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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 XXXIII, Issue 10

May 24, 2022

## Table of Contents

### Notices of Rulemaking and Proposed Rules

#### EDUCATIONAL RETIREMENT BOARD

Notice of Proposed Rulemaking.....781

#### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Notice of Proposed Rulemaking.....781

---

### Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

#### EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

8.15.2 NMAC                    A/E    Requirements for Child Care Assistance Programs Clients and  
Child Care Providers.....785

#### EDUCATIONAL RETIREMENT BOARD

2.82.1 NMAC                    A       Educational Retirement - General Provisions.....786

#### PUBLIC EDUCATION DEPARTMENT

6.30.6 NMAC                    R       Suspension of Authority of a Local School Board.....788  
6.30.6 NMAC                    N       Suspension of Authority of a Local School Board.....788  
6.60.11 NMAC                    N       Required Training Program for School District Personnel, School  
Volunteers, and Contractors.....791  
6.29.1 NMAC                    A       Standards for Excellence - General Provisions.....793

#### PUBLIC REGULATION COMMISSION

17.9.570 NMAC                    R       Governing Cogeneration and Small Power Production.....794  
17.9.570 NMAC                    N       Governing Cogeneration and Small Power Production.....794

#### PUBLIC SAFETY, DEPARTMENT OF

10.2.4 NMAC                    N/E    Law Enforcement Retention Fund Reporting, Monitoring and  
Administration.....808  
18.19.8 NMAC                    A       Size and Weight of Vehicles and Loads.....811

#### RACING COMMISSION

15.2.1 NMAC                    A       Horse Racing - General Provisions.....821  
15.2.2 NMAC                    A       Associations.....822  
15.2.3 NMAC                    A       Flat Racing Officials.....823  
16.47.1 NMAC                    A       Horse Racing Officials - General Provisions.....824

#### REGULATION AND LICENSING DEPARTMENT

##### CONSTRUCTION INDUSTRIES DIVISION

14.6.3 NMAC                    A       Contractor's License Requirements.....825

**TAXATION AND REVENUE, DEPARTMENT OF**

3.1.4 NMAC	A	Filing.....	826
3.1.8 NMAC	A	Hearings.....	828
18.19.4 NMAC	A	Licensing.....	830
18.19.9 NMAC	A	Implied Consent Act Revocations.....	833

---

**Other Material Related to Administrative Law**

**GOVERNOR, OFFICE OF THE**

Governor’s Executive Order 2022-024.....	837
--	-----

**HEALTH, DEPARTMENT OF**

5/16/2022 Amended Public Health Order.....	837
--	-----

**PUBLIC SAFETY, DEPARTMENT OF**

Notice of Emergency Rulemaking.....	840
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## Notices of Rulemaking and Proposed Rules

### EDUCATIONAL RETIREMENT BOARD

#### NOTICE OF PROPOSED RULEMAKING

**Public Hearing:** The New Mexico Educational Retirement Board (NMERB) will conduct a public board meeting and rule hearing on June 24, 2022 at 9:00 a.m. The rule hearing will be conducted during NMERB's regular public board meeting and will be held at Albuquerque Public Schools headquarters, 6400 Uptown Blvd. NE, Albuquerque, NM 87110. The location of the public rule hearing is subject to change if required by Governor Michelle Lujan Grisham's executive orders concerning COVID-19. If there is any change in the location of the public rule hearing, the updated information will be posted on the NMERB website at [www.nmerb.org](http://www.nmerb.org).

**Purpose:** The purpose of the public rule hearing is to receive public comment on proposed amendments to 2.82.5 NMAC, Retirement Benefits. In March 2022, Governor Lujan Grisham signed House Bill 73 (HB73) regarding educational retirees returning to work (2022 N.M. Laws, ch. 20, § 1). HB73 amends Section 22-11-25.1 of the Educational Retirement Act to create a new program in which retirees may return to work and continue to receive their retirement benefits. Under the program, a retiree may return to work for a local administrative unit (LAU) for up to 36 consecutive or nonconsecutive months if the retiree has completed a 90-day layout period after retiring. The retiree and the LAU must pay nonrefundable contributions. The retiree cannot earn or purchase service credit for the period of reemployment. The purpose of the proposed amendments is to add a rule describing the program, requirements, and penalties if a retiree is approved for the program but returns to employment for more than 36 consecutive or nonconsecutive

months. The new rule would be 2.82.5.18 NMAC and the subsequent sections in 2.82.5 NMAC would be renumbered. There is also a minor change to 2.82.5.11 NMAC to make the language gender neutral and to correct an internal reference.

**Statutory Authority:** Educational Retirement Act, NMSA 1978, § 22-11-6(A)(5) (2017).

#### Summary of Proposed

##### Amendments:

2.82.5.11 EFFECTIVE DATE OF BENEFIT: Insert gender neutral language in Subsection A. Correct the internal cross-reference in Subsection C.

2.82.5.18 RETURN TO WORK 36 MONTHS:

Subsection A describes the program requirements. A retired member may return to employment with an LAU and continue to receive their benefit if the retired member has not rendered service to an LAU for at least 90 consecutive days after retiring and the retiree returns to employment for no more than 36 consecutive or nonconsecutive months. The retiree must submit an application to NMERB and be approved prior to beginning employment. Subsection B states that a retiree who is in the program and returns to work for more than 36 consecutive or nonconsecutive months shall have their retirement benefit suspended for the period of employment that exceeds 36 consecutive or nonconsecutive months. The retiree must repay benefits received while ineligible for the program.

The subsequent sections of 2.82.5 NMAC would be renumbered as 2.82.5.19 NMAC through 2.82.5.22 NMAC.

#### Details for Obtaining a Copy of Proposed Rule Amendments and Submitting Oral or Written Comments:

A copy of the proposed rule amendments is available on the

NMERB website at [www.nmerb.org](http://www.nmerb.org) or by calling Amanda Olsen, Legal Assistant, at (505) 476-6133 during regular business hours. The proposed rule amendments are also posted on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public rule hearing or submit written comments by mail to Amanda Olsen, New Mexico Educational Retirement Board, P.O. Box 26129, Santa Fe, NM 87502; by email to [NMERB.RuleChange@state.nm.us](mailto:NMERB.RuleChange@state.nm.us) or by fax to (505) 827-1855. Written comments must be received by 3:00 pm (MT) on June 23, 2022. All timely submitted written comments will be posted on the NMERB website at [www.nmerb.org](http://www.nmerb.org).

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact Amanda Olsen at (505) 476-6133 as soon as possible or at least ten business days before the public hearing.

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

#### NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Employee Labor Relations Board ("PELRB") hereby gives notice that it will conduct a public hearing via video conference on July 12, 2022, as part of its monthly meeting which will commence at 9:00 a.m. The purpose of the public hearing will be to obtain input on the proposed amendment of PELRB administrative rules as described below. Copies of the proposed rules may be accessed on the PELRB website (<http://www.pelrb.state.nm.us>) or at the PELRB offices. Concerned parties may provide comments at the public hearing or submit written comments prior to the hearing. Written comments may be submitted to the

PELRB via US Mail c/o Matthew Huchmala, Administrative Assistant; New Mexico Public Employee Labor Relations Board; 2929 Coors Blvd. NW, Suite 303; Albuquerque, NM 87102; or by electronic mail to matt.huchmala@state.nm.us. The submission of written comments as soon as possible is encouraged. Written comments must be received no later than 5:00 p.m. on July 7, 2022.

To participate in the videoconference, please visit our website, pelrb.state.nm.us, or contact the administrative assistant at matt.huchmala@state.nm.us for instructions on how to participate. This information can be provided in a variety of accessible formats. If you are an individual who requires an alternative format or any other form of auxiliary aid to attend or participate in the rulemaking process, please contact the administrative assistant at 505-831-5422 or matt.huchmala@state.nm.us as soon as possible to arrange the appropriate accommodations.

### Statutory Authority

Authority for this rulemaking is the Public Employee Bargaining Act, NMSA 1978 §§ 10-7E-1 through 10-7E-26 (2003, amended 2005).

### Summary of Proposed Changes

This list provides a concise statement of the various ways the proposed rules change or codify current practice, and the general reasoning in support of the changes. It is not an elaborate analysis of the rules or of the detailed considerations upon which they are based; rather, it is designed to enable the public to obtain a general idea of the purpose of, and a statement of the basic justification for, the rules. As this list shows, the amendments provide targeted solutions to discrete, specifically identified problems. If the proposed change removes language, that is indicated by text with strikethrough (e.g. [~~removed language~~]); if the proposed change adds language, that is indicated by

text with underlining (e.g. added language).

“Act” has been capitalized throughout the rules where it refers to the Public Employee Bargaining Act.

#### 11.21.1.7 DEFINITIONS:

Changes to this section add a definition for “challenged card”.

#### 11.21.2.8

##### COMMENCEMENT OF CASE:

Changes to this section adjust for the availability of a card check in lieu of election after the 2020 amendments to the PEBA.

#### 11.21.2.11 SHOWING OF

**INTEREST:** These changes clarify the requirements for electronic signatures; codify the Board’s existing practice on the timeliness of interest cards; and specifies the requirements for rebutting the presumption of validity of a showing of interest.

#### 11.21.2.12 INFORMATION REQUESTED OF PARTIES:

This change requires an employer to provide a new list of employees in a proposed unit if the description of the unit changes after the filing of the petition and removes a reference to voting to accommodate the 2020 amendments to the PEBA.

#### 11.21.2.13 INITIAL

##### INVESTIGATION OF PETITION:

These changes re-order the subsections, and add a reference to 11.21.2.11.

#### 11.21.2.33

**CERTIFICATION:** These changes add language to accommodate the card check allowed by the 2020 amendments to the PEBA and separate the section into subsections.

#### 11.21.2.34 OBJECTIONS:

These changes add language to allow for objections to a card count as well as an election.

#### 11.21.2.42 DISCLAIMER

**OF INTEREST:** Language had been added calling for the dismissal of a petition for decertification if the

exclusive representative disclaims their representative interest in a bargaining unit.

**11.21.5** The title of this part will be changed to reflect the fact that no new labor boards can be created after the 2020 amendments to the PEBA.

#### 11.21.5.6 OBJECTIVE:

These changes align the rule with the fact that no new labor boards can be created.

#### 11.21.5.8 APPLICATION FOR APPROVAL OF A LOCAL BOARD ORDINANCE, RESOLUTION OR CHARTER:

These changes align the rule with the fact that no new labor boards can be created, but existing boards must submit biennial affirmations pursuant to the 2020 amendments to the PEBA.

#### 11.21.5.9 CONTENTS OF

**APPLICATION:** The contents of this section will be deleted and subsequent sections renumbered.

#### 11.21.5.10 CONTENTS OF APPLICATION FOR VARIANCE FROM BOARD APPROVED

**TEMPLATES:** These changes align the rule with the fact that no new labor boards can be created, but existing boards must apply for approval of any changes to their enabling ordinance or procedural rules.

#### 11.21.5.11 SUBMISSION OF

**RULES:** These changes align the rule with the fact that no new labor boards can be created, but existing boards must apply for approval of any changes to their enabling ordinance or procedural rules.

#### 11.21.5.12 REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD:

These changes align the rule with the fact that no new labor boards can be created, but existing boards must apply for approval of any changes to their enabling ordinance or procedural rules.

**11.21.5.13 POST APPROVAL  
REPORTING REQUIREMENTS:**

These changes separate the rule into subsections and add language reflecting the reporting requirements contained in the PEBA.

The PELRB invites members of the public to comment on draft proposed regulations. Members of the public may comment during the rulemaking hearing in the PELRB's meeting of July 12, 2022, or by submitting written comments prior to that meeting.

Written comments must be submitted no later than 5:00 p.m. on July 7, 2019.

Please send comments to the PELRB care of Matthew Huchmala, Executive Administrative Assistant to the Board, either by email to [matt.huchmala@state.nm.us](mailto:matt.huchmala@state.nm.us), or have a hard copy delivered to Mr. Huchmala's attention at the PELRB's Albuquerque office. There is no need to provide comments via both email and hard copy.

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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.

### EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

**This is an Emergency Amendment to 8.15.2 NMAC, Sections 9 and 14, effective 5/1/2022.**

#### 8.15.2.9 PRIORITIES

**FOR ASSISTANCE:** Any funds received by the department under the child care development fund and other sources are expended for child care assistance pursuant to the following priorities:

**A.** Priority one:

Clients receiving temporary assistance to needy families (TANF) benefits to include TANF diversionary payment, are considered priority one clients.

**(1)**

Participation exemption: The human services department (HSD) grants participation exemptions to TANF clients who cannot locate child care. The children, youth and families department is responsible for the verification of the TANF participant's inability to locate child care. Reasons for a participation exemption due to lack of child care are as follows:

**(a)**

the unavailability of appropriate child care within a reasonable distance from the individual's home or work site;

**(b)**

the unavailability or unsuitability of informal child care by a relative or under other arrangements; or

**(c)**

the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

**(2)** A person

who applies for participation exemption for any or all of the above reasons is referred to the children, youth and families department child care resource and referral. The child care resource and referral assists the

client with location of child care.

The final validation/verification of a client's inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to re-apply for the exemption every six months. If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with HSD. HSD is responsible for providing notice of the approval or denial of a participation exemption.

**B.** Priority one A:

**[RESERVED]**

**C.** Priority one B:

Child care assistance for income eligible families whose income is at or below one hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents.

**D.** Priority two:

Families transitioning off TANF and clients who have received a TANF diversionary payment. Clients must have received TANF for at least one month, or a diversionary payment, in the past 12 months in order to qualify for priority two. Only clients transitioning off TANF whose TANF cases are closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their 12 consecutive month period of eligibility for priority two child care.

**E.** Priority three:

**[RESERVED]**

**F.** Priority four: Child care assistance for families whose

income is above one hundred percent of the federal poverty level but at or below two hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below two hundred fifty percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. The department prioritizes child care services within priority four for children with special needs, disabilities, homeless families, and for teen parents.

**G.** Priority four

plus: During this period of economic recovery and subject to budgetary considerations, child care assistance for essential workers whose income is above two hundred percent of the federal poverty level but at or below three hundred fifty percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below four hundred percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. The department prioritizes child care services within priority four plus for children with special needs, disabilities, homeless families, and for teen parents. ~~[Co-payments for families in priority four plus are not waived. Co-payments for families will be capped at three hundred percent of the federal poverty level.]~~

**H.** Priority five: In

addition to these priorities, the department pays for at-risk child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education

requirements and copayments are waived for clients in this priority. [8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/2016; A, 10/1/2019; A/E, 9/18/2020; A, 3/1/2021; A/E, 8/1/2021; A, 1/1/2022; A/E, 5/1/2022]

**8.15.2.14 CASE SUSPENSIONS AND CLOSURES:**

**A.** A case may be suspended by the client if child care benefits are not being utilized for a period not to exceed three months with payment being discontinued to the provider. The client will remain eligible for child care assistance through the remainder of their eligibility period.

**B.** If the client experiences a non-temporary change of activity including the loss of employment, no longer attending school, or no longer participating in a job training or education program, the child care placement agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

**C.** A case will be closed if the following conditions apply:

- (1) any non-temporary change in activity;
- (2) income in excess of two hundred and fifty percent federal poverty level or a client designated as an essential worker, as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC, with an income in excess of four hundred [and fifty] percent of the federal poverty level;
- (3) failing to recertify at the end of approved eligibility period; or
- (4) being disqualified from participation in the program.

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/2016; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022; A/E, 5/1/2022]

**EDUCATIONAL RETIREMENT BOARD**

**This is an amendment to 2.82.1 NMAC, Sections 8, 9, 10 and 14 effective 05/24/2022.**

**2.82.1.8 BOARD MEMBERS AND OFFICERS:**

Ex-officio members of the board shall take office upon their qualifying for the offices enumerated in Section 22-11-3 NMSA 1978. The board member elected by the New Mexico educational association shall be elected in the manner prescribed by the constitution of that body and shall take office on January 1 following such election. The board member elected by the New Mexico members of the American association of university professors shall be elected in accordance with the constitution of that body and shall take office on July 1 following such election. The board member elected by the New Mexico association of educational retirees shall be elected in the manner prescribed by the constitution of that body and shall take office on July 1 following such election. The board member elected by the American federation of teachers New Mexico shall be elected in the manner prescribed by the constitution of that body and shall take office on July 1 following such election. The board members appointed by the governor shall take office upon their receipt of appointment. All board members shall hold office until their successors qualify regardless of the length of the term and office. At the regular August meeting of each year, the members of the board shall elect a chairman, a vice-chairman, and a secretary. The duties of the officers shall include the following.

