); and

(2) Has lettering not smaller than one-fourth of an inch (1/4”); and

(3) Is solid color with contrasting color for lettering; and

(4) Is factory engraved with the brand owner’s name, a correct facsimile of the owner’s New Mexico registered brand, or the New Mexico department of agriculture milk permit number.

**B.** Owners of dairy cattle may elect to use the alternative method of identifying cattle in their dairy, or other confined feeding operation in which ownership has not changed, after having received permission from the board to do so. The owner must first request permission to use the alternative and the board may grant that

permission after confirming the owner understands the minimum requirements for the alternate form and its proper use.

**C.** The board shall record the owner’s permission and keep record of those owner’s that have requested and been granted permission to use the alternative form of identification allowed by law and this section. For registering the alternative, the board shall charge a fee equal, and in addition, to the fee for recording the New Mexico registered brand of the owner of the cattle. The registered brand and the alternative shall be re-recorded separately at the time of the re-recording.

**D.** The owner of the dairy must ensure that the ear tags used throughout his/her dairy are consistent as to lettering, information, and layout. Within a dairy, variations in color, size, and individual animal number placed upon the tag are acceptable, provided that the tags meet the minimum requirements of Subsection A of 21.32.2.9 NMAC.

**E.** The appointed board has the right to revoke an owner’s permission to use the alternate method of identification after a hearing and upon presentation of evidence finds just cause to do so.

**F.** Cattle that are removed from the dairy for pasturing in New Mexico shall be branded in accordance with Section 77-9-3, NMSA 1978, prior to removal.

**G.** Nothing herein shall exempt any owner of livestock from possessing necessary bills of sale or proof of ownership for their livestock and presenting proof of ownership to an inspector, or agent of the board, upon request.

[21.32.2.9 NMAC - N, 7/31/2000; A, 1/12/2021]

**LIVESTOCK BOARD**

**This is an amendment to 21.32.10 NMAC, Section 8, effective 1/12/2021.**

**21.32.10.8 LIVESTOCK INSPECTION FEES:** Effective September 15, 2010, the following are the inspection charges for services of the New Mexico livestock board, pursuant to Sections 77-2-29 and 77-2-7, NMSA 1978:

- A. Cattle and bison inspection fee \$ 0.50 per head
- B. Horse inspection fee \$ 0.50 per head
- C. Hide inspection fee \$ 0.50 per hide
- D. Sheep and goat inspection fee \$ 0.16 per head
- E. Pelt inspection fee \$ 0.12 per pelt
- F. Swine inspection fee \$ 1.00 per head
- G. Service charge for field inspection \$ 10.00 per inspection
- H. Youth exhibition animals congregated at a pre-arraigned site \$5.00 per inspection
- I. Service charge at livestock market \$ 0
- J. The payment, in lieu of fees, on the receipt of livestock at an auction market, pursuant to Sections 77-10-4 and 77-2-29, NMSA 1978, shall be the same as the amounts listed in this section.
- K. Impoundment fee \$10.00 per head per day, pursuant to Section 7-14-36 and Subsection J of Section 77-2-29 NMSA 1978.
- L. Transportation fee not to exceed \$1.75 per loaded mile for the hauling of impounded trespass livestock to a livestock auction market facility or receiving station pursuant to Section 77-14-36 NMSA 1978. In the event a semi-tractor-trailer must be hired to haul livestock, a reasonable fee charged by the company shall be paid. Payment for the transportation fee shall have prior approval of the inspector from the originating district of the impounded livestock.

[3/1/1999; 21.32.10.8 NMAC - Rn & A, 21 NMAC 32.10.8, 7/31/2000; A, 5/15/2001; A, 7/9/2001; A, 10/31/2002; A, 9/15/2010; A, 1/12/2021]

**WORKFORCE SOLUTIONS,  
DEPARTMENT OF**

**This is an amendment to 9.1.1 NMAC Sections 7, 8, 9, 12, 13, and 14, effective 1/12/2021.**

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

- A. **“Act”** means the Human Rights Act, Sections 28-1-1 to 28-1-7, 28-1-9 to 28-1-14, 28-2-3, and 28-23-1 to 28-23-6 NMSA 1978, and all subsequent amendments and provisions.
- B. **“Applicant for employment”** means a person applying or attempting to apply for a position as an employee.
- C. **“Bureau”** means the human rights bureau of the labor relations division of the New Mexico department of workforce solutions.
- D. **“Chairperson”** and **“vice chairperson”:**
  - (1) **“Chairperson”** means a member of the commission designated by the governor to serve as chair.
  - (2) **“Vice chairperson”** means a member of the commission designated by the commission to preside in the absence or incapacity of the chairperson.
- E. **“Commission”** means the New Mexico human rights commission.
- F. **“Commissioner”** means one of the members appointed by the governor to serve on the New Mexico human rights commission.
- G. **“Complainant”** or **“claimant”** means any person who claims to be aggrieved by an unlawful discriminatory practice and who has filed a complaint with the human rights bureau within 300 days after the alleged unlawful discriminatory act was committed.

**H. “Complaint”** or **“charge”** means a charge of discrimination signed by the complainant on a human rights bureau charge of discrimination form, on an equal employment opportunity commission (EEOC) form 5 or on such other form as may be deemed acceptable to the human rights bureau.

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

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

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

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

**M. “Good cause”** means a substantial reason, one that affords a legal excuse, or a legally sufficient ground or reason. The bureau may consider any relevant factors to determine if good cause exists.

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

**O. “Hearing officer”** means the person conducting a hearing of a matter brought before the bureau; a hearing officer may be:

- (1) a member of the commission designated by the chairperson to act as the hearing officer; or

- (2) a hearing officer employed by the human rights bureau of the New Mexico department of workforce solutions.

The hearing officer may also be referred to as an Administrative Law Judge (ALJ).

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

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

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

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

**(1)** An individual is also considered to be physically or mentally disabled, if the individual:

**(a)** has a record of a physical or mental disability; or

**(b)** is regarded as having a physical or mental disability.

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

**(3) “Is regarded as having a disability”** means:

**(a)** having a physical or mental

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

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

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

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

**U. “Probable cause” and “no probable cause”:**

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

**(2) “No probable cause”** means that the allegations in the complaint are not supported by evidence providing reasonable grounds to believe an unlawful discriminatory practice occurred, pursuant to the act.

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

**W. “Qualified disabled person with respect to employment”** means a disabled person who, with reasonable accommodation, can perform the essential functions of the

job in question and shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in employment under any program or activity.

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

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

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

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

**(1)** An individual is also considered to have a serious medical condition, if that individual:

**(a)** has a record of a serious health-related impairment; or

**(b)** is regarded as having a serious health-related impairment.

**(2) “Has a record of serious health-related impairment”** means has a history or recorded classification of having a serious medical condition that substantially limits one or more major life activities.



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

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

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

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

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

**BB. “Sex discrimination”** is defined to include, but is not limited to, the following:

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

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

(b) affects one’s ability to obtain credit;

(c) affects one’s ability to obtain housing, continue housing agreements; or

(d) [~~be denied~~] affects one’s access to [~~or limit~~] public accommodations.

(2) “Pregnancy, childbirth, or related medical condition;” means women affected by pregnancy, childbirth or related medical conditions shall be treated the same as other persons who are temporarily disabled for

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

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

[9.1.1.7 NMAC - Rp, 9.1.1.7 NMAC, 1/1/2020; A, 1/12/2021]

**9.1.1.8 FILING A COMPLAINT:**

**A.** Persons who may file a complaint:

(1) [~~Any~~] any person claiming to be aggrieved by an unlawful discriminatory practice; [~~may make, sign and file a written complaint with the bureau individually or through a legally authorized representative.~~]

(2) any person claiming to be aggrieved by an employer in violation of the Criminal Offender Employment Act as provided in Section 28-2-3.1 NMSA 1978;

(3) any employee claiming to be aggrieved by an employer in violation of the Caregiver Leave Act as provided in Section 50-16-3 NMSA 1978;

(4) any person claiming to be aggrieved by an employer in violation of the Lynn and Erin Compassionate Use Act as provided in Section 26-2B-9 NMSA 1978; or

(5) any person claiming to be aggrieved by an employer in violation of the Fair Pay for Women Act as provided in Section 28-2B-9 NMSA 1978.

**B.** Time limit for filing: All complaints shall be filed with the bureau within 300 days after the last alleged act of unlawful discrimination was committed. The bureau does not have jurisdiction over complaints that are filed more than

300 days after the last alleged act of discrimination.

**C.** Form of complaint:

(1) Complainants may make, sign, and file a written complaint with the bureau individually or through a legally authorized representative.

[~~(4)~~] (2) The complaint of any person claiming to be aggrieved under Paragraph (1) of Subsection A of this section shall be in writing on a human rights bureau charge of discrimination form, on an EEOC form 5, or on such other form as the human rights bureau [~~may deem~~] deems acceptable.

(3) The complaint of any person claiming to be aggrieved under Paragraphs (2), (3) or (4) of Subsection A of this section may only be submitted on a human rights bureau charge form or other such form as the human rights bureau deems acceptable.

(4) The complainant may be assisted by the staff of the human rights bureau in preparing a complaint, unless the complainant is represented by legal counsel, in which case complainant’s counsel will be required to prepare and file the complaint on behalf of the complainant.

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

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

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

(2) the name and mailing address of the respondent;

(3) a statement describing the occurrence of an unlawful discriminatory practice that the complainant alleges. This description [~~is to~~] shall include:

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

(b) an identification of the particular [~~provision~~] provisions of the state or

federal [statute] statutes or of [these] the specific regulations upon which the complainant bases the claim; and

(c)

the time, date, place and nature of the [occurrence] occurrences alleged to be an unlawful discriminatory practice;

(4) the

factual basis or grounds supporting complainant's allegation of unlawful discriminatory practice; and

(5) the

signature of the complainant and the date of signing.

**E.** Manner of filing the complaint:

(1) The

complaint shall be deemed filed as of the date the perfected complaint is received by the bureau office. A perfected complaint contains all the information required in Subsection D of this section. If the complaint is missing any of the listed requirements, it shall be returned to the complainant or their legal representative for completion before the complaint will be deemed perfected.

(2) For the

purpose of complying with the filing time limit of 300 days, as provided in Subsection A of Section 28-1-10 NMSA 1978, as amended, a complaint which is first filed with any duly authorized civil rights agency holding a work sharing agreement or memorandum of understanding with the bureau shall be deemed to have been filed with the bureau as of the date on which the complaint was first filed with any of these agencies.

(3) When the

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

**F.** Jurisdiction:

(1) At the time

of filing, the bureau shall determine initially whether the allegations in the complaint sufficiently state a claim under the act in order to proceed

with the investigation. During the investigation, the bureau may also determine, based upon the facts established, whether the bureau has jurisdiction of the complaint.

(2) If at the

time of filing or at any subsequent time it is determined that there is a lack of jurisdiction, the complaint shall be dismissed, without prejudice.

The complainant shall be promptly notified of the dismissal by certified mail. The respondent shall be notified of the dismissal by regular mail.

(3) When a

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

**G.** Notice to

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

**H.** Withdrawal or

dismissal of the complaint and requests to reopen the case.

(1) The

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

(2) In the

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

(3) Requests

for reopening a case will be made to the bureau. The complainant must establish good cause to reopen the case. The director shall consider all

circumstances relative to the request and determine whether the request is jurisdictional and timely made and whether good cause has been established for reopening the case. The complainant and the respondent will be notified in writing when the director decides whether the case will be reopened.

(4) In the

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

**I.** Request for

director's order of nondetermination:

(1) After the

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

(2) The

director's order of nondetermination shall be deemed a final order of the bureau for purposes of exhausting administrative remedy, affording the complainant the opportunity to proceed in district court, pursuant to Section 28-1-13 NMSA 1978.

[9.1.1.8 NMAC - Rp, 9.1.1.8 NMAC, 1/1/2020; A, 1/12/2021]

### **9.1.1.9 INVESTIGATIONS AND ALTERNATIVE DISPUTE RESOLUTION (ADR):**

**A.** Investigation

deadlines:

(1) The bureau

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

(2) When the

respondent answers the complaint, the bureau shall provide the response without the exhibits to the complainant. The complainant will

be required to provide a rebuttal to the response within 30 days of the bureau's correspondence. Any requests for additional time beyond that must be made in writing, to the director, detailing the reason for the request, and may only be granted for good cause.

(3) ~~[The complainant may file an amendment to the complaint at any time prior to the rebuttal request. After the rebuttal has been requested, the complainant will be required to file a new complaint if the complainant wishes to make additional allegations not included within the original complaint.]~~ The complainant may file an amendment to the complaint at any time prior to the bureau's receipt of the respondent's position statement and exhibits. If the complainant wishes to amend the complaint after that time, the complainant must submit a request for withdrawal of the original complaint and file a new complaint. The new filing must be filed within 300 days of the most recent alleged act of discrimination to be considered timely.

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

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

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

[9.1.1.9 NMAC - Rp, 9.1.1.9 NMAC, 1/1/2020; A, 12/29/2020; A, 1/12/2021]

#### 9.1.1.12 MEDIATION AND CONCILIATION PROCESSES

**A.** Mediation prior to issuance of ~~[a determination]~~ commission complaint:

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

(2) If mediation attempts are successful, the parties shall prepare and sign a written settlement agreement. If the complainant and the respondent execute a written and signed settlement agreement, they shall provide the bureau with written notification that a settlement agreement between the parties has been executed.

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

(4) Once the director has received the parties' written notification that a settlement agreement has been executed, the complaint will be dismissed and the case will be administratively closed. The parties will be provided with notice ~~[by mail]~~ of the dismissal of the complaint and the administrative closure of the case.

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

**B.** Conciliation process after issuance of commission complaint:

(1) If a settlement agreement is reached between the complainant and the respondent through private mediation or the conciliation process after issuance of the commission complaint, the complainant will be required to submit a motion to dismiss pursuant to this rule.

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

(3) Following its deliberation, the commission will issue an order on the matter and notify the parties pursuant to Subsection E of Section 28-1-11 NMSA 1978. [9.1.1.12 NMAC - Rp, 9.1.1.11 NMAC, 1/1/2020; A, 1/12/2021]

#### 9.1.1.13 HEARING PREPARATION:

**A.** Time limits:

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

(2) A hearing date will be set not more than 15 days or less than 10 days after service of the commission complaint, pursuant to Subsection F of Section 28-1-10 NMSA 1978 of the New Mexico Human Rights Act, or as such provision may be otherwise amended by law.

**B.** Case preparation for hearing:

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

(2) Evidence:  
(a) Each party, either in person or through its attorney or other representative, may present evidence in support of its

case at hearing, by calling witnesses to testify and introducing exhibits. Each party, either in person or through its attorney or other representative, may examine and cross-examine witnesses.