**A.** The chairman shall preside at all meetings of the board.

**B.** The vice-chairman shall serve as the chairman in the absence of the chairman.

**C.** The secretary shall attest to the official actions of the board when such is required. The vice-chairman may attest to the official actions of the board in the secretary's absence.

[2.82.1.8 NMAC - Rp, 2.82.1.8 NMAC, 11/15/2012; A, 05/24/2022]

**2.82.1.9 MEETINGS:**

**A.** The New Mexico educational retirement board shall hold regular meetings in the months of February, April, June, August, October and December; provided however, that the board may change the date of a meeting by board action, which action shall be noted in the minutes. Special board meetings may be held in accordance with state law at the call of the chairman or by any three board members. Committee meetings shall be scheduled as directed by the chairman of each committee.

**B.** [~~Four~~] Five members of the board shall constitute a quorum at any regular or special meeting.

**C.** Notice of all meetings of the board and its committees shall be made in accordance with the Open Meetings Act (Chapter 10, Article 15, NMSA 1978) and the Open Meetings Resolution adopted by the board and shall be posted on the board's website and distributed as otherwise directed by the board. Notice shall be given at least eight days in advance of any regular meeting scheduled by the board at its last meeting. Notice shall be given at least three days in advance of any special meeting called by the chairman or any three members of the board.

**D.** The chairman shall set the agenda of board meetings; provided however, that if the chairman refuses to place an item on the agenda, three individual board members may petition in writing and place an item on the agenda without the chairman's consent. Committee chairmen shall set the agendas of their respective committees. Notice of agendas shall be made in accordance with the Open Meetings Act and the Open Meetings Resolution adopted by the board and the director shall distribute board and committee agendas to board members, post the agendas to the board's website, and distribute the agendas as otherwise directed by the board.

E. Board members and their designees may attend and participate in any regular or special board meeting by telephone or other electronic device if:

(1) the member or designee cannot attend the meeting due to an emergency or unforeseen circumstance;

(2) the member or designee can clearly be heard by everyone attending the meeting and the member or designee clearly identifies themselves before speaking or participating in a vote;

(3) the member or designee has not attended regular meetings electronically more than twice in a rolling 12 month period;

(4) no more than two members or designees who otherwise qualify for participation under this section may do so at the same meeting; and

(5) the member or designee otherwise complies with the Open Meetings Act.

F. Failure of any board member other than the state treasurer [or], secretary of public education or secretary of higher education to attend four consecutive regular meetings unless such absence is excused by the board at a board meeting will be considered resignation from the board by that board member.

Failure of the designee of the state treasurer [or], the secretary of public education or the secretary of higher education, respectively, to attend four consecutive regular meetings when the state treasurer [or], the secretary of public education or the secretary of higher education is absent will be considered resignation from the board by that designee. An excused absence must be recorded in the board meeting minutes.

G. Board members not officially assigned to the committee which is meeting may be temporarily appointed to the committee by the committee chairperson when necessary to achieve a quorum. [2.82.1.9 NMAC - Rp, 2.82.1.9 NMAC, 11/15/2012; A, 9/26/2017; A, 05/24/2022]

#### 2.82.1.10 SANCTIONS AND ENFORCEMENT:

A. Any breach of a board member's fiduciary duty or violation of the rules or policies adopted by the board made known to the board or of which the board becomes aware shall be reviewed by the board. If a majority of the entire board so request, an alleged breach or violation may be investigated by an independent person or entity not otherwise associated or affiliated with any member of the board or the board's staff. Such person or entity shall be selected by at least five board members and designees, if such be sitting for board members.

B. Any hearing addressing an alleged breach of fiduciary duty or violation of the rules or the policies adopted by the board shall be conducted by the entire board, excepting the member accused of such a breach or violation, in accordance with the rule governing administrative appeals adopted by the board prior to the alleged breach or violation having occurred. If the rule governing administrative appeals is amended between the time that an alleged breach of fiduciary duty or violation of such rules or policies occurred and the time of the hearing, the board shall conduct the hearing in accordance with the rule that existed prior to its amendment.

C. Removal of a board member should occur only when necessary for the board to fulfill its fiduciary duty. A decision to remove a board member should be based on a determination that allowing the member to continue to serve on the board would be a violation of the other board members' fiduciary duty and would be detrimental to the educational retirement fund and the board. Removal should not be undertaken solely to inflict a penalty for a board member's past action(s) unrelated to the matter before the board.

(1) Removal is appropriate in instances of gross misconduct, violation of the board member's fiduciary duty, repeated violation of the rules and policies

adopted by the board, or failure to fulfill the duties of a board member. "Gross misconduct" is defined as violation of a clearly established rule or policy, dereliction of duty, unlawful behavior involving matters of dishonesty or deception, gross negligence, but not negligence or carelessness.

(2) Removal of a board member other than the state treasurer [or], the secretary of public education or the secretary of higher education shall occur only after a full investigation, hearing, and an affirmative vote by not less than five board members and designees, if such are sitting for a board member.

(3) The state treasurer [and], the secretary of public education and the secretary of higher education may be removed from the board only by removal from their respective offices by an authority possessing such power. The board may nevertheless, in compliance with the procedures set forth herein, make a finding that the actions of a state treasurer [or], a secretary of public education or a secretary of higher education warrant removal from the board and report such finding to appropriate authorities. A designee of the state treasurer [or], the secretary of public education or the secretary of higher education, respectively, shall not participate in board discussions or votes related to the board's consideration of a matter pursuant to this subparagraph that involve the board member who named that person as a designee.

(4) The designees of the state treasurer [and], the secretary of public education and the secretary of higher education, respectively, may be removed from the board in accordance with the procedures set forth herein. A designee so removed may not be reappointed as a designee by either the state treasurer [or], the secretary of public education or the secretary of higher education.

D. Board members or designees found to be in violation of the rules and policies adopted by the



board or who fail to fulfill their duties, or who otherwise conduct themselves in a manner that is not appropriate for a member of a board governing a public pension fund, may be subject to formal reprimand or admonishment by the board. Reprimand or admonishment shall be done upon a public vote of not less than five board members and designees, if such are sitting for board members, and shall be permanently recorded in the board minutes.

(1) The board may choose to reprimand a board member or designee upon determining that the member's or designee's violation of the rules and policies adopted by the board or conduct as a board member warrant censure or reproof but do not warrant removal from the board.

(2) The board may choose to admonish a board member or designee upon determining that member or designee should be advised or cautioned regarding actions such as a failure to fulfill the duties of a board member or conduct that is inappropriate for a member of a board governing a public pension fund.

E. The board may not impose a fine on a board member or designee; however, the board may order a board member or designee to repay expenses paid by the board on behalf of a board member or designee for education or travel where a board member or designee did not fulfill the purpose for which the education or travel expense was provided. In addition, a board member or designee may be required to repay the donor of a gift accepted in violation of Section 22-11-5.1 NMSA 1978 or the rules and policies adopted by the board. [2.82.1.10 NMAC - N, 11/15/2012; A, 05/24/2022]

**2.82.1.14 INVESTMENT COMMITTEE:** The investments of the retirement fund shall be under the [immediate] direction of an investment committee composed of the chairman of the board, and two members of the board appointed by the chairman and approved by the

board, for terms of one year. The chairman shall appoint two members to the investment committee at the board's regular October meeting each year. In the event of a vacancy on the committee, the chairman shall appoint a member of the board to serve for the remaining portion of the one year term. The appointment shall become effective immediately; provided, however, that it shall be subject to the approval by the board at its first meeting occurring after said appointment.

The actions of the committee shall be subject to applicable statutes governing investment of the educational retirement fund, and the administrative rules and policies adopted by the board relating to investments of the fund.

[2.82.1.14 NMAC - Rp, 2.82.1.13 NMAC, 11/15/2012; A, 12/30/2013; A, 3/14/2017; 05/24/2022]

## PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved at its 11/12/2021 hearing, to repeal 6.30.6 NMAC, Suspension of Authority of a Local School Board, Superintendent, or Principal, filed 10/17/2005, and replace it with 6.30.6 NMAC, Suspension of Authority of a Local School Board, adopted on 4/29/2022 and effective 5/24/2022.

## PUBLIC EDUCATION DEPARTMENT

### TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS PART 6 SUSPENSION OF AUTHORITY OF A LOCAL SCHOOL BOARD

**6.30.6.1 ISSUING AGENCY:** Public Education Department, hereinafter the department.

[6.30.6.1 NMAC - Rp. 6.30.6.1 NMAC, 5/24/2022]

**6.30.6.2 SCOPE:** This rule shall apply to all local school boards. [6.30.6.2 NMAC - Rp. 6.30.6.2 NMAC, 5/24/2022]

**6.30.6.3 STATUTORY AUTHORITY:** Sections 9-24-8, 22-2-1, 22-2-2, and 22-2-14 NMSA 1978.

[6.30.6.3 NMAC - Rp. 6.30.6.3 NMAC, 5/24/2022]

**6.30.6.4 DURATION:** Permanent.

[6.30.6.4 NMAC - Rp. 6.30.6.4 NMAC, 5/24/2022]

**6.30.6.5 EFFECTIVE DATE:** May 24, 2022, unless a later date is cited at the end of a section.

[6.30.6.5 NMAC - Rp. 6.30.6.5 NMAC, 5/24/2022]

**6.30.6.6 OBJECTIVE:** This rule establishes the process for suspending the authority of local school boards for failing to attain and maintain the requirements of law, standards, or rules of the department as a final step following notice from the department of disapproval or failure to meet requirements and attempts to resolve in accordance with 6.30.6 NMAC.

[6.30.6.6 NMAC - Rp. 6.30.6.6 NMAC, 5/24/2022]

**6.30.6.7 DEFINITIONS:**

**A. "Emergency suspension"** means a suspension imposed by the secretary when there is sufficient reason to believe the educational process in the school district or public school has been severely impaired or halted as a result of severe deficiencies.

**B. "Public school"** means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings or remotely administered program generally recognized as either an

elementary, middle, junior high, or high school or any combination of those and includes a charter school; and

**C. “School district”** means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes. [6.30.6.7 NMAC - Rp. 6.30.6.7 NMAC, 5/24/2022]

**6.30.6.8 FACTORS IN DETERMINING SUSPENSION BY THE SECRETARY:**

**A.** Suspending the authority of local school boards is warranted whenever there has been a failure to meet requirements of law, standards, or rules of the department, relating to any part of the school district under their respective control. Whether or not to commence the suspension process under this rule shall be at the discretion of the secretary who will make this determination on a case by case basis.

**B.** The secretary, after consultation with the commission, shall suspend from authority and responsibility a local school board that has had notice of disapproval and fails to comply with the requirements or procedures of Subsection B of 6.30.6.9 NMAC.

**C.** To determine a failure to meet the requirements of law, department standards, or department rules, the secretary shall consider the following factors, including but not limited to:

- (1) the existence of a pattern of noncompliance with requirements of any applicable law, department standards, state or federal rules, or department directives;
- (2) the nature and severity of any identified area or areas of noncompliance with requirements of any applicable law, department standards, state or federal rules, or department directives;
- (3) the nature and type of notice given by the department to the applicable local school board regarding the

area or areas of noncompliance with requirements of law, department standards, or department directives;

(4) the opportunity to correct the area or areas of noncompliance, if correction is possible under the circumstances;

(5) the extent of any efforts to correct the area or areas of noncompliance; and

(6) the reasons given by the local school board for failing to comply with Subsection B of Section 22-2-14 NMSA 1978 or with other requirements of law, department standards, and department directives, leading to the proposed suspension.

**D.** If suspension is ordered, the department shall act in lieu of the suspended local school board, provided that any expenses or payments associated with the authority delegated by the secretary to act in lieu of the suspended local school board shall be the responsibility of the local school board as part of its operational funds.

**E.** Money budgeted by a local school board shall be spent first to attain and maintain the requirements for a school district as prescribed by law and by standards and rules as prescribed by the department. The department may disapprove instructional units or administrative functions that it determines to be detrimental to the educational process.

[6.30.6.8 NMAC - Rp. 6.30.6.8 NMAC, 5/24/2022]

**6.30.6.9 PROCEDURES FOR NON-EMERGENCY SUSPENSION:**

**A.** Before suspending a local school board, the department shall deliver written notification to a local school board of its failure to meet requirements of laws, rules, or standards. The notice shall describe the deficiency or deficiencies.

**B.** Within 30 calendar days after the receipt of the notice of failure to meet requirements, the local school board shall:

- (1) comply with the specific and attendant

requirements in order to remove the cause for disapproval; or

(2) submit plans satisfactory to the department to meet the requirements and remove the cause for disapproval.

**C.** At any time prior to the entry of a permanent order of suspension, the secretary shall consult with the public education commission at a public meeting to discuss the reasons for and purpose of the proposed suspension. The commission may recommend other alternatives to suspension, which the secretary may consider in rendering a final decision in the process.

**D.** If after 30 calendar days from receipt of a notice of failure to meet requirements, the local school board has failed or refused to comply with the specific and attendant requirements set forth in the notice, including submitting a satisfactory plan of compliance to the department, the secretary shall issue an alternative order of suspension that states the cause(s) for the suspension, the effective date and time the suspension will begin, and any other information the secretary deems relevant. The alternative order of suspension shall be delivered to the local school board by physical or electronic mail.

**E.** The alternative order shall also contain notice of a time, date, and place for a public hearing, prior to the beginning of suspension, to be conducted by the secretary or their designated hearing officer, at which the local school board may appear and show cause why the suspension should not be put into effect.

**F.** Members of the suspended local school board shall notify the department in writing of the suspended local school board members’ intent to appear and show cause regarding why the suspension should not be put into effect. [6.30.6.9 NMAC - Rp. 6.30.6.9 NMAC, 5/24/2022]

**6.30.6.10 PROCEDURES FOR EMERGENCY SUSPENSION:**

**A.** The secretary may suspend a local school board when the local school board has been notified of disapproval and when the department has sufficient reason to believe that the educational process in the school district has been severely impaired or halted as a result of deficiencies so severe as to warrant disapproved status before a public hearing can be held.

**B.** An emergency suspension may occur before a hearing. As soon as practicable after the secretary suspends a local school board, a public hearing shall be held in accordance with the procedures outlined in 6.30.6.12 NMAC.

**C.** The secretary shall include in the written notice of disapproval status the following:

(1) a description of the laws, rules, or standards that have not been followed; and

(2) summary of the reasons why the educational process in a local school district has been deemed to be so severely impaired or halted as a result of such severe deficiencies to warrant disapproval status before a public hearing can be held.

**D.** The notice shall provide the method by which the suspended local school board members may declare their intent to appear for a hearing to show cause why the suspension should not be made permanent.

**E.** If suspension is ordered before a public hearing can be held, the department shall immediately take control and act in the place of the local school board. The department shall act in lieu of the suspended local school board and shall execute all the legal authority of the local school board until such suspension is removed.

**F.** The secretary may delegate authority to an individual or individuals to act in lieu of the suspended local school board, provided that any expenses associated with such actions shall be the responsibility of the school district. [6.30.6.10 NMAC - N, 5/24/2022]

**6.30.6.11 DURATION OF SUSPENSION:** Suspension of a local school board shall continue until and the secretary removes the suspension. Nothing in this rule shall limit the term of office, membership, election, re-election, or recall of a local school board.

[6.30.6.11 NMAC - Rp. 6.30.6.10 NMAC, 5/24/2022]

**6.30.6.12 HEARING PROCEDURES:**

**A.** A hearing shall be held:

(1) within 30 calendar days of the date the secretary issues the alternative order of suspension; or

(2) within 60 days after the secretary issues an emergency order of suspension, which may be extended by the secretary upon good cause shown.

**B.** The local school board subject to an order of suspension, within 25 calendar days of the date an order of suspension is issued, may submit to the secretary a written statement explaining why the secretary should not issue an order of suspension.