**(b)**

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

**(c)**

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

**C. Exhibit requirements:**

**(1) Marking**

to identify exhibits: Each party shall have its exhibits marked for identification before the hearing. Complainant's exhibits shall be marked with numbers, for example: EXHIBIT 1, EXHIBIT 2, etc. Respondent's exhibits shall be marked with alphabetical letters, for example: EXHIBIT A, EXHIBIT B, etc. Identification of an exhibit is to be placed on the lower right corner of the first page of each exhibit, if there is space available. If space is not

available on the lower right corner, identification should be placed on the first page of the exhibit, at the top or bottom of the page where space is available. The identification number or letter of an exhibit shall remain the same, whether the exhibit is accepted or rejected. Separate documents, photographs, papers and other written or printed instruments shall each be given a separate exhibit number or exhibit letter. An exhibit consisting of more than one page shall be fastened, and each page shall be numbered.

**(2) Number of copies:**

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

**(3) Large exhibits:**

The use of large charts and diagrams, models and other bulky items for illustrative purposes is permitted. The introduction of such large items in evidence is discouraged. Exhibits offered in evidence should be limited to 8.5 x 11 inches, or capable of being folded and placed in 8.5 x 11 inch envelopes, unless otherwise necessary for adequate presentation of evidence.

**D. Witness**

identification:

**(1) Request**

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

**(a)**

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

**(b)**

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

**(c) a**

brief description of the general subject matter about which the witness is anticipated to testify.

**(2) The**

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

**(3) Response**

to request for identity of witnesses: A party's request for the identity of witnesses shall be answered within 10 days of service or no later than three days prior to the hearing, whichever is sooner, unless otherwise ordered by the commission or the hearing officer, upon a motion for a protective order and a showing of good cause.

**(4) Protective**

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

**E. Subpoenas and subpoenas duces tecum:**

**(1) Upon**

application of a party showing the general relevance and reasonableness of the scope of the testimony or other evidence sought. [~~The~~] the commission or hearing officer may issue subpoenas and subpoenas duces tecum [~~commanding the appearance and testimony of witnesses at the hearing. The commission or hearing officer may also issue subpoenas duces tecum~~] commanding the appearance of witnesses and their production of certain specific



documents or other [items] physical evidence at the hearing upon request of a party to the proceedings.

(2) ~~[The commission or hearing officer may issue subpoenas and subpoenas duces tecum upon the request of a party to the proceeding.]~~ Any subpoena must name the individual or document requested with sufficient specificity to identity who or what is being subpoenaed.

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

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

(5) Requests for subpoenas or subpoenas duces tecum will be submitted to the commission or hearing officer through the hearing clerk no later than ~~seven~~ working 21 calendar days prior to the hearing date. Requests must be made in writing ~~[and must]~~ to include the name and last known address for each person for whom a subpoena is requested and shall command each person to whom it is directed to attend and give testimony or to produce enumerated documentation at the time and place of the administrative hearing or at another date as ordered by the commission or hearing officer. Requests for subpoenas duces tecum must include a separate list of documents for attachment to the subpoena.

(6) Subpoenas must be served no later than seven calendar days prior to the hearing.

(7) Objections to the subpoenas or motions concerning the subpoenas must be filed in district court as prescribed by law for civil actions in district courts in the state of New Mexico.

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

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

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

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

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

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

BEFORE THE HUMAN RIGHTS  
COMMISSION  
OF THE STATE OF NEW MEXICO  
(Name of Complainant),  
Complainant,  
v. \_\_\_\_\_ HRB No.  
(Name of Respondent),  
Respondent,  
[DESCRIPTIVE TITLE OF THE  
DOCUMENT]

**G.** Motions:

(1) General matters: All motions, except those made orally during the hearing, shall be in writing, shall state the grounds

for the motion, and shall specify the relief sought. The commission or the hearing officer may direct that an oral motion made at hearing shall be made in writing, stating the grounds for the motion and specifying the relief sought. If the motion relies upon facts which are not in the hearing records, each motion shall be accompanied by an affidavit, certificate or other evidence relied upon. Motions shall be filed and served, as provided in these rules for the filing and service of documents.

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

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

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

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

**H.** Issuance of documents by the commission or the hearing officer: All documents issued by the commission or the hearing officer shall be filed with the hearing clerk. As soon as is practicable

or otherwise provided by law, the hearing clerk shall serve copies of the documents upon all the parties in person or by first-class mail.

**I. Statement of intent to present evidence at hearing:**

**(1) Filing requirement:** No later than five days prior to the hearing, each party shall file with the hearing clerk an original and four copies of the party's statement of intent to present evidence at the hearing. Each party shall also serve a copy of this statement on all parties of record.

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

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

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

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

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

[9.1.1.13 NMAC - Rp, 9.1.1.12 NMAC, 1/1/2020; A, 1/12/2021]

**9.1.1.14 HEARING PROCEDURES:**

**A. Issuance of commission complaint:**

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

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

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

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

**B. Scheduling the hearing:**

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

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

**(3)** Hearing mode: A hearing may be scheduled to be heard by a three-member panel

of commissioners or a single hearing officer.

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

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

**(b)** send copies of the notice of hearing, with a request for publication, to at least one newspaper of general circulation in the state; and

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

**C. Hearing procedures:**

**(1)** Appearance and representation:

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

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

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

(d) Commission counsel, or an attorney representative from the Office of the Attorney General, may advise the commission during the hearing on legal matters and will assist in the preparation of the findings of fact, the conclusions of law and the order.

(2) Sequence of the proceeding:

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

(b) invitation to the parties to attempt a settlement resolution prior to commencing the hearing;

(c) consideration of any preliminary matters or motions;

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

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

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

(g) presentation of the complainant's case;

(h) presentation of the respondent's case;

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

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

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

(l) final adjournment of the hearing.

(3) Sequestering witnesses: The commission shall sequester the

witnesses from the hearing until the time of their testimony. A complainant or the designated representative for respondent will be allowed to be present throughout the hearing, even though the complainant or the designated representative for respondent may be called to testify.

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

(5) Matters of proof:

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

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

(6) Evidentiary matters at hearing:

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

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

(c) Offers of proof: Whenever there is a ruling to exclude the evidence offered, the party offering the evidence may make an offer of proof, which shall be included in the record. An offer of proof for excluded evidence consists of a brief description of the

nature of the evidence excluded, the purpose for which it is offered and its relevance to the issues before the commission or hearing officer. An offer of proof for excluded documents or exhibits shall additionally include the insertion into the record of the excluded documents or exhibits. If the commission decides that a hearing officer's ruling to exclude evidence was both erroneous and prejudicial, the commission may consider the excluded evidence and may reopen the proceedings to take such evidence.

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

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

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

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

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

(c) Briefs and answer briefs:

(i) Briefs: Each party may submit a brief in support of its position, including

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

(ii)

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

(d)

Attorney fees:

(i)

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

(ii)

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

(10) Close

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

[9.1.1.14 NMAC - Rp, 9.1.1.12 NMAC, 1/1/2020; A, 1/12/2021]

**WORKFORCE SOLUTIONS, DEPARTMENT OF**

**This is an amendment to 11.2.3 NMAC, Sections 13 and 23 and adding Section 30, effective 1/12/2021.**

**11.2.3.13 PARLIAMENTARY PROCEDURE AND ORDER OF BUSINESS:**

**A.** Roberts Rules of Order, revised, shall govern the proceedings of the SAC, unless otherwise specified in this manual.

**B.** The order of business for all meetings of the SAC and its committees shall be:

- (1) approval of minutes for previous meeting;
- (2) communications;
- (3) reports of:
  - (a) SAC members;
  - (b) committees;
  - (c) consultants;
  - (d) director of apprenticeship;
- (4) unfinished business;
- (5) new business;
- (6) persons wishing to be heard by the SAC;
- (7) election of officers;
- (8) adjourn.