(1) The written statement shall address only the cause(s) for suspension specified in the order of suspension and the reasons for opposing the suspension, which shall address the factors outlined in Subsection C of 6.30.6.8 NMAC.

(2) The written statement shall be submitted to the department's office of general counsel.

**C.** Only matters relevant to the contents of the order of suspension and the statement from the local school board required by this section may be raised at the hearing.

**D.** The secretary or hearing officer may have the department's legal counsel and other department staff present at the hearing and may seek their advice at any time.

**E.** The rules of evidence and rules of civil procedure shall not apply to the hearing.

**F.** The hearing shall be presided over by the secretary or a hearing officer designed by the secretary, and shall be open to the public. A hearing officer shall, within two business days after the hearing, or sooner if requested by the secretary, submit a recommended decision to the secretary.

**G.** The secretary or hearing officer shall open the hearing by presenting a summary of the reasons for the alternative order or emergency suspension.

**H.** The local school board shall then commence a presentation to show why the secretary should not make permanent the alternative order or emergency suspension.

**I.** The local school board may present witnesses and introduce documentary evidence to rebut the department's recommendation of the alternative order or imposition of the emergency suspension. The local school board's presentation and witnesses may be subject to objection or cross-examination. The department may also present witnesses and introduce documentary evidence related to the alternative order or imposition of the emergency suspension. The department's presentation and witnesses may also be subject to objection or cross-examination.

**J.** The secretary or hearing officer may question department staff or the local school board subject to the alternative order or suspension regarding the causes for the alternative order or emergency suspension and the reasons stated by the recipient for opposing the alternative order or emergency suspension. The local school board may also question the department's witnesses regarding the causes for the alternative order or emergency suspension and the reasons stated by the recipient for opposing the alternative order or emergency suspension.

**K.** The secretary or hearing officer may question witnesses and rule on admission of

testimony or documentary evidence, including exercising discretion to exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence.

**L.** The secretary shall make permanent, modify, or withdraw the alternative order or emergency suspension within five business days after the hearing date.

**(1)** The secretary’s decision shall be in writing and delivered to the local school board subject to the alternative order or emergency suspension.

**(2)** The secretary’s written decision shall address the requirements for removing the suspension.

**(3)** The decision may be delivered by physical or electronic mail at the address or email with school district.

**M.** The local school board subject to the alternative order or emergency suspension may waive the timelines provided in this rule by submitting such waiver to the secretary in writing and signed by a person with authority to make the submission.

**N.** An administrative record shall be made, including a record of the proceedings, which may be an audio recording. Payment may be required for receipt of the administrative record.

**O.** The matter may be settled by the parties at any time prior to the conclusion of the hearing. Any such agreement shall address the timelines provided in this rule.

**P.** The local school board subject to the suspension that is aggrieved by the secretary’s decision may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[6.30.6.12 NMAC - Rp. 6.30.6.12 NMAC, 5/24/2022]

**6.30.6.13 IMPLEMENTATION:**

**A.** The secretary may employ or contract with consultants, contractors, or other individuals determined to be appropriate by the secretary in executing their legal

authority over a suspended local school board, provided that any expenses or payments associated with the use of these groups or individuals shall be the responsibility of the local school board.

**B.** While it shall not be the express purpose of a suspension under this rule to terminate, discharge, or replace licensed or unlicensed school district employees, the secretary shall possess and execute all the legal authority and responsibility of the suspended local school board subject to the following restrictions:

**(1)** The retention of existing school district administrators and employees shall be considered.

**(2)** Any termination or discharge of school district employees shall be conducted in accordance with the applicable sections of the School Personnel Act, Section 22-10A-1 et seq. NMSA 1978.

**(3)** Any adverse personnel action of any licensed or unlicensed school district employee shall be limited to the authority set forth in the school district’s policies of the suspended local school board.

**(4)** The secretary shall not be obligated to honor any school district employment plans or letters of intent issued pursuant to Section 22-10A-14 NMSA 1978 that involve the hiring of an individual holding or seeking a certificate of waiver.

[6.30.6.13 NMAC - Rp. 6.30.6.11 NMAC, 5/24/2022]

**6.30.6.14 SEVERABILITY:** If any part or application of this rule is held invalid by a court of competent jurisdiction, the remainder or its application to other situations shall not be affected.

[6.30.6.14 NMAC - Rp. 6.30.6.13 NMAC, 5/24/2022]

**HISTORY OF 6.30.6 NMAC:** 6.30.6 NMAC - Suspension of Authority of a Local School Board, Superintendent or Principal, filed 10/17/2005. was repealed and

replaced by 6.30.6 - Suspension of Authority of a Local School Board, effective 5/24/2022.

**PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 60 SCHOOL PERSONNEL – GENERAL PROVISIONS**

**PART 11 REQUIRED TRAINING PROGRAM FOR SCHOOL DISTRICT PERSONNEL, SCHOOL VOLUNTEERS, AND CONTRACTORS**

**6.60.11.1 ISSUING AGENCY:** Public Education Department (PED), hereinafter the department. [6.60.11.1 NMAC - N, 5/24/2022]

**6.60.11.2 SCOPE:** This rule shall apply to all school district personnel, school employees, school volunteers, contractors, and contractors’ employees. [6.60.11.2 NMAC - N, 5/24/2022]

**6.60.11.3 STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, and 22-10A-32 NMSA 1978. [6.60.11.3 NMAC - N, 5/24/2022]

**6.60.11.4 DURATION:** Permanent. [6.60.11.4 NMAC - N, 5/24/2022]

**6.60.11.5 EFFECTIVE DATE:** May 24, 2022, unless a later date is cited in the history note at the end of a section. [6.60.11.5 NMAC - N, 5/24/2022]

**6.60.11.6 OBJECTIVE:** This rule establishes the mandatory ethical misconduct training course requirements for all school district personnel, school employees, school volunteers, contractors, and contractors’ employees. [6.60.11.6 NMAC - N, 5/24/2022]



**6.60.11.7****DEFINITIONS:****A. "Child abuse"**

means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian, custodian, or other adult;

(2) who has suffered physical abuse, emotional abuse, or psychological abuse inflicted or caused by the child's parent, guardian, custodian, or other adult;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian, custodian, or other adult;

(4) whose parent, guardian, custodian, or other adult has knowingly, intentionally, or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian, custodian, or other adult has knowingly or intentionally tortured, cruelly confined, or cruelly punished the child.

**B. "Contractor"**

means an individual who is under contract with a public school and is hired to provide services to the public school, but does not include a general contractor or a building or maintenance contractor who is supervised and has no access to students at the public school.

**C. "Ethical**

**misconduct"** means the following behavior or conduct by school district personnel, school employees, school volunteers, contractors or contractors' employees:

(1) discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status, or serious medical condition;

(2) sexual misconduct or any sexual offense prohibited by Chapter 30, Article 6A or Article 9 NMSA 1978 involving an adult or child, regardless of a child's

enrollment status;

(3) fondling a child or student, including touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin, or anus; or

(4) any other behavior, including licentious, enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral, or other prohibited behavior.

**D. "Public school"**

means a school district, charter school, constitutional special school, regional education cooperative, or the educational program of another state agency.

**E. "School district"**

includes charter schools.

**F. "School employee"**

includes licensed and unlicensed employees of a public school.

**G. "School volunteer"**

means a person, including a relative of a student, who commits to serve on a regular basis at a school district, charter school, or other educational entity without compensation.

**H. "State agency"**

means a regional education cooperative or state institution.

**I. "State institution"**

means the New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas, and any other state agency responsible for educating resident children.

[6.60.11.7 NMAC - N, 5/24/2022]

**6.60.11.8 MANDATORY ETHICAL MISCONDUCT TRAINING PROGRAM FOR ALL SCHOOL DISTRICT PERSONNEL, SCHOOL EMPLOYEES, SCHOOL VOLUNTEERS, CONTRACTORS, AND CONTRACTORS' EMPLOYEES:**

**A.** Within the first year of employment or provision of

contractual or volunteer services, all newly hired school district personnel, school employees, contractors, contractors' employees, and all new school volunteers shall complete training provided by approved providers, including the New Mexico public school insurance authority's contracted entities and New Mexico state university's training on recognizing and reporting child abuse; or provide evidence that they have already completed the required training. The ethical misconduct training shall address child abuse and neglect, ethical misconduct, professional responsibilities, sexual abuse and assault, and substance abuse, and shall include, at a minimum training on the following:

(1) reporting requirements, including minimal standards triggering reporting;

(2) trauma-informed instruction;

(3) identification of circumstances and factors that are indicators of likely child abuse or inappropriate behaviors;

(4) ethical misconduct;

(5) professional responsibilities;

(6) investigations and procedures; and  
(7) relevant legal and regulatory definitions.

**B.** Current school district personnel, school employees, school volunteers, contractors, and contractors' employees shall complete the training required under Subsection A of 6.60.11.8 NMAC within one year of the final adoption and promulgation of 6.60.11 NMAC.

**C.** The department shall make the training programs required pursuant to 6.60.11.8 NMAC available to the deans and directors of all colleges of education in New Mexico for use in providing training to candidates seeking elementary and secondary education licensure.

**D.** All school district personnel, school employees, school volunteers, contractors, and contractors' employees shall complete

all the training required under Subsection A of 6.60.11.8 NMAC every two years.  
[6.60.11.8 NMAC - N, 5/24/2022]

**6.60.11.9 ETHICAL MISCONDUCT TRAINING REPORTING AND COMPLIANCE:**

All school districts and public schools shall maintain records of the ethical misconduct training completion required under Subsection A of 6.60.11.8 NMAC, including initial and biennial training, of all school district personnel, school employees, school volunteers, contractors, and contractors' employees.  
[6.60.11.9 NMAC - N, 5/24/2022]

**HISTORY OF 6.60.11 NMAC: [RESERVED]**

**PUBLIC EDUCATION DEPARTMENT**

**This is a short-form amendment to 6.29.1 NMAC, Subsection M of Section 9, effective 5/24/2022.**

**Explanatory Paragraph: Subsections A through L, and N through R were not shown as no changes were made to those subsections.**

**6.29.1.9 PROCEDURAL REQUIREMENTS:**

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**M.** Statewide student assessment system. As stated in Section 22-2-8.13 NMSA 1978, students' knowledge and skills are assessed and evaluated though the New Mexico content standards with benchmarks and performance standards, the system of assessments, and local measures.

(1) The statewide student assessment system. All public school students, with the exceptions indicated below, shall participate in the system of assessments, which includes standards-based assessments in grades 3 through 8 and high school.

(2) Exceptions. Exceptions include special provisions and requirements for the assessment of English language learners and students with IEPs.

(a) English language learners. Students who have limited English language skills (i.e., students who are "English language learners") as determined by the department-approved English language proficiency screening assessment shall participate in the statewide assessment program. The following considerations specify how assessment shall be conducted.

(i) Length of enrollment in U.S. schools. The options for participation of English language learners in the New Mexico standards-based assessment program depend on the length of time that the student has been enrolled in U.S. public schools. For students who are new to U.S. schools, the following applies: Students who are enrolled for the first year in a U.S. school may receive an exemption from the system of assessments for English language arts, including all subtests therein. In all other content areas of the system of assessments, the student shall participate in the Spanish-language version of the assessment (if available and appropriate) or in the English-language version with accommodations provided, if they are determined to be appropriate by the local school's team, as described in (iii) of Subparagraph (a) of Paragraph (2) of Subsection M of 6.29.1.9 NMAC. For the subtests other than reading, the test completion status shall be student tested all sessions, and the types of accommodations that are provided, if any, shall be indicated in the student information system. Students who have been in U.S. schools for at least 12 months and less than three consecutive years shall participate in the statewide assessment program in one of three ways: the student may participate in the standard administration of the English-language version of the assessment without accommodations; the student may participate in

the English-language version of the assessment with appropriate accommodations; or the student may participate in the standard administration of the Spanish-language version of the assessment, where available and appropriate.

(ii) Waivers for home language assessment. Students who have been in U.S. schools for three or more consecutive years shall participate in the English-language version of the assessment with or without allowable accommodations, unless a request based on the determination of the local education agency to continue the testing of the student in the home language of Spanish and the request is approved by the secretary. If, after three consecutive years in U.S. schools, the district or charter school determines (on a case-by-case basis) that academic assessments in the student's home language of Spanish would yield more accurate and reliable information about the student's knowledge of a subject, the district or charter school may request a waiver from the secretary to continue to assess the student in the home language of Spanish. Approved waivers are effective for the current year only; annual waiver requests may be approved for a maximum of two years. The waiver request shall be submitted to the secretary for approval at least three months before the assessment, by the district's superintendent or the charter school administrator. The request shall include: student name, student state identification number, school in which the student is currently enrolled, student's grade level, student's most recent department-approved English language proficiency, assessment date and overall composite score, length of enrollment in U.S. schools, an indication of whether this is the first or second waiver request for the student, the reason or justification for the waiver request, and names of the school team members involved in the decision to request the waiver.

(iii) accommodations. Districts and charter

schools shall provide accommodations to English language learners after consideration of their appropriateness for the individual student. To determine the appropriateness of allowing accommodations, the district or charter school shall consider the student's level of proficiency in all domains of language (listening, speaking, reading, writing and comprehension) and the nature of the school's instructional program. The district or charter school shall ensure that students do not receive accommodations without current justification supported by data. District and school staff may obtain the technical assistance on procedures for accommodations from the department's district test coordinator's manual or from the department. Each school shall utilize a team to review individual student progress in order to determine accommodations. For students being served on an individualized education program (IEP) or Section 504 Plan, those teams (IEP or Section 504) will respectively determine appropriate test accommodations. For all other students, the school may use its student assistance team (SAT) or form another school-based team for this purpose, but the team shall be comprised of at least three school staff, including staff who are familiar with the student's abilities and language needs, standardized test procedures and valid ELL test accommodations. Team members may include: the student's bilingual multicultural education- or TESOL-endorsed teacher, the bilingual multicultural education program coordinator, the student's other teacher(s), administrators or school test coordinators, or the school counselor. The student's parent or guardian, the student and other staff members may be also included, as appropriate. The team shall base its decisions about appropriate accommodations on the following: annual review of the student's progress in attaining English proficiency, student's current English language proficiency, including the student's experience and time in

U. S. schools, student's expected date for exiting English language learner accommodations, student's familiarity with the accommodation under consideration, the primary language of instruction used in the content area to be assessed and the length of time that the student has received instruction in that language, and the student's grade level. Written documentation of accommodation decisions made by the team shall be stored in the student's cumulative file and shall be reported to the department's bureau of assessment and evaluation.

**(b)**

Students with IEPs. Students with IEPs who receive special education and related services shall participate in all statewide and district-wide assessments of student achievement or in state-approved alternate assessments. Pursuant to Subsection E of 6.31.2.11 NMAC, 34 CFR 300.320 (a)(2)(ii) and 34 CFR 300.320(a)(6), the IEPs for such students shall specify which assessments each student will participate in and what, if any, accommodations or modifications in administration are needed to enable the student to participate.

The IEPs for students who will not participate in a particular statewide or district-wide assessment shall meet state-approved criteria, methods and instruments.

**(c)**

Waiver of the high school system of assessments (graduation requirement assessment).

**(i)**

With the approval of the local board of education or charter school governing body, the local superintendent or charter school administrator may request written approval from the secretary to award a diploma to a student who has not passed the high school system of assessments. The district or charter school shall document student attainment of required competencies through an alternative assessment procedure and shall submit such a request using the department's *high school system of assessments waiver*

*request* form. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; statement of applicable district or charter school policy, list of students for whom the waiver request is being made including: student name, school, date of board approval, and statement of whether or not competencies are documented through an alternative assessment; and rationale for request.

**(ii)**

With appropriate documentation, a passing score on another state's graduation requirement assessment shall substitute for the high school system of assessments.

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[6.29.1.9 NMAC - Rp, 6.30.2.10 NMAC, 6/30/2009; A, 02/12/2010; A, 10/31/2011; A, 2/28/2017; A, 07/25/2017; A, 12/15/2020; A, 5/24/2022]

## PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission, approved at its 4/20/2022 open meeting, to repeal its rule 17.9.570 NMAC - Governing Cogeneration and Small Power Production (filed 10/1/2008) and replace it with 17.9.570 NMAC - Governing Cogeneration and Small Power Production, effective 5/24/2022.