**C.** The chairman shall permit public comment after presentations made during the unfinished business and new business sections of the meeting prior to any SAC vote.

[11.2.3.13 NMAC – Rp, 11.2.3.13 NMAC, 1/30/2018; A, 1/12/2021]

**11.2.3.23 STANDARDS OF APPRENTICESHIP:**

**A.** General policy: It is the objective of the department and the SAC to encourage the development and continuance of apprenticeship programs adequate to produce qualified skilled

workers. Labor and employers will be encouraged to jointly develop adequate standards of apprenticeship, and it is the policy of the department and SAC to render any assistance needed by these groups in the development of such standards. Apprenticeship program sponsors shall submit their standards to the department for registration. After registration, the sponsor shall provide the director of apprenticeship with such documentation as may be requested concerning the operation of the program.

**B.** Development of standards: In order to promote good apprenticeship policies and procedures each apprenticeship program sponsor, who desires registration by the department, shall formulate, adopt, and submit to the department for review a set of apprenticeship standards. The purpose of these standards is to provide rules for the operation of the apprenticeship program. An apprenticeship program, to be eligible for registration by the department shall conform to the following standards:

(1) The program shall have an organized, written plan (program standards) embodying the terms and conditions of employment, related instruction, and supervision of one or more apprentices in the apprenticeable occupation, as defined in this part and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(2) The program standards shall contain provisions that address:

- (a) the employment and training of the apprentice in a skilled occupation;
- (b) the term of apprenticeship, which for an individual apprentice may be measured either through the completion of the industry standard for on-the-job learning (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and



competency-based approaches (hybrid approach);

(i)

the time-based approach measures skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job learning as described in a work process schedule;

(ii)

the competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor; programs utilizing this approach shall still require apprentices to complete an on-the-job learning component of registered apprenticeship; the program standards shall address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies;

(iii)

the hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule;

(c)

the determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the department of the determination as appropriate to the apprenticeable occupation for which the program standards are registered;

(d)

an outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate amount of time to be spent in each major process;

(e)

provisions or organized related and supplemental instruction in technical subjects related to the trade; a minimum of 144 hours for each year of apprenticeship is recommended. This instruction in technical subjects may be accomplished through media such as classroom, occupational or

industry courses, electronic media, or other instruction approved by the department

(f)

every apprenticeship instructor shall:

(i)

meet the state department of education's requirements for a vocational-technical instructor in the state of registration, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation; and

(ii)

have training in teaching techniques and adult learning styles, which may occur before or after the apprenticeship instructor has started to provide the related technical instruction;

(g)

a progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired; the entry wage shall not be less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable federal law, state law, respective regulations, or by collective bargaining agreement;

(h)

periodic review and evaluation of the apprentice's performance on the job and in related instruction; and the maintenance of appropriate progress records;

(i)

a numeric ratio of apprentices to journeyworkers consistent with established industry practices, proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements except where such ratios are expressly prohibited by the collective bargaining agreements; the ratio language shall be specific and clearly described as to its application to the job site, workforce, department or plant;

(j)

a probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of

apprenticeship; the probationary period cannot exceed twenty-five percent of the length of the program, or one year, whichever is shorter;

(k)

adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction;

(l)

the minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years;

(m)

the placement of an apprentice under a written apprenticeship agreement that meets the requirements of 11.2.3.27 NMAC; the agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;

(n)

the granting of advanced standing or credit for previously acquired experience, training or skills for all applicants equally with commensurate wages for any progression step so granted; all credit, which is to be granted, shall be reported to the office of the department in accordance with adopted procedures and guidelines;

(o)

the transfer of an apprentice between apprenticeship programs and within an apprenticeship program shall be based on agreement between the apprentice and the affected apprenticeship committees or program sponsors, and shall comply with the following requirements:

(i)

the transferring apprentice shall be provided a transcript of related instruction and on-the-job learning by the committee or program sponsor;

(ii)

transfer shall be to the same occupation; and

(iii)

a new apprenticeship agreement shall be executed when the transfer occurs between program sponsors;

(p)

assurance of qualified training personnel and adequate supervision on the job;

(q) recognition for successful completion of apprenticeship evidenced by an appropriate certificate issued by the department;

(r) program standards that utilize the competency-based or hybrid approach for progression through an apprenticeship and that choose to issue interim credentials shall clearly identify the interim credentials, demonstrate how these credentials link to the components of the apprenticeable occupation, and establish the process for assessing an individual apprentice’s demonstration of competency associated with the particular interim credential; further, interim credentials shall only be issued for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation;

(s) identification of the department;

(t) provision for the registration, cancellation and deregistration of the program; and for the prompt submission of any program standard modification or amendment to the department for approval;

(u) provision for the registration of apprenticeship agreements, modifications, and amendments; notice to the SAA of persons who have successfully completed apprenticeship programs; and notice of transfers, suspensions, and cancellations of apprenticeship agreements and a statement of the reasons therefore;

(v) authority for the cancellation of an apprenticeship agreement during the probationary period by either party without stated cause; cancellation during the probationary period will not have an adverse impact on the sponsor’s completion rate;

(w) a statement that the program will be conducted, operated, and administered in conformity with applicable

provisions of 11.2.2 NMAC equal opportunity in apprenticeship state plan;

(x) contact information (name, address, telephone number, and e-mail address if appropriate) for the appropriate individual with authority under the program to receive, process and make disposition of complaints;

(y) recording and maintenance of all records concerning apprenticeship as may be required by the OA or the department and other applicable law;

(z) all standards registered with the department shall contain a provision which states that the director or his or her designee shall be an ex-officio member, without vote, of any committee which functions to administer the apprenticeship program; [and]

(aa) provision which clearly states that the director or his or her designee shall have the right to visit all job sites where apprentices may be employed, and apprentice related instruction classes, in order to determine compliance with apprenticeship standards; and

(bb) a written assurance that the sponsor is: 1) aware of the availability of Title 38 educational assistance for veterans and other eligible individuals; 2) will make a good faith effort to obtain approval for such educational assistance for each program location that recruits or employs a veteran or other eligible individual; and 3) will not deny the application of a qualified apprenticeship applicant who is a veteran or other individual qualified for Title 38 educational benefits for the purpose of avoiding making a good faith effort to obtain approval for such benefits.

[11.2.3.23 NMAC – Rp, 11.2.3.23 NMAC, 1/30/2018; A, 1/12/2021]

**11.2.3.30 UNEMPLOYMENT ELIGIBILITY:**

**A. Apprentices participating in an approved apprenticeship program registered**

with the apprenticeship office through the department of workforce solutions 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 Section 51-1-1 et seq. NMSA 1978 as long as all other unemployment eligibility requirements are met.

**B. During the week in which an apprentice is eligible for unemployment benefits though this provision, the work search requirements will be waived since the apprentice will have a predetermined return to work date established though their apprentice program.**

[11.2.3.30 NMAC – N, 1/12/2021]

**WORKFORCE SOLUTIONS, DEPARTMENT OF**

**This is an amendment to 11.3.300 NMAC, Sections 308 and 320 and adding a new Section 328, effective 1/12/2021**

**11.3.300.308 CLAIM DETERMINATION:**

**A.** Notice to employer of filing of claim: Whenever a claimant files an initial claim for benefits or an additional claim, the department shall immediately transmit to the claimant’s last known employer, at the address of the employer as registered with the department, if so registered, and, if not registered, to the address provided by the claimant, a dated notice of the filing of the claim and a fact-finding questionnaire. The employer shall provide the department with full and complete information in response to the inquiry. The employer shall transmit a response directly to the department within 10 calendar days from the date the notice of claim is sent. Unless excused by the department, the response must be an electronic transmittal.