## PUBLIC REGULATION COMMISSION

**TITLE 17 PUBLIC  
UTILITIES AND UTILITY  
SERVICES  
CHAPTER 9 ELECTRIC  
SERVICES  
PART 570 GOVERNING  
COGENERATION AND SMALL  
POWER PRODUCTION**

**17.9.570.1 ISSUING  
AGENCY:** New Mexico Public



Regulation Commission.  
[17.9.570.1 NMAC - Rp, 17.9.570.1 NMAC, 5/24/2022]

**17.9.570.2 SCOPE:**

**A.** 17.9.570 NMAC applies to every electric utility (investor-owned, rural electric cooperative, municipal, or an entity providing wholesale rates and service) operating within the state of New Mexico that is subject to the jurisdiction of the New Mexico public regulation commission as provided by law.

**B.** It is intended that the obligations of utilities provided for in 17.9.570 NMAC shall extend to both production and consumption functions of qualifying facilities irrespective of whether the production and consumption functions are singly or separately owned. In situations where the production and consumption functions are separately owned, the qualifying facility or its operator may elect to enter into the contract with the utility.

**C.** All interconnection contracts between utilities and qualifying facilities existing at the time 17.9.570 NMAC is adopted shall automatically continue in full force and effect with no change in rates for the purchase of power from the qualifying facilities. Any changes made to the existing interconnection contracts shall be made by mutual agreement and shall conform to the provisions of 17.9.570 NMAC.

**D.** Variances which have been granted by the commission from earlier versions of general order no. 37 and under 17.9.570 NMAC shall continue in full force and effect unless the commission specifically rescinds any such variance.

[17.9.570.2 NMAC - Rp, 17.9.570.2 NMAC, 5/24/2022]

**17.9.570.3 STATUTORY**

**AUTHORITY:** Sections 8-8-15, 62-6-4, 62-6-19, 62-6-24, and 62-8-2 NMSA 1978; 16 USCA Section 2621.  
[17.9.570.3 NMAC - Rp, 17.9.570.3 NMAC, 5/24/2022]

**17.9.570.4 DURATION:**  
Permanent.

[17.9.570.4 NMAC - Rp, 17.9.570.4 NMAC, 5/24/2022]

**17.9.570.5 EFFECTIVE**

**DATE:** May 24, 2022, unless a later date is cited at the end of a section. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.

[17.9.570.5 NMAC - Rp, 17.9.570.5 NMAC, 5/24/2022]

**17.9.570.6 OBJECTIVE:**

**A.** 17.9.570 NMAC is to govern the purchase of power from and sale of power to qualifying facilities by:

- (1) enabling the development of a market for the power produced by qualifying facilities;
- (2) establishing reasonable and objective criteria to determine when a legally enforceable obligation arises;
- (3) establishing guidelines for the calculation of utilities' avoided costs, including the option to use market-based methods to calculate avoided energy and capacity costs; and
- (4) providing meaningful access to critical cost information from utilities.

**B.** 17.9.570.14 NMAC is intended to simplify the metering procedures for qualifying facilities up to and including 10kW and encourage the use of small-scale customer-owned renewable or alternative energy resources in recognition of the beneficial effects the development of such resources will have on the environment of New Mexico.

**C.** 17.9.570 NMAC is intended to implement regulations of the federal energy regulatory commission, 18 C.F.R. Section 292, as amended, promulgated pursuant to the Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 (codified as amended starting at 16 U.S.C. Section 824) and the New Mexico Public Utility Act, Sections 62-3-1 et. seq., NMSA 1978 as amended.

**D.** The standards and procedures for the interconnection

of generating facilities with rated capacities up to and including 10 MW are set forth in 17.9.568 NMAC. The standards and procedures for the interconnection of generating facilities with rated capacities greater than 10 MW are set forth in 17.9.569 NMAC.

[17.9.570.6 NMAC - Rp, 17.9.570.6 NMAC, 5/24/2022]

**17.9.570.7 DEFINITIONS:**

Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA) shall have the same meaning for purposes of this rule as they have under PURPA, unless further defined in 18 CFR 292.101. The following definitions apply for purposes of this rule:

**A. Definitions beginning with "A":**

(1) **avoided costs** means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source. Avoided costs shall exclude all costs that the utility would not have been incurred "but for" the sale by the qualifying facility. Costs that would not have been incurred "but for" the sale by the qualifying facility shall include, but are not limited to, settlement adjustment charges and costs associated with additional reserves, systems operation impacts, and curtailments;

(2) **as available power** means power that a qualifying facility may sell, but has no legal obligation to sell, to the utility.

**B. Definitions beginning with "B":**

**back-up power** means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the qualifying facility;

**C. Definitions beginning with "C":**

**commission** means New Mexico public regulation commission.

**D. Definitions beginning with "D":**

**design**

**capacity** means the total AC nameplate power rating of the power conversion unit(s) at the point of common coupling.

**E. Definitions**

**beginning with “E”:** [RESERVED]

**F. Definitions**

**beginning with “F”:** [RESERVED]

**G. Definitions**

**beginning with “G”:** [RESERVED]

**H. Definitions**

**beginning with “H”:**

[RESERVED]

**I. Definitions**

**beginning with “I”:**

(1)

**interconnection costs** means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs;

(2)

**interruptible power** means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

**J. Definitions**

**beginning with “J”:** [RESERVED]

**K. Definitions**

**beginning with “K”:** [RESERVED]

**L. Definitions**

**beginning with “L”:**

(1) **locational**

**marginal price** means the price for energy at a particular location as determined in the western energy imbalance market or in the “SPP energy markets” which means the real-time energy markets operated by southwest power pool, inc;

(2) **legally**

**enforceable obligation** means a public utility’s obligation to purchase as-available energy from a qualified facility and is created when the criteria set forth in 17.9.570.9 NMAC are met and refers to the qualifying facility’s obligation to sell power to a utility for the term of the obligation, and to the utility’s corresponding obligation to purchase power from the qualifying facility for the term of the obligation.

**M. Definitions**

**beginning with “M”:** **maintenance**

**power** means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

**N. Definitions**

**beginning with “N”:**

(1) **net**

**metering** means the difference between the energy produced by the qualifying facility’s generation and the energy that would have otherwise been supplied by the utility to the qualifying facility absent the qualifying facility’s generation;

(2) **new**

**capacity addition:**

(a)

new capacity addition means the capacity added to a utility’s resource mix after the effective date of 17.9.570 NMAC through normal utility resource procurement activities which shall include but not necessarily be limited to:

(i)

construction of or participation in new generating facilities;

(ii)

augmenting the capacity of or extending the life of existing generating facilities through capital improvements; or

(iii)

entering into new contracts or exercising options in existing contracts which will result in additional capacity;

(b)

new capacity addition does not include the following:

(i)

renegotiation of existing contracts

for anything other than increasing capacity in the resource mix;

(ii)

renegotiation of existing full power requirements contract between a distribution cooperative and its full power requirements supplier; and

(iii)

seasonal uprating in capacity achieved without any capital improvements to existing generating facilities.

**O. Definitions**

**beginning with “O”:** [RESERVED]

**P. Definitions**

**beginning with “P”:**

(1) **point of**

**common coupling (PCC)** means the point where the interconnection facilities connect with the utility’s system;

(2) **power**

means electric energy or capacity or both;

(3) **power**

**conversion unit (PCU)** means an inverter or AC generator, not including the energy source;

(4) **purchase**

means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

**Q. Definitions**

**beginning with “Q”:**

(1) **qualifying**

**facility** means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart B of 18 C.F.R. Part 292;

(a)

A qualifying facility may include transmission lines and other equipment used for interconnection purposes (including transformers and switchyard equipment), if:

(i)

Such lines and equipment are used to supply power output to directly and indirectly interconnected electric utilities, and to end users, including thermal hosts, in accordance with state law; or

(ii)

Such lines and equipment are used to transmit supplementary, standby, maintenance and backup power to the qualifying facility, including its thermal host meeting the criteria set forth in Union Carbide Corporation,

48 FERC 61,130, reh'g denied, 49 FERC 61,209 (1989), aff'd sub nom., Gulf States Utilities Company v. FERC, 922 F.2d 873 (D.C. Cir. 1991); or

(iii)

If such lines and equipment are used to transmit power from other qualifying facilities or to transmit standby, maintenance, supplementary and backup power to other qualifying facilities.

(b)

The construction and ownership of such lines and equipment shall be subject to any applicable federal, state, and local siting and environmental requirements.

**R. Definitions**

**beginning with "R": rate** means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

**S. Definitions**

**beginning with "S":**

(1) **sale** means the sale of electric energy or capacity or both by an electric utility to a qualifying facility;

(2) **settlement adjustment charge** means the sum of adjustments to the settlement interval by an energy market, such as the southwest power pool, to account for market charges or credits applicable to the qualifying facility resource.

(3)

**supplementary power** means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself;

(4) **system emergency** means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

**T. Definitions**

**beginning with "T": tariff** means

the document filed by a utility with the commission pursuant to 17.9.570 NMAC containing that utility's rules, rates, services and forms.

**U. Definitions**

**beginning with "U": utility** means a utility or public utility as defined in Section 62-3-3 NMSA 1978 serving electric customers subject to the jurisdiction of the commission.

**V. Definitions**

**beginning with "V": [RESERVED]**

**W. Definitions**

**beginning with "W": western energy imbalance market (or western EIM)** means the real-time energy imbalance market operated by the California independent system operator corporation.

**X. Definitions**

**beginning with "X": [RESERVED]**

**Y. Definitions**

**beginning with "Y": [RESERVED]**

**Z. Definitions**

**beginning with "Z": [RESERVED]** [17.9.570.7 NMAC - Rp, 17.9.570.7 NMAC, 5/24/2022]

**17.9.570.8 [RESERVED]** [17.9.570.8 NMAC - Rp, 17.9.570.8 NMAC, 5/24/2022]

**17.9.570.9 OBLIGATION TO PURCHASE:**

**A.** If a qualifying facility elects to sell power to the utility on an as-available basis, the utility shall purchase power from the qualifying facility from the date the qualifying facility begins providing as-available power to the utility.

**B.** If a qualifying facility elects to sell power to the utility in accordance with a legally enforceable obligation, the legally enforceable obligation arises on the date that the qualifying facility demonstrates compliance with all of the following prerequisites:

(1) The qualifying facility has filed an interconnection application with the appropriate entity and has tendered all required fees to that entity;

(2)

The qualifying facility has taken meaningful steps to obtain site control to construct the entire qualifying

facility, which the qualifying facility may demonstrate through the production of executed agreements and through similar measures;

(3) The qualifying facility has applied for all required federal, state, and local permits and licenses necessary to construct and operate the facility, and has tendered all required fees to the appropriate governmental authorities;

(4) The qualifying facility has completed all environmental studies and other actions necessary to support permit and license applications including but not limited to acquired and recorded in the appropriate governmental offices all real property rights necessary to construct and operate the facility, such as real property leases, rights of way, line locations approvals and easements;

(5) The qualifying facility has obtained or applied for financing of the proposed project, as evidenced by loan application documents or other types of financing applications;

(6) The qualifying facility has provided the utility with a construction plan and timeline for the construction of the facility, including construction cost quotes; and

(7) The qualifying facility has submitted a self-certification to the federal energy regulatory commission that has not been revoked, has received an order from the federal energy regulatory commission certifying qualifying facility status, or has otherwise demonstrated that certification as a qualifying facility is not required under the Federal Energy Regulatory Commission's regulations.

**C.** After receipt of a qualifying facility's request that the utility acknowledge that a legally enforceable obligation to purchase from the qualifying facility has arisen, the utility shall provide a response to the qualifying facility within 30 calendar days. If the utility rejects the qualifying facility's request or otherwise fails to acknowledge the request within 30 calendar days,



the qualifying facility may file an application with the commission seeking a determination that the utility has a legally enforceable obligation to purchase power from the qualifying facility, with the date of such obligation to be fixed by the commission.

**D.** Regardless of when a legally enforceable obligation arises, the utility's obligation to begin paying for power provided under a legally enforceable obligation begins on the date the qualifying facility begins delivering power to the utility.

**E.** An electric utility is obligated to purchase power from a qualifying facility at the utility's avoided cost, as calculated under 17.9.570.11 NMAC, regardless of whether the electric utility making such purchase is simultaneously selling power to the qualifying facility.

**F.** The qualifying facility shall give the utility at least 60 days written advance notice to interconnect. Such notice shall specify the date the qualifying facility will be ready for interconnection, the date the qualifying facility will be able to commence testing, and the anticipated date of operation after testing. The qualifying facility shall pay the estimated costs of interconnection in full at the time the notice to interconnect is given. The utility shall pay a qualifying facility for any energy produced during testing of the qualifying facility at the appropriate energy rate pursuant to Subsection B of 17.9.570.11 NMAC.

**G.** If the utility determines that it cannot interconnect the qualifying facility within the time set in the notice to interconnect because adequate interconnection facilities are not available, it shall, within 15 business days of receipt of the notice to interconnect, notify the qualifying facility specifying the reasons it cannot interconnect as requested by the qualifying facility and specifying the date interconnection can be made. If the qualifying facility objects to the date for interconnection specified by the utility, objects

to the utility's determination that adequate interconnection facilities are not available, or disputes the good faith efforts of the utility to interconnect, the qualifying facility may initiate a proceeding before the commission pursuant to the complaint process of this 17.9.570 NMAC. If the commission finds that the utility's position on the time for interconnection or unavailability of interconnection facilities was not justified, the qualifying facility shall be deemed to have been interconnected and the qualifying facility shall be deemed to have otherwise complied with its contractual duties on the 60<sup>th</sup> day following the notice to interconnect and payments by the utility to the qualifying facility shall commence at the appropriate power rate which shall be applied to the amount of imputed or expected power as if the qualifying facility were producing, provided that the qualifying facility's power was available.

[17.9.570.9 NMAC - Rp, 17.9.570.9 NMAC, 5/24/2022]

**17.9.570.10 METERING OPTIONS:**

**A.** General.

**(1)** A

qualifying facility contracting to provide power may displace its own load. The utility may require appropriate metering. Billing for any power from the utility will be at the utility's approved rate applicable to the service provided to the qualifying facility in accordance with Subsections A-G of 17.9.570.12 NMAC.

**(2)** The

tariff filed by each utility pursuant to Subsection H of 17.9.570.13 NMAC shall include the offer to any qualifying facility that has not contracted to receive capacity payments, the metering options in Subsections B, C and D of 17.9.570.10 NMAC.

**(3)** The

options of Subsections B, C and D of 17.9.570.10 NMAC may involve time-of-day metering if the utility has in effect time-differentiated rates and

metering for the class of customer to which the qualifying facility belongs or if the parties negotiate time-differentiated payments to the qualifying facility.

**B.** Load displacement option. If the qualifying facility wishes primarily to serve its own load, the utility shall agree to interconnect with a single meter or meter set measuring flow from the utility to the qualifying facility; billing for any power from the utility will be at the utility's approved tariff applicable to the service provided to the qualifying facility; there will be no additional customer charge and no payment by the utility for any excess energy which might be generated by the qualifying facility.

**C.** Net metering option.

**(1)** The utility shall install the metering necessary to determine the net energy delivered from the qualifying facility to the utility or from the utility to the qualifying facility for each time-of-use or single rate period, as applicable, during a billing period; the net energy delivered to either the qualifying facility or to the utility is the difference between the energy produced by the qualifying facility's generation and the energy that would have otherwise been supplied by the utility to the qualifying facility absent the qualifying facility's generation.

**(2)** The net energy delivered from the qualifying facility to the utility shall be purchased by the utility at the utility's applicable time-of-use or single period energy rate as described in Subsection B of 17.9.570.11 NMAC; the qualifying facility shall be billed for the net energy delivered from the utility in accordance with the tariffs that are applicable to the qualifying facility absent the qualifying facility's generation; the qualifying facility shall also be billed for all demand and other charges in accordance with the applicable tariffs. At the end of the billing period the utility shall net all charges owed to the utility by the qualifying facility and all payments owed by the utility to the qualifying

facility. If a net amount is owed to the qualifying facility for the billing period, and is less than \$50, the payment amount may be carried over to the following billing period. If a net amount is owed to the qualifying facility and is \$50 or more, the utility shall make payment to the qualifying facility prior to the end of the next billing period.