**B.** Request for additional information: Prior to issuance of a determination the

department may request additional information from the employer, the claimant or witnesses relative to the separation of the claimant from employment. The employer shall provide the department full and complete information to the request for additional information within two business days from the transmission. Unless excused by the department, the response must be an electronic transmittal.

**C. Initial**

determination: A determination on any claim for unemployment benefits shall be transmitted only after the department has evaluated the claim.

(1) If an employer's response is not received within 10 calendar days after the transmission of the notice of a claim and a non-monetary issue is not raised in the application for benefits, a determination shall be made upon the information on the application.

(2) The 10 day period shall begin to run on the day after the notice of claim was transmitted to the employer as indicated on the application. If the tenth calendar day falls on the weekend or on a holiday, the reply shall be timely if received by the department on the following business day.

(3) After the 10 day period has passed, the department shall immediately transmit to the parties the determination including the reason, and shall advise the parties of the right to appeal that determination pursuant to these rules.

(4) If the claimant is subsequently disqualified from the receipt of benefits resulting in an overpayment, the employer will remain liable for any benefit charges incurred to the date of disqualification if the employer or an agent of the employer demonstrates an established pattern of failing to respond timely or adequately to the notice of claim within the 10-day period.

(a) A pattern is defined as failure to respond timely or adequately to five claims, or more at the secretary's discretion, within a calendar year.

(b) An inadequate response is defined as the employer's failure to provide relevant information or documentation that was reasonably available at the time a response was requested by the department.

(5) An employer may appeal a determination within 15 days of the assessment of the penalty that the employer or agent of the employer failed to respond timely or adequately to the notice of claim. Upon a finding on appeal that the employer or an agent of the employer had good cause for failure to transmit a timely or adequate response, the employer will be relieved of such charges. Overturned determinations will not be factored into the analysis of whether a pattern exists.

**D. Redetermination:** A redetermination may be issued only if all the following criteria are met:

(1) The department perceives the need for reconsideration as a result of a protest by an interested party due to new or additional information received. Examples of the type of errors which may prompt a redetermination are misapplication or misinterpretation of the law, mathematical miscalculation, an additional fact not available to the department at the time of the determination excluding those facts the employer and claimant had the opportunity to provide prior to the initial determination, transmitting a notice to the wrong employer or address, an employer's timely response statement disputing a claim for benefits, or other administrative error.

(2) All evidence and records are re-examined.

(3) A written redetermination notice is issued to the claimant and any other interested party, and is documented in the department records.

(4) A redetermination can be issued no later than [45] 20 calendar days from the original determination date or [45] 20 days from the date of the first payment derived from the original

determination, whichever event occurs latest.

(5) The department may issue a redetermination provided that the employer's statement was received within the statutory time limits and within less than [45] 20 calendar days from the date of the first payment.

(6) If the claimant began collecting benefits and as a result of redetermination will be denied benefits, the claimant shall be advised.

**E. Stopping payment due to administrative error:** Once an initial determination is made and payment of benefits is begun, payments shall not be stopped without prior notice and an opportunity to be heard pursuant to 11.3.500.9 NMAC. When payments are made as a result of administrative error by the department and are clearly not authorized by law, rule, regulation, or any determination made pursuant to Subsection C of 11.3.300.308 NMAC, such payment shall not be deemed to have been made pursuant to a determination of eligibility.

**F. Employer's notice of a labor dispute:** When there is a strike, lock-out or other labor dispute, the employer shall file with the department after the commencement of such activity, and upon the demand of the department, a report of the existence and nature of the labor dispute, and the number of persons affected; and shall promptly provide the names, social security numbers and work classifications of all individuals unemployed due to the labor dispute, and whether and in what manner each individual is participating in the dispute or has a direct interest in the outcome.

**G. Termination of continued claims:** Payment of continued benefits to any person who has been determined eligible to receive benefits on an initial claim in accordance with 11.3.300.308 NMAC shall not thereafter be terminated without notice and an opportunity to respond.

[11.3.300.308 NMAC - Rp, 11.3.300.308 NMAC, 11/1/2018 A, 10/29/2019; A, 1/12/2021]

**11.3.300.320 WORK SEARCH REQUIREMENT:****A. WORK**

SEARCHES: To qualify for continued benefits, a claimant must:

(1) be a member of a union with a hiring hall or a referral hall and meet the union requirements for job referral or placement;

(a) the claimant must be a member in good standing at the time of certification;

(b) the hiring hall or referral hall must be actively seeking to place its members in employment; or

(2) actively seek work by contacting a minimum number of different employers each week during the week for which benefits are claimed, as directed by department representatives. It is not mandatory that the work searches occur on different days of the week;

(a) a claimant may contact the same employer more than one time during a given week, which may count for multiple searches if the claimant applies for multiple jobs with the same employer so long as the applications are distinct and separate positions;

(b) a claimant may list jobs applied for through the New Mexico department of workforce solutions workforce connection centers, the New Mexico state personnel office (SPO), America's job bank, Workforce Innovation and Opportunity Act (WIOA) partners and similar programs as approved from time to time by the department as valid work search contacts for each week of claim certification;

(3) Other unions may apply for work search waivers by submitting a request in writing to the secretary, who may upon discretion make an exception to the work search requirements.

**B.** in order to qualify for continued benefits, interstate, if New Mexico is the liable state, claimants must seek work within the

week for which benefits are being claimed and actively seek work by contacting a minimum of two different employers each week, or if a union member, actively seek work by contacting the union as required by the union in order to be eligible for job referral or placement

**C.** claimants must keep a record of the name, address and telephone number or electronic mail address of each employer contacted in the event of an audit and must retain a copy of any email confirmation received as a result of applying for a job on-line;

(1) This information must be provided to department representatives upon request;

(2) the claimant must provide the requested information no later than 10 calendar days from the date of the department's request;

(3) the claimant must provide sufficient information for the department to verify the claimant's work search efforts. If the claimant is able to provide specific job numbers or requisition numbers for the job applied for, this information will be considered sufficient to verify the contact;

(4) failure to provide the required information without good cause may result in a denial of benefits for the week in question;

(5) if the information provided is insufficient to verify a valid work search occurred, benefits for the week in question will be denied;

(6) if a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits. Such benefits would constitute an overpayment which would be recouped pursuant to Section 51-1-38 NMSA 1978;

(7) any denial imposed for failure to provide the required information may be appealed pursuant to 11.3.500.9 NMAC;

**D.** A claimant whose work search is deemed inadequate or invalid shall be denied benefits for the week in question. A rebuttable presumption that the claimant failed to meet the active work-search requirements for that week will be raised in all cases where a claimant's work search is deemed inadequate or invalid. In order to overturn the denial of benefits the claimant shall provide proof that the claimant did meet the active work-search requirements for that week. If a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits. Such benefits would constitute an overpayment which would be recouped pursuant to Section 51-1-38 NMSA 1978. Any denial imposed on the basis of an inadequate or invalid work search may be appealed pursuant to 11.3.300.500.9 NMAC.

**E.** The department may waive the work search requirements for claimants who the department determines are on temporary lay-off status from their regular full-time employment upon receipt of an assurance from the employer that the lay-off shall not exceed four weeks or upon receipt of an express offer in writing of substantially full-time work which will begin within a period not exceeding four weeks. Such waivers shall apply only to the four-week period covered on the determination. A claimant who receives a determination granting a waiver for the four-week period shall promptly transmit any change to the claimant's recall date or start date to the department. The claimant's eligibility shall then be subject to redetermination pursuant to Subsection A of 11.3.300.308 NMAC.

**F.** In cases where the department determines a claimant is in a temporary lay-off status due to a government furlough or shutdown, the department may waive the work search requirements during the period of the temporary lay-off for all affected claimants.

**G.** In the event of a public health emergency declaration



issued by the governor, work searches shall be waived for all claimants at the discretion of the secretary until the end of the public health crisis.

[11.3.300.320 NMAC - Rp, 11.3.300.320 NMAC, 11/1/2018; A/E, 1/9/2019 A, 10/29/2019; A, 7/28/2020; A/E, 7/28/2020; A, 1/12/2021]

**11.3.300.328 APPRENTICES:**

A. Apprentices participating in an approved apprenticeship program registered with the apprenticeship office through the department of workforce solutions 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 Section 51-1-1 *et seq.* NMSA 1978 as long as all other unemployment eligibility requirements are met.

B. During the week in which an apprentice is eligible for unemployment benefits though this provision, the work search requirements will be waived since the apprentice will have a predetermined return to work date established though their apprentice program.

[11.3.300.328 NMAC - N, 1/12/2021]

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**End of Adopted Rules**

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**Other Material Related to Administrative Law**


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**GOVERNOR,  
OFFICE OF THE**
**EXECUTIVE ORDER 2020-085**
**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 December 10, 2020 the Centers for Disease Control and Prevention (“CDC”) reported over 15 million people have been infected in the United States, with over 285,000 related deaths, and the New Mexico Department of Health has report over 114,731 positive COVID-19 cases and 1,846 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 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, 020-55, 2020-059, 2020- 064, 2020-073, and 2020-080 shall be renewed and extended through January 8, 2021.

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 as well as Executive Orders 2020-016, 2020-020, 2020-021, 2020-025, 2020-037, 2020-039, 2020-056, 2020-063, 2020-072, and 2020-075.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect on December 11, 2020 and shall remain in effect until January 8, 2021 unless renewed or until the Governor rescinds it.

**DONE AT THE EXECUTIVE  
OFFICE THIS 11TH DAY OF  
DECEMBER 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**

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**HEALTH,  
DEPARTMENT OF**

**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
SECRETARY-DESIGNATE  
TRACIE C. COLLINS, M.D.**

**DECEMBER 23, 2020**

**Amended Public Health  
Emergency Order Implementing  
Additional Contact Tracing  
Information Requirements for  
all Laboratories and Submitters  
Submitting Notifiable**

**Condition COVID-19 Test Results to the New Mexico Epidemiology and Response Division**

**WHEREAS**, on March 11, 2020, because of the spread of COVID-19, Michelle Lujan Grisham, the Governor of the State of New Mexico, issued Executive Order 2020-004 declaring 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 January 8, 2021;

**WHEREAS**, COVID-19 is a deadly virus and has taken the lives of nearly 330,000 Americans and over 2,200 New Mexicans;

**WHEREAS**, confirmed cases in the United States have risen to more than 18 million and confirmed COVID-19 infections in New Mexico have risen to over 130,000, with significant recent spikes in cases in New Mexico overwhelming our hospitals;

**WHEREAS**, the State of New Mexico is in the midst of an urgent medical crisis caused by the COVID pandemic which has strained the ability of both institutional and individual providers to deliver the quality of care New Mexicans ordinarily expect;

**WHEREAS**, there is anticipated to be a shortage in the number of physicians, nurses, and other healthcare workers available given the continually increasing number of COVID-19 infections in the State;

**WHEREAS**, clinical resources and supplies are currently taxed and are anticipated to be even more greatly taxed as COVID-19 infections increase, resulting in the postponement and discontinuation of various essential medical services;

**WHEREAS**, a host of modifications of normal medical practice will be necessitated to address the ongoing surge in COVID-19 infections in the New Mexico and the attendant detrimental consequences to medical practice and medical service availability within the State;

**WHEREAS**, on December 4, 2020, Governor Michelle Lujan Grisham issued Executive Order 2020-083 ("EO 2020-083"), stating that "Crisis Care" standards may need to be implemented over the next several weeks and our State should prepare for that possibility";

**WHEREAS**, EO 2020-083 orders and directs the New Mexico Department of Health to undertake all steps necessary to credential and approve certain physicians and other licensed healthcare providers as "COVID-19 Credentialed Physicians" and certain advance practice clinicians as "COVID-19 Credentialed Advanced Practice Clinicians" so that such individuals shall be considered public employees for purposes of the Tort Claims Act under the All Hazards Emergency Response Act;

**WHEREAS**, on December 2, 2020, the New Mexico Medical Advisory Team notified the Acting Secretary of Health that "Crisis Care Standards" have been activated within the state and that it is appropriate to apply Crisis Care Standards in hospital settings;

**WHEREAS**, during a declared Public Health Emergency, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Emergency Response Act to "utilize, secure or evacuate health care facilities for public use." NMSA 1978, § 12-10A-6(A)(1). The Department of Health also possesses the legal authority under the Public Health Act to "respond to public health emergencies," "ensure the quality and accessibility of health care services and the provision of health care when health care is otherwise unavailable," "control and abate the causes of

disease, especially epidemics," and "maintain and enforce rules for the control of conditions of public health importance." NMSA 1978, § 24-1-3; and

**WHEREAS**, the Department of Health finds that it is necessary and appropriate under the current circumstances for certain physicians and other medical clinicians who evidence the meeting of certain qualifications to become approved to perform certain medical duties by the Acting Cabinet Secretary and to become credentialed for the purpose of being deemed public employees for purposes of the New Mexico Tort Claims Act.

**NOW, THEREFORE**, I, Tracie C. Collins, M.D., Secretary-Designate 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 Executive Order 2020-083 under the full scope of her emergency powers under the All Hazard Emergency Management Act and the Emergency Licensing Act, do hereby **DECLARE THAT IT IS NECESSARY FOR THE STATE TO INVOKE CRISIS-LEVEL STANDARDS OF CARE** and that it is necessary and appropriate under the current circumstances for certain physicians and other medical clinicians who evidence the meeting of certain qualifications to become approved to perform certain medical duties by the Secretary-Designate and to become credentialed for the purpose of being deemed public employees for purposes of the New Mexico Tort Claims Act.

**I DIRECT** that the credentialing and approval of providers credentialed and approved under this Order shall be conducted as follows:

**1. DEFINITIONS**

As used in this Order,

the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(a) "Applicant" means a natural person who is licensed as a medical practitioner and who applies for credentialing and approval as a COVID-19 Credentialed Physician or a COVID-19 Advanced Practice Clinician.

(b) "Application" means an application for credentialing and approval of a person to be a COVID-19 Credentialed Physician or COVID-19 Advanced Practice Clinician that is completed utilizing the Department-approved application form.

(c) "Application form" means the form available online at [www.mnhealth.org](http://www.mnhealth.org).