**(3)** If provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, the qualifying facility shall pay all incremental costs associated with installing the more costly metering equipment and facilities. An additional customer charge to cover the added costs of billing and administration may be included in the tariff if supported with evidence of need for such charge.

**D.** Separate load metering (simultaneous buy/sell) option. The utility shall install the metering necessary to determine separately:

**(1)** all the energy produced by the qualifying facility's generator; and

**(2)** all of the power consumed by the qualifying facility's loads; the utility shall purchase all energy produced by the qualifying facility's generator at the utility's applicable time-of-use or single period energy rate as described in Subsection B of 17.9.570.11 NMAC. The qualifying facility shall purchase all power consumed at its normally applicable rate; an additional customer charge to cover the added costs of billing and administration may be included in the tariff if supported with evidence of need for such charge.

**E.** Metering configurations. Metering configurations used to implement the provisions of 17.9.570 NMAC shall be reasonable, nondiscriminatory, and shall not discourage cogeneration or small power production.

[17.9.570.10 NMAC - Rp,  
17.9.570.10 NMAC, 5/24/2022]

**17.9.570.11  
DETERMINATION OF RATES  
FOR PURCHASES FROM  
QUALIFYING FACILITIES:**

**A. General:** A utility shall pay a qualifying facility avoided costs for energy or capacity purchased from the qualifying facility. Avoided costs are defined in Subsection A of 17.9.570.7 NMAC. The energy rate represents avoided energy costs for the purposes of 17.9.570 NMAC. The avoided energy or capacity rate determined as provided herein represents avoided energy or avoided capacity costs for the purposes of 17.9.570 NMAC.

**B. Energy rate:**  
**(1)** Within one year of the approval of this rule, each utility subject to the commission's jurisdiction shall apply for approval of a tariff that specifies a method for determining avoided energy costs as specified herein to establish the avoided energy cost rates paid by that utility to qualifying facilities.

**(a)** A utility participating in the Western EIM may establish the energy rate to be paid for power supplied by a qualifying facility by reference to the appropriate Western EIM locational marginal price determined on an hourly basis if such locational marginal price is representative of the utility's avoided cost. To implement this option for the avoided cost energy rate, the utility must set forth in its current tariff on file with the commission the applicable Western EIM pricing location.

**(b)** A utility participating in the SPP may establish the energy rate to be paid for power supplied by a qualifying facility by reference to the appropriate SPP locational marginal price if such locational marginal price is representative of the utility's avoided cost, as defined herein. To implement this option for the avoided cost energy rate, the utility must set forth in its current tariff on file with the commission the applicable SPP pricing location.

**(c)** Any utility that participates in a

market has the flexibility to establish avoided energy cost rates based on the rule criteria. Any utility that does not participate in the Western EIM or the SPP may establish avoided energy cost rates based on:

- (i)** Locational marginal prices, if any are available;
- (ii)** Market hub prices;
- (iii)** Formulas based on natural gas prices;
- (iv)** Competitive solicitations; or
- (v)** Mutual agreement between the qualifying facility and the utility.

**(2)** In its application for approval of the tariff, each utility applying for approval of a method to calculate avoided energy cost rates for purchases shall specify the method to be used and explain why it results in an accurate approximation of the utility's avoided energy costs.

**(3)** The avoided energy cost rates calculated in accordance with the method approved under Paragraph (1) of Subsection B of 17.9.570.11 NMAC shall be applied to both energy acquired on an as-available basis and energy acquired pursuant to a legally enforceable obligation.

**(4)** Until the commission approves a utility's tariff under Paragraph (1) of Subsection B of 17.9.570.11 NMAC, the utility shall pay avoided cost rates calculated under Subsection C of 17.9.570.11 NMAC for both energy purchased on an as-available basis and energy purchased pursuant to a legally enforceable obligation. After the approval of the utility's tariff under Paragraph (1) of Subsection B of 17.9.570.11 NMAC, the utility shall pay the avoided cost rates calculated under the approved tariff for both energy purchased on an as-available basis and energy purchased pursuant to a legally enforceable obligation.

**C.** Until approval of a utility's tariff under Paragraph (1) of Subsection B 17.9.570.11 NMAC, the avoided cost rate to be paid for



the energy supplied by a qualifying facility in any month shall be that respective month's rate from the utility's current schedule on file with the commission. Each utility shall file with the commission its schedule containing monthly energy rates that will be applicable to the next 12-month period. These monthly energy rates shall be listed for each voltage level of interconnection and shall be expressed in cents/kWh. Each month's energy rate contained in the schedule shall be the average of the economy energy purchases by the utility for the corresponding month of the immediately preceding 12-month period. In the event a utility does not engage in economy energy purchases in any given month, the energy rate to be included in its schedule for that month shall be either: the monthly average of hourly incremental energy costs including variable operation and maintenance expenses for generating utilities, or the energy charge of the highest energy cost contract as adjusted for appropriate retail fuel and purchase power pass through for non-generating utilities.

(1) As applicable, those utilities with retail time-of-use rates on file with the commission shall file schedules reflecting monthly energy rates calculated for peak periods only and off-peak periods only which shall be applied to qualifying facilities whose generation is limited to peak periods only or off-peak periods only. Peak and off-peak periods shall be as defined in the utility's retail tariffs on file with the commission.

(2) Within 60 days of the effective date of revised 17.9.570 NMAC each electric utility subject to the rule shall file with the commission the schedule containing rates to be offered along with detailed supporting workpapers showing the input data and calculations, if applicable. After the first submittal each utility shall update its filing within 30 days from the last day of its fiscal year.

(3) To the extent applicable, variable operation

and maintenance rates used for the above computations shall be the basis for requested variable operation and maintenance rates in the utility's future rate cases.

(4)

The energy rate contained in the schedules shall include the savings attributable to the avoidance of losses due to transmission, distribution, and transformation as applicable for different voltage levels of interconnection. These transmission, distribution, and transformation loss avoidance savings for different voltage levels of interconnection shall be obtained from the utility's filing in the last commission-decided rate case, and those figures shall be shown in the utility's submittal.

D. Negotiations.

Notwithstanding the provisions of 17.9.570 NMAC, a utility and qualifying facility may at the qualifying facility's option negotiate rates for the power to be supplied by the qualifying facility. Such negotiated rates shall be filed with the commission within 30 days of the execution of the contract. The contract shall not contain any rate which is higher than the utility's avoided costs as defined in 17.9.570 NMAC.

[17.9.570.11 NMAC - Rp,  
17.9.570.11 NMAC, 5/24/2022]

**17.9.570.12 OBLIGATION TO SELL:**

A. Rates to be offered.

Utilities are required to provide supplementary power, backup power, maintenance power, and interruptible power to qualifying facilities irrespective of whether the production and consumption functions of the qualifying facility are singly or separately owned. The rates for supplementary power, backup power, maintenance power, and interruptible power shall be calculated as provided for in this section (17.9.570.12 NMAC) and included in the tariff for each utility to be filed pursuant to 17.9.570 NMAC. Utilities may charge a facilities fee for equipment dedicated to the customer pursuant to the utility's rate schedules and

rules governing the utility's practices for recovering such costs. The computation of the facilities fee shall take into account the costs of facilities already paid for by the customer before installing a qualifying facility.

B. Supplementary power.

(1)

Qualifying facilities shall be entitled to supplementary power under the same retail rate schedules that would be applicable to those retail customers having power requirements equal to the supplementary power requirements of the qualifying facility. Any ratchet enforced through the "billing demand" provisions of such retail schedules shall also apply.

(2)

To determine the amount of supplementary power required, supplementary power shall be measured to each qualifying facility through appropriate metering devices which are adequate to determine whether supplementary or backup power is being utilized. The demand interval used shall be the same as that contained in the applicable retail rate schedule.

C. Backup power.

(1) Qualifying

facilities shall be entitled to backup power for forced outages under the same retail rate which would be applicable absent its qualifying facility generation. Rates for sale of backup power shall not contain demand charges in time periods when demand charges are not applicable to such retail rate schedule. Rates for backup power shall not contain demand ratchets or power factor penalties. If the utility can demonstrate that a particular qualifying facility has caused either a demand ratchet or a power factor penalty clause between the utility and its power supplier(s) to be invoked because of the qualifying facility's operation, the utility may petition the commission to allow the allocable charges resulting from the demand ratchet or power factor penalty which has been invoked to be included in the rates for that particular qualifying facility.

(2) In the months that backup power is not utilized by the qualifying facility the rates for backup power may contain a monthly reservation fee which shall not exceed ten percent of the monthly demand charge contained in the retail rate schedule which would be applicable to the consumer absent its qualifying facility generation. Such a reservation fee shall not be charged while a qualifying facility is taking backup power or while charges resulting from a power factor penalty or demand ratchet have been imposed pursuant to Paragraph (1) of Subsection C of 17.9.570.12 NMAC.

**D. Maintenance power.**

(1) Maintenance power shall be provided to qualifying facilities for periods of maintenance scheduled in advance with the concurrence of the utility. A qualifying facility shall schedule such maintenance with the utility by giving the utility advance notice dependent on the length of the outage as follows:

Length of Outage*	Advance Notice*
1 day	5 days
2 to 5 days	30 days
6 to 30 days	90 days
*All days are calendar days.	

(2) Maintenance power rates shall be the same as the retail rate which would be applicable to the qualifying facility absent its qualifying facility generation. The maintenance power demand charge shall be determined by multiplying the applicable retail demand charge by the ratio of the number of weekdays in which the maintenance power was taken to the number of weekdays in the month. No demand charge shall apply for maintenance power taken during off-peak hours as defined in the utility's retail tariffs. For those utilities which do not have time-of-use rates, off-peak hours are defined as 11:00 p.m. to 7:00 a.m. weekdays, 24 hours per day on weekends and holidays.

(3) Maintenance power shall be available to qualifying facilities for a minimum period of 30 days per year scheduled outside of the system peak period of the utility which is defined as the three-month period covering the peak month together with the preceding and succeeding months.

**E. Interruptible power.** All utilities shall file rates for interruptible power which shall be available to qualifying facilities. Rates for such interruptible power purchases shall reflect the lower costs, if any, which the utility incurs in order to provide interruptible power as opposed to what it would incur to provide firm power.

**F. Customer charges.**

The customer charges from a utility for a qualifying facility shall be the same as the retail rate applicable to the customers in the same rate class absent its qualifying facility generation.

**G. Exceptions.** An electric utility shall not be required to provide supplementary power, backup power, maintenance power, or interruptible power to a qualifying facility if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the commission finds that provision of such power would:

- (1) impair the electric utility's ability to render adequate service to its customers; or
- (2) place an undue burden on the utility.

[17.9.570.10 NMAC - Rp, 17.9.570.10 NMAC, 5/24/2022]

**17.9.570.13 PERIODS WHEN PURCHASES AND SALES ARE NOT REQUIRED AND GENERAL PROVISIONS:**

**A. System emergencies.**

(1) During any system emergency a utility may discontinue on a nondiscriminatory basis:

- (a) purchases from a qualifying facility if

such purchases would contribute to such emergency, and

(b) sales to a qualifying facility provided that such discontinuance is on a previously established nondiscriminatory basis.

(2) A qualifying facility shall be required to provide power to a utility during a system emergency only to the extent:

(a) provided by agreement between the qualifying facility and the utility; or

(b) ordered pursuant to the provisions of the Federal Power Act, 16 U.S.C. Section 824a(c).

**B. Operational circumstances.** The utility may discontinue purchases from the qualifying facility during any period in which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases but instead generated an equivalent amount of energy itself; a claim by an electric utility that such a period has occurred or will occur is subject to verification by the commission; the utility shall maintain and make available sufficient documentation to aid the commission with verification proceedings.

**C. Notification requirements.** Any utility which

disconnects and thereby discontinues purchases or sales from a qualifying facility for the reasons cited in Subsections A and B of 17.9.570.13 NMAC above shall notify the qualifying facility or facilities prior to the system emergency or operational circumstance if reasonably possible. If prior notice is not reasonably possible the utility shall notify the qualifying facility by telephone or personal contact within 48 hours following the system emergency or operational circumstance followed by written communication if requested by the qualifying facility. Any notification shall include the specific reason for the system emergency or operational circumstance.

**D. Penalty.** Any utility which fails to comply with the notification requirements in Subsection C of 17.9.570.13 NMAC or fails to demonstrate the existence of a system emergency or operational circumstance which warrants the discontinuance of purchases shall pay for the qualifying facility's imputed or expected power at the applicable rate as if the system emergency or operational circumstance had not occurred. The utility may also be subject to a penalty under Section 62-12-4 NMSA 1978.

**E. Wheeling of power.** If the qualifying facility agrees, an electric utility which would otherwise be obligated to purchase power from the qualifying facility may transmit power to any other electric utility. Any electric utility to which power is transmitted shall purchase such power as if the qualifying facility were supplying power directly to such electric utility. The rate for purchase by the electric utility to which such power is transmitted shall be adjusted up or down to reflect line losses pursuant to 18 C.F.R. Section 292.304(e)(4) and shall not include any charges for transmission.

**F. Distribution cooperatives.**

(1) A distribution cooperative having a full power requirements contract with its supplier has the option of transferring the purchase obligation

pursuant to 17.9.570.9 NMAC to its power supplier. The qualifying facility will be paid the capacity and energy payments, as applicable, by the supplier pursuant to 17.9.570.11 NMAC. A distribution cooperative that does not transfer the purchase obligation to its power supplier shall have the option to:

(a) pay qualifying facilities the energy and capacity charges including appropriate fuel and purchase power pass-throughs it pays to its power supplier, or

(b) pay the qualifying facility the energy and capacity charges which shall be determined in accordance with Section 17.9.570.11 NMAC.

(2) The obligation to interconnect and provide supplementary, backup, and maintenance power either on a firm or on an interruptible basis shall remain with the distribution cooperative.

(3) Any municipal electric utility that does not have generating capacity but is subject to the jurisdiction of the commission shall be considered a distribution cooperative for the purposes of 17.9.570 NMAC.

**G. Requirements to file electric utility system data:** not later than April 1 of each year each utility shall submit to the commission a report covering the previous calendar year which shall at a minimum provide:

(1) the name and address of each qualifying facility with which it is interconnected, with which it has a contract to interconnect, or with which it has concluded a wheeling agreement;

(2) annual purchases in kW and kWh from each qualifying facility with which it is interconnected and the amount of electricity wheeled on behalf of each qualifying facility;

(3) the price charged for any power wheeled on behalf of each qualifying facility;

(4) the methodology and assumptions used in the calculation of wheeling rates;

(5) amounts actually paid to each qualifying facility; and

(6) a list of all applications for interconnection which the utility has rejected or otherwise failed to approve together with the reasons therefor.

**H. Filing of tariff.**

(1) Within 60 days of the adoption of this rule, each utility shall develop and file any changes to its tariffs on file with the commission needed to comply with the requirements set forth herein; such changes shall comply with all tariff filing requirements of the commission; such tariffs shall conform to the requirements of 17.1.210 NMAC, and shall become effective 30 days after the filing thereof unless suspended by the commission pursuant to Section 62-8-7 NMSA 1978, or unless ordered effective at an earlier date by the commission.

(2) Within 60 days of the adoption of the amendments to this rule, each utility shall develop and file tariffs for metering and billing consistent with this rule for generating facilities with rated capacities up to and including 10 kW; such tariffs shall comply with all tariff filing requirements of the commission; such tariffs shall conform to the requirements 17.1.210 NMAC, and shall become effective 30 days after the filing thereof unless suspended by the commission pursuant to Section 62-8-7 NMSA 1978, or unless ordered effective at an earlier date by the commission.

**I. Complaints and investigations.** The procedures set forth in Sections 62-8-7 and 62-10-1 NMSA 1978 and the complaint provisions of 1.2.2 NMAC shall be applicable for the resolution of complaints and investigations arising out of the implementation and conduct of 17.9.570 NMAC.

**J. Severability.** If any part of 17.9.570 NMAC or any application thereof is held invalid, the remainder or the application thereof to other situations or persons shall not be affected.

**K.** Amendment. The adoption of 17.9.570 NMAC shall in no way preclude the commission, after notice and hearing, from altering or amending any provision hereof or from making any modification with respect to its application deemed necessary.

**L.** Exemption or variance.

(1) Any interested person may file an application for an exemption or a variance from the requirements of 17.9.570 NMAC. Such application shall:

(a) describe the situation which necessitates the exemption or variance;

(b) set out the effect of complying with 17.9.570 NMAC on the utility and its customers if the exemption or variance is not granted;

(c) identify the section(s) of 17.9.570 NMAC for which the exemption or variance is requested;

(d) define the result which the request will have if granted;

(e) state how the exemption or variance will promote the achievement of the purposes of 17.9.570 NMAC; and

(f) state why no other reasonable alternative is available.

(2) If the commission determines that the exemption or variance is consistent with the purposes of the rule as defined herein, the exemption or variance may be granted. The commission may at its option require an informal conference or formal evidentiary hearing prior to the granting of the variance.

**M.** Motion for stay pending amendment, exemption, or variance. An application for an amendment, exemption, or a variance may include a motion that the commission stay the application of the affected portion of 17.9.570 NMAC for the transaction specified in the motion.

[17.9.570.13 NMAC - Rp, 17.9.570.13 NMAC, 5/24/2022]

**17.9.570.14 NET METERING OF CUSTOMER-SITED QUALIFYING FACILITIES WITH A DESIGN CAPACITY UP TO AND INCLUDING 10KW:**

**A.** Relationship to other commission rules. The standards and procedures for the interconnection of qualifying facilities subject to this section (17.9.570.14 NMAC) are set forth in 17.9.568 NMAC.

**B.** Use of a single meter. When the customer is billed under a rate structure that does not include time-of-use energy pricing, a single energy meter shall be used to implement net metering of a qualifying facility unless an alternate metering arrangement is agreed to by the customer and utility. If either the utility or the customer requests an alternate form of metering or additional metering that is not required to accomplish net metering or is for the convenience of the party, the party requesting the change in metering shall pay for the alternate or additional metering arrangement. If the customer elects to take electric service under any rate structure, including time-of-use, that requires the use of metering apparatus or a metering arrangement that is more costly than would otherwise be necessary absent the requirement for net metering, the customer shall be required to pay the additional incremental cost of the required metering equipment. Within ten days of receiving notification from the customer of the intent to interconnect, the utility will notify the customer of any metering costs. Charges for special metering costs shall be paid by the customer, or arrangements for payment agreed to between the customer and utility, prior to the utility authorizing interconnected operation.

**C.** Net metering calculation. The utility shall calculate each customer's bill for the billing period using net metering and with the following conditions:

(1) Customers shall be billed for service in accordance with the rate structure and monthly charges that the customer would be assigned if the customer had not interconnected a qualifying facility. Net energy produced or consumed on a monthly basis shall be measured in accordance with standard metering practices.

(2) If electricity supplied by the utility exceeds electricity generated by the customer during a billing period, the customer shall be billed for the net energy supplied by the utility under the applicable rates.

(3) If electricity generated by the customer exceeds the electricity supplied by the grid during a billing period, the utility shall credit the customer on the next bill for the excess kilowatt-hours generated, by:

(a) crediting or paying the customer for the net energy supplied to the utility at the utility's energy rate pursuant to this 17.9.570 NMAC; or

(b) crediting the customer for the net kilowatt-hours of energy supplied to the utility. Unused credits shall be carried forward from month to month; provided that if a utility opts to credit customers and the customer leaves the system, customer's unused credits for excess kilowatt-hours generated shall be paid to the customer at the utility's energy rate pursuant to this 17.9.570 NMAC.

[17.9.570.14 NMAC - Rp, 17.9.570.14 NMAC, 5/24/2022]

**17.9.570.15 STANDARD METERING AND BILLING AGREEMENT FOR QUALIFYING FACILITIES WITH A DESIGN CAPACITY OF GREATER THAN 10 KW AND LESS THAN OR EQUAL TO 10 MW:**

This agreement is made as of the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ ("customer") and \_\_\_\_\_ ("utility") also referred to collectively as "parties" and singularly as "party."



Customer receives electric service from utility at \_\_\_\_\_ (location/address) under account \_\_\_\_\_. Customer has located at these premises a qualifying facility ("QF") as defined by 17.9.570 NMAC, having an installed capacity of greater than 10 kilowatts and up to and including 10 megawatts, which is interconnected to utility pursuant to an interconnection agreement, attached as exhibit A. For good and valuable consideration, customer desires to sell or provide electricity to utility from the QF and utility desires to purchase or accept all the energy produced by the QF that is not consumed by customer, and the parties agree to the following terms and conditions:

**A. Definitions.**

Whenever used in the agreement, the following words and phrases shall have the following meanings:

**(1) agreement**

shall mean this agreement and all schedules, tariffs, attachments, exhibits, and appendices attached hereto and incorporated herein by reference;

**(2)**

**interconnection facilities** shall mean all machinery, equipment, and fixtures required to be installed solely to interconnect and deliver power from the QF to the utility's system, including, but not limited to, connection, transformation, switching, metering, relaying, line and safety equipment and shall include all necessary additions to, and reinforcements of, the utility's system;

**(3) prudent**

**electrical practices** shall mean those practices, methods and equipment, as changed from time to time, that are commonly used in prudent electrical engineering and operations to operate electric equipment lawfully, and with safety, dependability, efficiency and economy;

**(4) qualifying**

**facility (QF)** means a cogeneration facility or a small power production facility which meets the criteria for qualification contained in 18 C.F.R. Section 292.203;

**(5) point of**

**delivery** means the geographical and physical location described on exhibit B hereto; such exhibit depicts the location of the QF's side of interconnection facilities where customer is to (sell and) deliver electric energy pursuant to this agreement or pursuant to a separate wheeling agreement;

**(6)**

**termination** means termination of this agreement and the rights and obligations of the parties under this agreement, except as otherwise provided for in this agreement;

**(7) suspension**

means suspension of the obligation of the utility to interconnect with and purchase electricity from the customer.

**B. Term of**

**agreement.** The original term of this agreement shall be for a period of five years from the date of the execution of this agreement and shall continue thereafter from year to year until terminated as herein provided.

**(1)**

Termination by customer.

Termination of this agreement during and after the original term requires written notice to utility that this agreement will terminate in 90 days. Customer may terminate this agreement without showing good cause.

**(2)**

Termination by utility. Termination of this agreement during and after the original term requires written notice to customer that this agreement will terminate in 90 days, unless otherwise provided. Utility, in the exercise of this right, must show good cause for the termination.

**(3) At any**

time the QF is sold, leased, assigned, or otherwise transferred, the seller or lessor of the QF shall notify utility and this agreement may be terminated at utility's option, for good cause, regardless of whether such transfer occurs during the original term or any renewal thereof. Such termination may be made with five days written notice by utility.

**(4) Should the**

customer default in the performance of any of the customer's obligations hereunder, utility may suspend interconnection, purchases, or both and if the default continues for more than 90 days after written notice by utility to customer, utility may terminate this agreement. Termination or suspension shall not affect the obligation of utility to pay for energy already delivered or of customer to reimburse interconnection costs, or any cost then accrued. Upon termination, all amounts owed to the utility will become payable immediately.

**C. Meter installation, testing and access to premises.**

Customer will be metered by a meter or meters as determined by utility to which utility is granted reasonable access.

**(1) Customer**

shall supply, at its own expense, a suitable location for all meters and associated equipment. Customer shall provide a clearly understandable sketch or one-line diagram showing the qualifying facility, the interconnection equipment, breaker panel(s), disconnect switches and metering, to be attached to this agreement. Such location must conform to utility's meter location policy. The following metering options will be offered by utility:

\_\_\_\_\_. Customer shall provide and install a meter socket and any related interconnection equipment per utility's requirements.

**(2) Customer**

shall deliver the as-available energy to utility at utility's meter.

**(3) Utility**

shall furnish and install a standard kilowatt-hour meter. Utility may install, at its option and expense, magnetic tape recorders in order to obtain load research information. Utility may meter the customer's usage using two meters for measurement of energy flows in each direction at the point of delivery.

**(4) If**

either utility or customer requests an alternate form of metering or additional metering that is not

required to accomplish net metering or is for the convenience of the party, the party requesting the change in metering shall pay for the alternate or additional metering arrangement. If customer elects to take electric service under any rate structure, including time-of-use, that requires the use of metering apparatus or a metering arrangement that is more costly than would otherwise be necessary absent the requirement for net metering, customer shall be required to pay the additional incremental cost of the required metering equipment. Within 10 days of receiving notification from customer of the intent to interconnect, utility will notify the customer of any metering costs. Charges for special metering costs shall be paid by customer, or arrangements for payment agreed to between customer and utility, prior to utility authorizing interconnected operation.

(5) All meter standards and testing shall be in compliance with utility's rules and regulations as approved by the NMPRC. The metering configuration shall be one of utility's standard metering configurations as set out in Subsection D of 17.9.570.15 NMAC and mutually agreeable to the parties or any other metering configuration mutually agreeable to the parties. The agreed upon configuration is shown on exhibit B. (Service by the distribution cooperative to customer shall be in accordance with the distribution cooperative's articles, bylaws and regulations and in accordance with its tariffs filed with the NMPRC, the terms and conditions of which shall be unaffected by this agreement). If the interconnection facilities have been modified pursuant to the interconnection agreement, customer shall permit utility, at any time, to install or modify any equipment, facility or apparatus necessary to protect the safety of its employees or to assure the accuracy of its metering equipment, the cost of which shall be borne by customer. Utility shall have the right to disconnect the QF if it has been modified without utility's authorization.

(6) Utility may enter customer's premises to inspect at all reasonable hours customer's protective devices and read or test meter; and pursuant to the interconnection agreement to disconnect, without notice, the interconnection facilities if utility reasonably believes a hazardous condition exists and such immediate action is necessary to protect persons, or utility's facilities, or property of others from damage or interference caused by customer's facilities, or lack of properly operating protective devices.

**D. Eenergy purchase price and metering option.** All electric energy delivered and service rendered hereunder shall be delivered and rendered in accordance with the applicable rate schedules and tariffs. Customer has selected the \_\_\_\_\_ metering option defined in this section. It is understood and agreed, however, that said rates are expressly subject to change by any regulatory body having jurisdiction over the subject matter of this agreement. If a new rate schedule or tariff is approved by the proper regulatory body, the new rate schedule or tariff shall be applicable to this agreement upon the effective date of such rate schedule or tariff.

(1) Load displacement option: Utility will interconnect with the customer using a single meter which will be ratcheted and would only measure the flow of energy to the customer. Billing to customer will be at utility's approved tariff rate applicable to the service provided to the QF. There will be no additional customer charge and no payment by utility for any excess power which might be generated by the QF.

(2) Net metering option.

(a) Utility shall install the metering necessary to determine the net energy delivered from customer to utility or the net energy delivered from utility to customer for each time-of-use or single rate period, as applicable, during a billing period. The net

energy delivered to either the QF or to the utility is the difference between the energy produced by the QF generation and the energy that would have otherwise been supplied by the utility to the QF absent the QF generation.

(b) The net energy delivered from customer to utility shall be purchased by utility at utility's applicable time-of-use or single period energy rate, as described in Subsection B of 17.9.570.11 NMAC, and filed with the NMPRC. Customer shall be billed for all net energy delivered from utility in accordance with the tariff that is applicable to customer absent the QF generation. An additional customer charge to cover the added costs of billing and administration may be included in the tariff. At the end of the billing period, utility shall net all charges owed to utility by customer and all payments owed by utility to customer. If a net amount is owed to customer for the billing period, and is less than \$50, the payment amount may be carried over to the following billing period. If a net amount is owed to customer and is \$50 or more, utility shall make payment to customer prior to the end of the next billing period.

(c) If provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, customer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

(3) Simultaneous buy/sell option.

(a) Utility will install the metering necessary to determine separately 1) all of the energy produced by customer's generator and 2) all of the power consumed by customer's loads. Utility will purchase all energy produced at utility's applicable time-of-use or single period energy rate, as described in Subsection B of 17.9.570.11 NMAC, for such purchases, and as filed with and

approved by the NMPRC. Customer shall purchase all power consumed at its normally applicable tariff rate. An additional customer charge to cover the added costs of billing and administration may be included.

**(b)**

If provision of the simultaneous buy/sell option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for simultaneous buy/sell metering, customer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

**E. Interruption or reduction of deliveries.**

**(1)** Utility shall not be obligated to accept or pay for and may require customer to interrupt or reduce deliveries of available energy under the following circumstances:

**(a)**

it is necessary in order to construct, install, maintain, repair, replace, remove, investigate, or inspect any of its equipment or part of its system or if it reasonably determines that curtailment, interruption, or reduction is necessary because of emergencies, forced outages, force majeure, or compliance with prudent electrical practices; whenever possible, utility shall give customer reasonable notice of the possibility that interruption or reduction of deliveries may be required;

**(b)**

there is evidence that customer's QF is interfering with service to other customers or interfering with the operation of utility's equipment; customer may be reconnected by utility when customer makes the necessary changes to comply with the standards required by this agreement;

**(c)**

it is necessary to assure safety of utility's personnel; notwithstanding any other provision of this agreement, if at any time utility reasonably determines that the facility may endanger utility personnel or other persons or property or the continued operation of customer's facility may

endanger the integrity or safety of utility's electric system, utility shall have the right to disconnect and lock out customer's facility from utility's electric system; customer's facility shall remain disconnected until such time as utility is reasonably satisfied that the conditions referenced in this section have been corrected;

**(d)**

there is a failure of customer to adhere to this agreement;

**(e)**

if suspension of service is otherwise necessary and allowed under utility's rules and regulations as approved by the NMPRC.

**(2)**

Customer shall cooperate with load management plans and techniques as ordered or approved by the NMPRC, and the service to be furnished by utility hereunder may be modified as required to conform thereto.

**F. Force majeure.**

Force majeure shall mean any cause beyond the control of the party affected, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, (labor dispute,) labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction, by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence, it shall be unable to overcome. If either party, because of force majeure, is rendered wholly or partly unable to perform its obligations under this agreement, except for the obligation to make payments of money, that party shall be excused from whatever performance is affected by the force majeure to the extent so affected, provided that:

**(1)**

the nonperforming party, within a reasonable time after the occurrence of the force majeure, gives the other party written notice describing the

particulars of the occurrence;

**(2)**

the suspension of performance is of no greater scope and of no longer duration than is required by the force majeure; and

**(3)**

the nonperforming party uses its best efforts to remedy its inability to perform. This paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the party involved in the disputes.

**G. Indemnity.** Each party shall indemnify the other from liability, loss, costs, and expenses on account of death or injury to persons or damage or destruction of property occasioned by the negligence of the indemnifying party or its agents, officers, employees, contractors, licensees or invitees, or any combination thereof, except to the extent that such death, injury, damage, or destruction resulted from the negligence of the other party or its agents, officers, employees, contractors, licensees or invitees, or any combination thereof. Provided, however, that:

**(1)**

each party shall be solely responsible for the claims or any payments to any employee or agent for injuries occurring in connection with their employment or arising out of any workers compensation law or occupational disease disablement law;

**(2)**

utility shall not be liable for any loss of earnings, revenues, indirect or consequential damages or injury which may occur to customer as a result of interruption or partial interruption (single-phasing) in delivery of service hereunder to customer or by failure to receive service from customer by reason of any cause whatsoever, including negligence; and

**(3)**

the provisions of this subsection on

indemnification shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of any valid insurance policy;

(4) the indemnifying party shall pay all costs and expenses incurred by the other party in enforcing the indemnity under this agreement including reasonable attorney fees.

**H. Dedication.** An undertaking by one party to another party under any provision of this agreement shall not constitute the dedication of such party's system or any portion thereof to the public or to the other party and any such undertaking shall cease upon termination of the party's obligations herein.

**I. Status of customer.** In performing under this agreement, customer shall operate as or have the status of an independent contractor and shall not act as or be an agent, servant, or employee of utility.

**J. Amendment, modifications or waiver.** Any amendments or modifications to this agreement shall be in writing and agreed to by both parties. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of the breach of any term or covenant contained in this agreement, whether by conduct or otherwise, shall be deemed to be construed as a further or continuing waiver of any such breach or a waiver of the breach of any other term or covenant unless such waiver is in writing.