(d) "COVID-19 Credentialed Advanced Practice Clinician" means a natural person who is licensed as a healthcare provider, who is credentialed and approved by the New Mexico Department of Health for the purpose of deeming the person to be a public employee pursuant to the Emergency Licensing Act and the New Mexico Tort Claims Act. A COVID-19 Advanced Practice Clinician shall hold authority under New Mexico law to provide medical care independently and not under the supervision of a physician, and shall be deemed a public employee to the limited extent that, and in the limited circumstance in which, the clinician provides medical care, in a hospital acute care setting, to a person infected with the COVID-19 virus or to a person that the clinician reasonably believes may be infected with COVID-19 virus. COVID-19 Credentialed Advanced Practice Clinicians are limited to the following:

(i) certified nurse practitioners (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.2);

(ii) certified

registered nurse anesthetists (licensed by the New Mexico Board of Nursing in accordance with NMSA 1978, § 61-3-23.3);

(iii) clinical nurse specialists (licensed by the Board of Nursing in accordance with NMSA 1978, § 61-3-23.4); and

(iv) certified nurse-midwives (licensed by the Board of Nursing pursuant to the Nursing Practice Act and licensed by the Department of Health as a certified nurse-midwife pursuant to NMSA 1978, § 24-1-3(R) and NMAC 16.11.2).

(e) "COVID-19 Credentialed Physician" means a medical doctor or doctor of osteopathic medicine who holds authority under New Mexico law to provide medical care, who is credentialed and approved by the New Mexico Department of Health for the purpose of deeming the person to be a public employee pursuant to the Emergency Licensing Act and the New Mexico Tort Claims Act. A COVID-19 Credentialed Physician shall be deemed a public employee to the extent that, and in the limited circumstance in which, the physician provides medical care in a hospital acute care setting to a person infected with the COVID-19 virus or to a person that the physician reasonably believes may be infected with COVID-19, or when the physician serves as a triage officer or member of a triage board with respect to the treatment decisions related to the care of a person infected with COVID-19 or to a person that the physician reasonably believes may be infected with COVID-19.

(f) "Credentialed Practitioner" means a COVID-19 Credentialed Physician or a COVID-19 Advanced Practice Clinician.

(g) "Facility" means the acute care hospital facility or institution at which an applicant intends to provide medical services, whether for consideration or on a

voluntary basis.

(h) "Licensed" means licensed, certified, or permitted to provide medical care to a person by an authorized governmental licensing authority in the State of New Mexico.

## 2. DESIGNATION OF CREDENTIALLED PRACTITIONERS; EFFECT

The Secretary of Health shall designate a physician as a COVID-19 Credentialed Physician, or a clinician as a COVID-19 Credentialed Advanced Practice Clinician, based upon findings that: (1) the physician/advanced practice clinician services will materially further the State's interest in public health and welfare, and (2) the physician/advanced practice clinician possesses the requisite skills and background necessary to provide care during the pendency of the existing health emergency. The Secretary may weigh and consider any additional factors the Secretary deems appropriate given the operative facts and circumstances. The Secretary shall implement an application process, as more set forth more fully herein, for the purpose of identifying eligible medical practitioners and assessing their scopes of current practice and COVID-19 clinical services proposed for approval by the Department.

**COVID-19 Credentialed Physicians and COVID-19 Credentialed Advanced Practice Clinicians shall only be considered public employees for purposes of the Tort Claims Act to the limited extent and in the limited circumstance in which such Credentialed Practitioners provide medical care outside of their normal and privileged scope of practice and/or are serving as a triage officer or triage board member in a hospital acute care setting in relation to a person infected with COVID-19 or to a person reasonably believed to be infected with COVID-19. NMSA 1978, §§ 41-4-1 to -27; NMSA 1978, §§ 12-10-4, -11, -13.**



(a)  
**Application Process**  
 An applicant or a facility affiliated with an applicant shall submit a completed application to the e-mail address that is identified on the application form.  
 The Secretary or her designee(s) shall review the application and render a determination of whether to grant or deny the application in whole or in part based on operative facts and circumstances, including, but not limited to, the nature of the applicant’s current primary scope of medical practice, the nature of the applicant’s proposed COVID-19 scope of practice, the extent of deviation between the applicant’s primary scope of practice and proposed COVID-19 scope of practice, and other factors as the Secretary may deem appropriate.

(b) **Content of Application**  
 The information required to be submitted in the application shall include, but need not be limited to, the following:

1. Identity and contact information of the applicant;
2. Professional qualifications of the applicant, including the applicant’s professional degree;
3. Main location of the facility;
4. Main scope of current practice;
5. Proposed practice locations, including name and contact information for associated facilities;
6. Proposed COVID-19 clinical services;
7. Request for designation as a COVID-19 Credentialed Physician or COVID-19 Credentialed Advanced Practice Clinician;
8. Name and signature of applicant; and

9.  
 Proof of: agreement between the applicant and the associated facility, that the facility is willing to permit the performance of the identified proposed COVID-19 clinical services on the facility’s premises, and that the applicant is willing to perform such services.

(c)  
**Disclaimer**  
 The Secretary or his or her designee may rescind approval of an application upon notice to an affected applicant and associated facility for cause, which includes, but is not limited to, falsification of any information included within the application or any other information or material submitted to the Department. A previously issued approval of an application shall be deemed automatically rescinded upon the suspension or revocation of an applicant’s medical license by the applicant’s professional licensing authority.

A Credentialed Practitioner and an associated facility shall at all times adhere to applicable ethical standards.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This 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) This Order shall take effect on December 23, 2020 and remain in effect through January 5, 2021.

**THIS ORDER** supersedes any other previous orders, proclamations, or directives in conflict. This Order shall take effect immediately and shall remain in effect for the duration indicated in the Order unless otherwise rescinded.

**DONE AT THE EXECUTIVE OFFICE THIS 23RD DAY OF DECEMBER 2020**

**ATTEST:**  
 /S/ MAGGIE TOULOUSE OLIVER  
 SECRETARY OF STATE

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

/S/ TRACIE C. COLLINS M.D.  
 SECRETARY DESIGNATE OF THE STATE OF NEW MEXICO  
 DEPARTMENT OF HEALTH

**HEALTH,  
 DEPARTMENT OF  
 PUBLIC HEALTH ORDER  
 NEW MEXICO DEPARTMENT  
 OF HEALTH  
 SECRETARY-DESIGNATE  
 TRACIE C. COLLINS, M.D.**

**DECEMBER 30, 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 to Impose County-by-County Restrictions 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. It remains the core

purpose of this Order to emphasize that all New Mexicans should be staying in their homes for all but the most essential activities and services. This is especially true now, when this State is experiencing an unprecedented surge in new cases and hospitals are approaching or exceeding their capacity. ‘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. 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

C. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID- 19 Test Results to the New Mexico Epidemiology and Response Division.

3. The December 15, 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 December 11, 2020;

**WHEREAS**, confirmed cases in the United States have risen to more than 19.4 million and confirmed COVID-19 infections in New Mexico have risen to over 139,000 with significant recent spikes in New Mexico threatening to overwhelm our hospitals;

**WHEREAS**, COVID-19 is a deadly virus and has taken the lives of over 330,000 Americans and over 2,300 New Mexicans;

**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**, Tracie C. Collins, M.D., Secretary-Designate 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 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.

### **DEFINITIONS**

As used in this 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 more than one-third of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, animal feed or supplies, fresh meats, fish, and poultry, and any other consumable household 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, self-storage facilities, 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, 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. Crematoriums, funeral homes, 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, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, and guided balloon tours.

(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, bowling alleys, casinos, concert venues, ice-skating

rinks, 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, ski basins, youth programs, youth livestock shows, horseracing tracks, botanical gardens, and outdoor zoos.

(7) “Places of lodging” means all hotels, motels, RV parks, and short-term vacation rentals.

(8) “Retail space” means any business that regularly sells goods or services directly to consumers or end-users at the business location and includes, but is not limited to, the following “essential businesses” identified in the categories above: (1)d, (1)k, (1)m, and (1)n.

(9) “Mass gathering” means any public gathering, private gathering, organized event, ceremony, parade, funeral, or any other grouping that brings together a specified number of individuals in a single room or connected space, confined outdoor space, or open outdoor space. “Mass gatherings” also includes coordinated events in which individuals gather in vehicles. “Mass gathering” does not include the presence of <my number of 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/>.

### THE “RED TO GREEN” FRAMEWORK

**I DIRECT** that the State shall continue to reopen according to the following county-by-county framework:

#### SUMMARY

This Order sets out the “Red to Green” framework, which includes three levels of operations that are based on a county’s ability to satisfy specified metrics: Green Level, Yellow Level, and Red Level. A county will remain at a given operating level so long as it continues to satisfy the specified metrics for that level. The Department of Health maintains the official map displaying each county’s current level at: <https://cvprovider.nmhealth.org/public-dashboard.html>. The Department of Health updates this map every other Wednesday. If a county fails to meet the specified metrics for a given level, the county must begin operating at the lower level’s restrictions within 48 hours of the map’s update. If a county begins meeting the specified metrics for a less restrictive level, the county may begin operating at that level’s restrictions immediately upon the map’s update.

#### REOPENING LEVEL METRICS

Counties shall be categorized according to one of the following levels:

(1) Green Level -Counties seeking to operate at this level must satisfy both of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; AND

(b) An average percent of positive

COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(2) Yellow Level - Counties seeking to operate at this level must meet either of the following metrics:

(a) A new COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; OR

(b) An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(3) Red Level -All other counties shall operate at the Red Level.

#### REQUIREMENTS FOR EACH LEVEL

**Green Level** - Green Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than twenty (20) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to one hundred (100) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate without occupancy limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.



c. "Houses of worship" may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. "Outdoor recreational facilities" may operate at 50% capacity unless specified otherwise in the pertinent CSP's, in which case the CSP's capacity limits are controlling. The indoor portions of "outdoor recreational facilities" must comply with the requirements contained in paragraph (2)h below unless specified otherwise in the pertinent CSP's. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. "Food and drink establishments" may not provide dine-in service, except those restaurants that have completed the NM Safe Certified training program. All "food and drink establishments" that have completed the NM Safe Certified offered at <https://nmsafecertified.org>, and also 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 may operate at 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. All "food and drink establishments," regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables 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, and no bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.

f. "Places of lodging" which have completed the NM Safe Certified training offered at <https://mnsafecertified.org> may operate up to 75% of maximum occupancy. All other "places of lodging" shall not operate at more than 40% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed ten (10) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. "Close-contact recreational facilities" may not operate.

h. Any entity that is not identified as an "essential business," "house of worship," "outdoor recreational facility," "food and drink establishment," "place of lodging," or "close-contact recreational facility" may operate but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

i. State museums may operate but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

**Yellow Level** - Yellow Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all

"mass gatherings" of more than ten (10) individuals are prohibited. "Mass gatherings" in which individuals gather in vehicles are permitted so long as the gathering is limited to twenty-five (25) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All "essential businesses," excluding those defined as a "retail space," may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. "Essential businesses" identified as a "retail space" may operate but may not exceed 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. "Houses of worship" may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. "Outdoor recreational facilities" may operate at 25% capacity unless specified otherwise in the pertinent CSP's, in which case the CSP's capacity limits are controlling. The indoor portions of "outdoor recreational facilities" must comply with the requirements contained in paragraph (2)i below unless specified otherwise in the pertinent CSP's. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. "Food and drink establishments" may not provide dine-in service unless they 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. Those “food and drink establishments” that complete the NM Safe Certified training and comply with all attendant requirements mandated by that program may provide dine-in services but they may not exceed more than 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables 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, and no bar or counter seating is permitted. 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. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

f. “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. Further, and notwithstanding any

other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. “Close-contact recreational facilities” may not operate.

h. “Close-contact businesses” may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or twenty (20) customers inside the building at any given time.

i. Any entity that is not identified as an “essential business,” “house of worship,” “outdoor recreational facility,” “food and drink establishment,” “place of lodging,” “close-contact recreational facility,” or “close-contact business” may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or one hundred twenty-five (125) customers inside its building at any given time. Notwithstanding the foregoing, indoor shopping malls may operate, provided that the total number of persons within the mall does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department.

j. State museums may not operate.

**Red Level** -Red Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than

five (5) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to ten (10) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Outdoor recreational facilities” may operate at 25% capacity unless specified otherwise in the pertinent CSP’s, in which case the CSP’s capacity limits are controlling. The indoor portions of “outdoor recreational facilities” must comply with the requirements contained in paragraph (2)i below unless specified otherwise in the pertinent CSP’s. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. “Food and drink establishments” may not provide indoor dine-in service but may provide service in outdoor seating areas up to 25% occupancy, where applicable. Tables 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, and 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 9:00 p.m. and must remain closed until at least 4:00 a.m. "Food and drink establishments" may provide delivery service after 9:00 p.m. but no customers are permitted on the premises.

f. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 40% of maximum occupancy. All other "places of lodging" shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. "Close-contact recreational facilities" may not operate.

h. "Close-contact businesses" may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or ten (10) customers inside the building at any given time.

i. Any entity that is not identified as an "essential business," "house of worship," "outdoor recreational facility," "food and drink establishment,"

"place of lodging," "close-contact recreational facility," or "close-contact business" may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or seventy-five (75) customers inside the building at any given time. Notwithstanding the foregoing, indoor shopping malls may operate, provided that the total number of persons within the mall does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department.

j. State museums may not operate.

#### **BASELINE DIRECTIVES**

Regardless of a county's level, I **DIRECT** that the following baseline directives apply at all times and in all instances:

(1) 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 do not satisfy this requirement. "Retail spaces" 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.

(2) In order to minimize the shortage of health care supplies and other necessary goods, "retail spaces" shall limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual.

(3) Any "food and drink establishment," "close-contact business," "place of lodging," "retail space," or other business (including "essential businesses" other than those which meet the definition of a healthcare operation, utility, or indigent care services) in which members of the public regularly visit must immediately

close for a period of fourteen (14) days 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, an "essential business" may be permitted to continue operating if the Department of Health, after consultation with the New Mexico Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations. Further, "essential businesses" that test each employee every two weeks and regularly provide contact tracing data to the Environment Department shall not be subject to closure under this provision.

(4) All businesses, houses of worship, and other non-profit entities must adhere to the pertinent CSP's.

(5) 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." Private schools shall report to the New Mexico Public Education Department all cases of COVID-19- positive students, staff, contractors and volunteers associated with the school within four hours of the school being notified of

the positive case, pursuant to the procedures in the current COVID-19 Response Toolkit for New Mexico's Public Elementary Schools. Private schools must immediately close for a period of fourteen (14) days following the last occurrence of four (4) or more rapid responses within a fourteen (14) day period. Private schools also are subject to inclusion on the New Mexico Environment Department's watchlist and closure list.

(6) State parks shall only be open to New Mexico residents for day-use only. 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.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This 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 Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect on December 30, 2020

and remain in effect through January 29, 2021.

(5) 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.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

**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 30TH DAY OF DECEMBER 2020**

**ATTEST:**

**/S/ MAGGIE TOULOUSE  
OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**/S/ TRACIE C. COLLINS M.D.  
SECRETARY DESIGNATE OF THE STATE OF NEW MEXICO  
DEPARTMENT OF HEALTH**

**End of Other Material  
Related to Administrative  
Law**



# 2021 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXII, Issues 1-24

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

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