**K. Assignment.** This agreement and all provisions hereof shall inure to and be binding upon the respective parties hereto, their personal representatives, heirs, successors, and assigns. Customer shall not assign this agreement or any part hereof without the prior written consent of utility, otherwise this agreement may be terminated pursuant to Paragraph (3) of Subsection B of 17.9.570.15 NMAC

**L. Notices.** Any payments, notices, demands or requests required or authorized by this agreement shall be deemed properly given if personally delivered or mailed postage prepaid to:  
Customer: \_\_\_\_\_

Utility: \_\_\_\_\_

The designation of the persons to be notified, or the address thereof, may be changed by notice in writing by one party to the other. Routine notices and notices during system emergency or operational circumstances may be made in person or by telephone. Customer's notices to utility pursuant to this agreement shall refer to the customer's electric service account number set forth in this agreement.

**M. Miscellaneous.** This agreement and any amendments thereto, including any tariffs made a part hereof, shall at all times be subject to such changes or modifications as shall be ordered from time to time by any regulatory body or court having jurisdiction to require such changes or modification. This agreement (and any tariffs incorporated herein) contains all the agreements and representations of the parties relating to the interconnection and purchases contemplated and no other agreement, warranties, understandings or representations relating thereto shall be binding unless set forth in writing as an amendment hereto.

**N. Governing law.** This agreement shall be interpreted, governed, and construed under the laws of the state of New Mexico as if executed and to be performed wholly within the state of New Mexico.

**O. Attachments.** This agreement includes the following exhibits as labeled and incorporated herein by reference:

- (1) interconnection agreement;
  - (2) customer's sketch or one line diagram and site drawing, and generation and protection equipment specifications.
- In witness thereof, the parties have

executed this agreement on the date set forth herein above.

Date: \_\_\_\_\_

CUSTOMER \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

UTILITY \_\_\_\_\_ By: \_\_\_\_\_

[17.9.570.15 NMAC - Rp,  
17.9.570.15 NMAC, 5/24/2022]

**HISTORY OF 17.9.570 NMAC: Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records-state records center and archives.

PSC-GO 37 (General Order 37), Rules And Regulations Governing Cogeneration And Small Power Production filed 4/1/1981.  
First Revised General Order No. 37, Rules And Regulations Governing Cogeneration And Small Power Production filed 12/30/1982.  
G.O. 37; General Order 37, Second Revised, Rules And Regulations Governing Cogeneration And Small Power Production filed 12/3/1986.  
G.O. 37; General Order 37, Second Revised, Rules And Regulations Governing Cogeneration And Small Power Production filed 1/5/1987.  
G.O. 37; Second Revised General Order 37, Governing Cogeneration And Small Power Production filed 3/3/1987.  
G.O. 37; Third Revised General Order 37, Governing Cogeneration And Small Power Production filed 3/11/1988.  
NMSPC Rule 570, Governing Cogeneration And Small Power Production filed 6/30/1988.

**History of Repealed Material:** NMSPC Rule 570, Governing Cogeneration and Small Power Production (filed 6/30/1988) repealed 3/30/2007.  
17 NMAC 10.571, Net Metering of Customer-Owned Qualifying Facilities of 10kW or Smaller (filed 9/17/1999) repealed 10/15/2008.  
17.9.570 NMAC, Governing Cogeneration and Small Power Production (filed 3/6/2007) repealed 10/15/2008.  
17.9.570 NMAC, Governing



Cogeneration and Small Power Production (filed 10/1/2008) repealed 5/24/2022.

**Other History:**

NMPSC Rule 570, Governing Cogeneration and Small Power Production (filed 6/30/1988) was renumbered, reformatted and replaced by 17.9.570 NMAC, Governing Cogeneration and Small Power Production, effective 3/30/2007. Only those applicable portions of 17 NMAC 10.571, Net Metering of Customer-Owned Qualifying Facilities of 10kW or Smaller (filed 09/17/1999) and 17.9.570 NMAC, Governing Cogeneration and Small Power Production (filed 3/16/2007) were replaced by 17.9.570 NMAC, Governing Cogeneration and Small Power Production, effective 10/15/2008.

**PUBLIC SAFETY,  
DEPARTMENT OF**

**TITLE 10 PUBLIC SAFETY  
AND LAW ENFORCEMENT  
CHAPTER 2 DEPARTMENT  
OF PUBLIC SAFETY  
PART 4 LAW  
ENFORCEMENT RETENTION  
FUND REPORTING,  
MONITORING  
AND ADMINISTRATION**

**10.2.4.1 ISSUING  
AGENCY:** Department of Public Safety.  
[10.2.4.1 NMAC - N/E, 5/5/2022]

**10.2.4.2 SCOPE:** All law enforcement agencies eligible to receive funding from the law enforcement retention fund for the purpose of providing a retention differential disbursement to eligible law enforcement officers employed by that law enforcement agency.  
[10.2.4.2 NMAC - N/E, 5/5/2022]

**10.2.4.3 STATUTORY  
AUTHORITY:** This rule is promulgated pursuant to Section 9-19-6 E. NMSA 1978 of the Department of Public Safety Act

and 2022 HB 68 Section 36 H., a new section of the Department of Public Safety Act, which requires the Department to develop rules, forms, standards, procedures and related training for law enforcement agencies to report retention information when seeking monies to provide retention differential disbursements to eligible law enforcement officers within the law enforcement agency's employ.  
[10.2.4.3 NMAC - N/E, 5/5/2022]

**10.2.4.4 DURATION:** One hundred and eighty days.  
[10.2.300.4 NMAC - N/E, 5/5/2022]

**10.2.4.5 EFFECTIVE  
DATE:** May 5, 2022.  
[10.2.4.5 NMAC - N/E, 5/5/2022]

**10.2.4.6 OBJECTIVE:** The objective of this rule is to provide forms, standards and procedures for law enforcement agencies to report retention information when seeking monies from the law enforcement retention fund, for the purpose of providing retention differential disbursements to eligible law enforcement officers within the law enforcement agency's employ  
[10.2.4.6 NMAC - N/E, 5/5/2022]

**10.2.4.7 DEFINITIONS:** This rule adopts the definitions found in Section 9-19-2 NMSA 1978 and Subsection M of Section 36 of 2022 HB 68, as if fully set forth herein. In addition to the definitions adopted, the following terms have the following meaning:

- A. "Date of hire"** means the month, date and year the individual was hired by a law enforcement agency for the purpose of serving as a law enforcement officer with that agency.
- B. "DPS"** means the department of public safety.
- C. "Eligible officer"** means an officer who has remained employed as a law enforcement officer with the same law enforcement agency one year and one day after reaching four, nine, fourteen and nineteen years of service from the law enforcement officer's date of hire with

that law enforcement agency.

**D. "Employer tax liability"** means the employer contribution for payroll taxes outlined in the Federal Insurance Contribution Act for Social Security and/or Medicare. This does not include any employer contributions for retirement or other benefit plans.

**E. "Law enforcement academy"** means the New Mexico law enforcement academy created by Section 29-7-2 NMSA 1978 or any of the satellite academies certified by the New Mexico law enforcement academy board.

**F. "Law enforcement retention fund"** means a fund in the state treasury, consisting of money appropriated by the legislature, federal money granted to the state for the purposes of the fund, income from investment of the fund and money otherwise accruing to the fund. Money in the fund does not revert to any other fund at the end of the fiscal year. The fund is administered by DPS to provide monies to law enforcement agencies who request the funds for the purpose of providing retention differential disbursements to law enforcement officers within the agency's employ who meet statutorily prescribed requirements.

**G. "Law enforcement retention fund"** means a fund in the state treasury, consisting of money appropriated by the legislature, federal money granted to the state for the purposes of the fund, income from investment of the fund and money otherwise accruing to the fund. Money in the fund does not revert to any other fund at the end of the fiscal year. The fund is administered by DPS to provide monies to law enforcement agencies who request the funds for the purpose of providing retention differential disbursements to law enforcement officers within the agency's employ who meet statutorily prescribed requirements.

**H. "LERF"** means law enforcement retention fund.

**I. "Portal"** means the electronic system through which law enforcement agencies annually report to the DPS the data required by this rule in order for the law enforcement

agency to receive funding from the law enforcement retention fund for the purpose of providing retention differential disbursements to eligible officers employed by that agency.

**J. “PRDD”** means the amount of the projected retention differential disbursement stated in dollars and cents to be paid to the eligible officer.

**K. “Reporting fiscal year”** means the fiscal year in which the law enforcement agency is reporting to DPS the information set forth in Subsection A of 10.2.4.9 NMAC.

**L. “Salary”** means the base hourly rate of pay of the law enforcement officer for two thousand eighty hours, excluding overtime, any percentage pay increases or multiple components of pay.

**M. “Years of service”** means the number of consecutive years, months and days, beginning with the date of hire, a law enforcement officer is employed for the purpose of serving as a law enforcement officer with a single law enforcement agency.  
[10.2.4.7 NMAC - N/E, 5/5/2022]

**10.2.4.8  
CALCULATION OF THE  
PROJECTED FIVE PERCENT  
RETENTION DIFFERENTIAL  
DISBURSEMENT BY  
THE REPORTING LAW  
ENFORCEMENT AGENCY:**

The salary used by the law enforcement agency to calculate the five percent retention differential disbursement for those officers projected to be eligible officers in the upcoming fiscal year, shall be the salary of the officer on the date the officer reached four, nine, 14 or 19 years of consecutive service with the law enforcement agency requesting the retention differential disbursement.

[10.2.4.8 NMAC - N/E, 5/5/2022]

**10.2.4.9 REPORTING  
REQUIREMENTS FOR  
AGENCIES SEEKING  
RETENTION DIFFERENTIAL  
DISBURSEMENTS**

**A.** Every law enforcement agency seeking monies from the LERF for retention differential disbursements for officers within its employ, who are projected to be eligible officers in the upcoming fiscal year, shall annually report to DPS the following information:

**(1)** The full legal name and date of hire of the officer projected to be an eligible officer in the upcoming fiscal year, the PRDD for that officer, the amount of the annual salary on which the PRDD was calculated and the amount of the employer tax liability attributable to the PRDD, including the amount of that portion of the employer tax liability attributable to Social Security and the amount of that portion of the employer tax liability attributable to Medicare;

**(2)** The aggregate number of law enforcement officers employed by the law enforcement agency during each of the five fiscal years immediately preceding the reporting fiscal year. For any officer employed less than a full fiscal year, the law enforcement agency shall report the number of months and days the officer was employed, identifying the officer without personally identifying information (e.g. Officer # 1, Officer # 2, etc.).

**(3)** For each officer included in Paragraph (2) of Subsection A above, the number of years (or partial years) of service of each law enforcement officer with the reporting agency.

**(4)** The number of law enforcement officers that left the employ of the law enforcement agency during the fiscal year immediately preceding the reporting fiscal year. The number of years of service with the reporting law enforcement agency of each departing officer and the stated reasons why each law enforcement officer left the employ of the law enforcement agency.

**(5)** The number of applicants to the law enforcement agency for a position as a law enforcement officer during the fiscal year immediately preceding the

reporting fiscal year.

**(6)** The number of applicants to the law enforcement agency for a position as a law enforcement officer in the fiscal year immediately preceding the reporting fiscal year who attended a law enforcement academy.

**(7)** The number of law enforcement officers within the reporting agency’s employ who received one or more certifications during the fiscal year immediately preceding the reporting fiscal year.

**(8)** The number of law enforcement officers added to the law enforcement agency by way of lateral transfer during the fiscal year immediately preceding the reporting fiscal year and the years of service of each added officer at each previous law enforcement agency if known to the reporting agency.

**(9)** Any changes to compensation, recruiting, retention or benefits of officers implemented by the law enforcement agency during the fiscal year immediately preceding the reporting fiscal year.

**(10)** The number of officers that are projected to become eligible for a retention differential disbursement in the upcoming fiscal year, and the projected amount of the retention differential disbursement including any employer tax liabilities.

**(11)** Any other information requested by DPS that is used for determining retention rates, unless disclosure of such information is otherwise prohibited by law.

**B.** The information in Subsection A above shall be reported to the DPS for the upcoming fiscal year no later than May 31.

**C.** The information in Subsection A above shall be reported to the DPS through the electronic portal, unless DPS advises the applying law enforcement agencies that a different reporting method should be used.

[10.2.4.9 NMAC - N/E, 5/5/2022]

**10.2.4.10 PROCEDURE**

**FOR CALCULATION OF DISBURSEMENTS FROM THE LERF, SUBMISSION OF OBJECTIONS TO THE DISBURSEMENT AND REVERSION OF UNDISBURSED FUNDS**

**A.** Following receipt of the information required to be reported in 10.2.4.9 NMAC, DPS shall calculate the total amount necessary to be disbursed to each requesting law enforcement agency to provide a retention differential disbursement to all eligible officers employed by that law enforcement agency in the fiscal year for which the funds are requested, plus the employer tax liability for each PRDD.

**B.** Following calculation of the PRDD and employer tax liability for each officer projected to be an eligible officer in each requesting agency, the DPS shall determine whether the balance in the LERF is sufficient to permit the total disbursements calculated. If the balance in the LERF is insufficient to pay the total amount of the disbursement to each requesting agency, DPS shall reduce the amount to be disbursed to each law enforcement agency on a pro rata basis to an amount permitted by the monies available in the LERF.

**C.** Once the calculation of the PRDD, employer tax liability and any necessary pro rata deduction is complete, DPS shall issue a Notice of Intent to Disburse letter to each agency that requested monies from the LERF. This notice shall advise the agency of the amount DPS intends to distribute from the LERF to the agency for the PRDD and related employer tax liability, including an explanation of the pro rata deduction, if any. If the agency disagrees with the amount set forth in the Notice of Intent to Disburse letter, the agency shall have 30 days from its receipt of the letter to notify DPS of its objection and the reasons therefor.

**D.** The written Objections to the Notice of Intent to Disburse shall be sent to: DPS. LERF@state.nm.us.

**E.** DPS will respond

to all objecting agencies, in writing, within 30 days of the date on which all objections by all agencies are due. DPS will either affirm its original Notice of Intent to Disburse letter or issue an Amended Notice of Intent to Disburse letter. If the agency requesting monies from the LERF remains aggrieved, the agency may proceed as provided in 10.2.4.12 NMAC.

**F.** DPS shall disburse the monies to the requesting law enforcement agencies in accordance with the Notice of Intent to Disburse letter and any amendment thereto in accordance with the choice selected by the law enforcement agency in SHARE Financials as State of New Mexico vendors. Some law enforcement agencies may be set up for manual warrants.

**G.** DPS shall disburse the monies to all requesting law enforcement agencies in accordance with their respective Notice of Intent to Disburse letters and any amendments thereto, on December 15 of the fiscal year in which the monies are projected to be disbursed by the law enforcement agencies to the eligible officers.

**H.** Upon receipt of the disbursement, the law enforcement agency shall place the monies in an interest bearing account. Interest earned will revert to DPS as set forth in this rule.

**I.** The law enforcement agency shall disburse the PRDD to the eligible officer no sooner than the date the officer attains eligibility and no later than 30 days following the date of eligibility, or the law enforcement agency's receipt of the disbursement from DPS, whichever occurs last.

**J.** The law enforcement agency shall disburse the monies attributable to the employer's tax liability to the appropriate taxing authority as required by law.

**K.** The law enforcement agency shall report the date of disbursement of the PRDD and the employer taxes on the same to the DPS through the portal within 30

days of disbursement.

**L.** Within 60 days after the end of the fiscal year in which PRDDs and the accompanying employer tax liability are disbursed and paid and no later than August 31, the law enforcement agency shall return to the DPS any monies disbursed for projected PRDDs and employer tax liability, together with any interest earned on the monies disbursed, in the form of a check. The law enforcement agency returning the monies shall include with the check, a statement of all PRDDs made and employer tax liability paid for each officer, identified by the officer's full legal name, date of the disbursement and date of payment of the employer tax liability. The law enforcement agency shall also provide a statement of the full legal names of the officers projected to receive a retention differential disbursement, who did not receive a disbursement, the amount of the returned PRDD, the amount of the returned employer tax liability and the reason the disbursement was not made. The law enforcement agency shall also include a statement of the interest that accrued on the funds while in the agency's custody, that is being returned to DPS.

[10.2.4.10 NMAC - N/E, 5/5/2022]

**10.2.4.11 WAIVER OF REPORTING REQUIREMENT**

**A.** Any agency requesting a waiver of all or a portion of the information that the law enforcement agency is required to report under Subsection A of 10.2.4.9 NMAC, shall file a written request for waiver no later than May 31 of the fiscal year the report is due. The request for waiver shall specify the section or sections of the rule for which waiver is sought and the reason therefor.

**B.** DPS will respond in writing to a request for waiver of the required reporting information within 30 days of its receipt of the request.

**C.** The agency's decision on a request for waiver is final.

[10.2.4.11 NMAC - N/E, 5/5/2022]



**10.2.4.12 APPEAL PROCESS**

**A.** There is no statutory right of appeal from DPS’s decision on a Notice of Intent to Disburse letter or its denial of a request to waive the required reporting information.

**B.** A law enforcement agency aggrieved by a DPS decision may proceed by requesting an applicable writ as provided by law. [10.2.4.12 NMAC - N/E, 5/5/2022]

**HISTORY OF 10.2.4 NMAC: [RESERVED]**

**PUBLIC SAFETY, DEPARTMENT OF**

This is an amendment to 18.19.8 NMAC, Sections 7, 8, 9, 10, 11, 13, 16, 19, 20, 21, 24, 25, 26, 28, 29, 30, 36, 39, 40, 52, 57, 58, 62, 63, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 96 and 99, effective 6/1/2022.

Statutory citations were changed throughout the rule to conform to correct legislative style.

**18.19.8.7 DEFINITIONS:**

As used in this rule:

**A. “Accumulated traffic”** means a build-up of six or more vehicles, other than escort vehicles, or any vehicle being detained for more than ten minutes behind a vehicle or load required to be escorted; provided that, if the escorted vehicle or load is traveling consistently at a speed within five miles per hour of the maximum legal speed for the highway being traveled upon, the term means a build-up of eight or more vehicles, other than escort vehicles, or any vehicle being detained for more than ten minutes;

**B. “Applicant”** means a person or entity applying for a special permit;

**C. “Continuous movement”** means movement during all hours, day or night, on any day of the week except on a holiday; provided that “continuous movement” does not include movement during inclement weather, traffic hazards or

other occurrences that affect the safe movement of vehicles on a highway;

**D. “Counter-flow”** means the movement of or obstruction by a vehicle, combination, structure or load upon a roadway designated for traffic flowing in the opposite direction;

**E. “Daylight movement”** means movement 30 minutes before sunrise until 30 minutes after sunset on any day of the week, except on a holiday; provided that “daylight movement” does not include movement during inclement weather, traffic hazards or other occurrences that affect the safe movement of vehicles on a highway;

**F. “DOT”** means the department of transportation;

~~[F:]~~ **G. “Department”** “DPS” means the department of public safety;

~~[G:]~~ **H. “Height”** means a measurement from the uppermost point of the vehicle, combination of vehicles or load to the roadbed;

~~[H:]~~ **I. “Highway”** or “street” means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

~~[I:]~~ **J. “Holiday”** means 12:01 am until 11:59 pm on the calendar day of any of the following holidays:

- (1) New year’s day;
- (2) Memorial day;
- (3) Independence day;
- (4) Labor day;
- (5) Thanksgiving day;
- (6) Christmas day; and
- (7) any other holiday that may be designated by the ~~[department]~~ DOT;

~~[J:]~~ **K. “Inclement weather”** means a natural occurrence that may create dangerous driving conditions and includes any of the following:

- (1) snow;
- (2) ice;
- (3) fog;
- (4) rain;
- (5) dust;
- (6) a weather condition that limits visibility to less than ~~[one thousand]~~ 1000 feet, or approximately two-tenths of one mile;

(7) for oversize vehicles, combinations or loads, wind speeds of ~~[twenty-five]~~ 25 miles per hour or more as determined by the National Weather Service, nearest airport, New Mexico port of entry or government controlled weather station; or

(8) a weather condition that is determined by the ~~[department, the department of transportation]~~ DPS or DOT or a law enforcement official to create a safety hazard;

~~[K:]~~ **L. “Irreducible load”** means a vehicle or load exceeding size or weight limitations that cannot reasonably be reduced to legal limits and that, if separated into multiple or smaller loads or vehicles, would:

(1) compromise the intended use of the vehicle or load, rendering it unable to perform the function for which it was intended;

(2) destroy the value of the vehicle or load, making it unusable for its intended purpose; or

(3) require more than eight work hours to dismantle using appropriate equipment;

~~[L:]~~ **M. “Length”** means a measurement from the foremost point to the rearmost point of a vehicle, combination of vehicles or load;

~~[M:]~~ **N. “Manufactured home”** means a movable or portable housing structure that exceeds either a width of eight feet or a length of ~~[forty]~~ 40 feet, constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy;

~~[N:]~~ **O. “Movement”** or “move” means the movement of an oversize or overweight vehicle, combination or load on a highway of this state requiring a special permit;

[~~O~~:] **P.** “**Oversize**” or “**overweight**” means exceeding a maximum dimension or weight specified in Sections 66-7-401 through 66-7-416 NMSA 1978;

[~~P~~:] **Q.** “**Permittee**” means a person or entity that has been issued a special permit to move a specific vehicle, combination or load;

[~~Q~~:] **R.** “**Route survey**” means actual physical measurements conducted by an applicant or an applicant’s designee of the width and height of the load or vehicle to be moved compared with actual physical measurements of the width and height of structures and property to be cleared by the load or vehicle throughout the entirety of the proposed route to be traveled;

[~~R~~:] **S.** “**Special permit**” means a written permit issued by the [department] **DOT** that authorizes a [permittee] permittee to move an oversize or overweight vehicle, combination or load on a highway in this state;

[~~S~~:] **T.** “**Utility service vehicle**” means a vehicle used in the furtherance of repairing, maintaining, or operating any structure or other physical facility necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, television cable or community antenna service; and

[~~T~~:] **U.** “**Width**” means a measurement from the extreme outermost point of one side of the vehicle or combination of vehicles or load to the extreme outermost point of the opposite side of the vehicle, combination of vehicles or load.  
[18.19.8.7 NMAC - Rp, 18.19.8.7 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.8 SPECIAL PERMIT REQUIRED:** Unless specifically exempted by law, a vehicle, combination of vehicles or a load that exceeds a maximum size or weight limitation established by Sections 66-7-401 through 66-7-416 NMSA 1978 shall not move on a public highway or street without a valid special permit issued by the [department] **DOT**.

[18.19.8.8 NMAC - Rp, 18.19.8.10 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.9 SPECIAL PERMIT FOR IRREDUCIBLE LOADS - EXCEPTIONS:**

**A.** Except as otherwise provided in this section, a special permit shall be issued only for an irreducible load. An applicant shall demonstrate that the load to be moved cannot reasonably be dismantled, reduced or disassembled. Reductions shall be made whenever possible, even if use of additional vehicles becomes necessary.

**B.** The following reducible loads may be issued a special permit:

(1) vehicle or combination of vehicles with a gross weight not exceeding [ninety-six thousand] **96,000** pounds within [twelve] **12** miles of a port of entry on the border with Mexico, and within the area described in Section 66-7-413 NMSA 1978 for the port of entry at Santa Teresa, as provided in Section 66-7-413 NMSA 1978;

(2) an over-width vehicle or load used to transport loads of hay, as provided in Section 66-7-413.1 NMSA 1978, for a distance up to [fifty] **50** miles;

(3) liquid hauling tank vehicle, as provided in Section 66-7-413.4 NMSA 1978;

(4) agricultural products, as provided in Section 66-7-413.7 NMSA 1978;

(5) specialized haul vehicles, as provided in Section 66-7-413.8 NMSA 1978; or

(6) emergency response vehicles, including those loaded with salt, sand, chemicals or a combination and being used for the purpose of spreading the material on highways that are or may become slick or icy.

**C.** The [department] **DOT** may issue special permits for casks designed for the transport of spent nuclear materials and for military vehicles transporting marked military equipment or material.

**D.** When an integral part of a machine or other equipment

is removable, and the load without that part is oversize or overweight, the [department] **DOT** may allow that part to be included in the permitted load; provided that the inclusion of the removable part does not increase the dimensions of the load.

[18.19.8.9 NMAC - Rp, 18.19.8.12 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.10 APPLICATION FOR A SPECIAL PERMIT:**

**A.** Only a person or entity that owns and operates the transporting vehicle or that operates the transporting vehicle under a lease agreement may apply for a special permit.

**B.** An applicant for a special permit shall be in compliance with and shall ensure that the transporting vehicle and the specific vehicle, combination or load to be moved is in compliance with motor vehicle registration laws, tax laws and regulations and any applicable public regulation commission rules and requirements.

**C.** An applicant for a special permit shall:

(1) indicate the type of special permit requested;

(2) provide contact information for the person or entity requesting the permit;

(3) specifically identify the vehicle, combination or load to be moved;

(4) provide the width, length and height of the vehicle, combination or load and identify the size and location of any overhangs;

(5) provide the gross vehicle weight;

(6) provide all axle information requested, including number and spacing of axles, number and type of tires on each axle and the weight on each axle;

(7) describe the type of load being moved and the type of vehicle;

(8) identify the points of origin and destination;

(9) describe the route of travel;

(10) indicate

whether a route survey has been conducted and provide a copy of the route survey, if requested;

(11) indicate whether certified escort vehicle or vehicles will accompany the move, if required;

(12) if required, demonstrate that a feasibility study of the proposed movement has been made or that an engineering analysis or investigation of the route to be traveled has been completed;

(13) provide proof of insurance coverage in accordance with New Mexico's financial responsibility laws and requirements of the public regulation commission; and

(14) provide other information as requested by the [department] DOT.

**D.** An applicant for a special permit shall obtain any required maps, restricted roads, structures or bridges required by the [department] DOT for the move. Required maps and other documents are available by electronic link on the special permit application. [18.19.8.10 NMAC - Rp, 18.19.8.14 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.11 PROOF OF FINANCIAL RESPONSIBILITY:**

**A.** A person applying for a special permit shall submit to the [department] DOT proof of financial responsibility as required by New Mexico law.

**B.** An applicant shall submit a certificate of insurance issued by an insurance carrier authorized to transact business in this state in accordance with public regulation commission requirements. The certificate of insurance shall indicate the following minimum coverage:

(1) bodily injury liability in the amounts of \$50,000 for each person and \$100,000 for each accident; and

(2) property damage liability in the amount of \$25,000 for each accident.

**C.** A certificate of insurance shall identify:

(1) the vehicle covered by year, make, type, capacity, license number and serial number or indicate that the vehicle is included under an all owned, non-owned and hired vehicle clause;

(2) the effective dates of coverage; and

(3) the name and address of the insured.

**D.** The [department] DOT may accept other evidence of financial responsibility that shows compliance with the certification, operating authority and insurance requirements of the public regulation commission; provided that the minimum liability coverage required by this section is met.

**E.** An applicant or permittee shall notify the [department] DOT in writing of any material change or cancellation of insurance coverage at least [ten] 10 days prior to the effective date of such change or cancellation. The [department] DOT shall void any outstanding special permits if insurance is canceled and not replaced before the expiration date noted on the special permit.

**F.** If the required insurance coverage is not on file with the [department] DOT, the special permit application will be held in abeyance until satisfactory proof of coverage is provided. [18.19.8.11 NMAC - Rp, 18.19.8.52 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.13 CARRIED IN VEHICLE:** A special permit shall be carried in the vehicle to which it applies, along with any required surveys, maps or lists of structures, and be presented for inspection to any peace officer, authorized employee of the [department] DOT or the DPS or an escort vehicle driver who is escorting the vehicle. The special permit and any other required document may be carried on an electronic device and presented in electronic form as long as it is legible. [18.19.8.13 NMAC - Rp, 18.19.8.20 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.16 SURETY BOND MAY BE REQUIRED:** If requested

by the [department] DOT or by a municipality, an applicant shall execute and deliver [with] to the [department] DOT or municipality a surety bond, cash equivalent or other security satisfactory to the [department] DOT or municipality in an amount sufficient to cover any damages anticipated to road surfaces, bridges, culverts, structures or appurtenances that may be caused by the proposed movement. The amount of the security shall be determined by the [department] DOT or municipality following an analysis of the proposed move and the roadways and structures along its route.

[18.19.8.16 NMAC - Rp, 18.19.8.15 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.19 PRELIMINARY APPROVAL FOR A SPECIAL PERMIT:**

A person may request from the [department] DOT preliminary approval of a proposed movement of an oversize or overweight vehicle, combination or load. Sufficient data shall be submitted to allow the [department] DOT to evaluate the proposed move. If it is determined that the proposed move is feasible, the mover will be notified that a special permit can be issued upon notification to the [department] DOT and payment of the proper fee. The [department] DOT may retract its preliminary approval if circumstances change.

[18.19.8.19 NMAC - Rp, 18.19.8.51 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.20 ENTRY INTO NEW MEXICO:**

**A.** An oversize or overweight vehicle, combination or load shall have a special permit issued by the [department] DOT before entry into this state. Any required escort vehicle shall be certified by the [department] DOT or DPS before entry into this state.

**B.** If an escort vehicle is not certified before entry, the escort vehicle and the escorted vehicle or load shall stop outside the state. The escort vehicle driver shall turn off or remove all exterior lighting and equipment, remove or cover any

signs and remove the amber lights and flags. The escort vehicle shall then drive to the nearest port of entry where the vehicle and equipment can be checked and verified for certification. After the escort vehicle has been certified, it shall drive back, without display of lighting, signs, flags or equipment, to where the escorted load has stopped outside the state. All required lighting, equipment, flags and signs shall then be repositioned on the escort vehicle, and the permitted load and escort vehicle shall enter the state.

C. A special permit may be obtained by submitting an electronic application over the internet at [[www.mtdpermits.dps.state.nm.us](http://www.mtdpermits.dps.state.nm.us)] [<https://permits.dot.state.nm.us>]. [18.19.8.20 NMAC - Rp, 18.19.8.13 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.21 BEFORE COMMENCEMENT OF MOVE - AMENDED SPECIAL PERMIT:**

A. Prior to starting the move, a permittee shall:

- (1) review the special permit for accuracy of information contained in the special permit;
- (2) ensure that any required survey, maps or lists of structures are included with the special permit;
- (3) fully understand all the conditions and restrictions contained in the special permit;
- (4) know the route to be traveled; and
- (5) be aware, as reasonably possible, of any special circumstances that may be encountered along the route.

B. If a permittee finds that the special permit does not cover the entire move or that it is incorrect, the permittee shall contact the [department] DOT and request the necessary changes or amendments to the special permit. The [permittee] permittee shall not commence the move until such changes have been made and a correct or amended special permit has been issued. A special permit that contains incorrect

information is void.

C. The [department] DOT may, depending upon circumstances, issue a supplemental special permit or amend an existing special permit to address a situation that did not exist or was not anticipated at the time of issuance of the original special permit. In such cases, additional documentation may be required by the [department] DOT to support the issuance of a supplemental special permit or the amendment of an existing special permit.

[18.19.8.21 NMAC - Rp, 18.19.8.19 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.24 DAYLIGHT MOVEMENT:**

A. Unless continuous movement is specifically allowed on a special permit, there shall be no movement thirty minutes after sunset until thirty minutes before sunrise.

B. There shall be no movement during inclement weather or on holidays.

C. The [department] DOT may grant an exception, considering, among other factors:

- (1) the size or weight of the vehicle, combination or load;
- (2) the route to be traveled;
- (3) safety to the motoring public;
- (4) advice of the [department of transportation] DOT and law enforcement officials; and
- (5) any other consequence of allowing the move during those times.

[18.19.8.24 NMAC - Rp, 18.19.8.34 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.25 CONTINUOUS MOVEMENT:**

A. A special permit that allows for continuous movement may be issued for a vehicle, combination or load that does not exceed:

- (1) a width of [ten] 10 feet;
- (2) a height of

[fourteen] 14 feet six inches;

(3) a length of [one hundred twenty] 120 feet; or

(4) a weight of [one hundred forty thousand] 140,000 pounds.

B. Lighting requirements shall be in accordance with the Code of Federal Regulations, Title 49, Section 393.11, and all lights shall meet a five hundred foot visibility requirement. In addition, for an over-width or over-length vehicle, combination or load, at least one rotating, flashing, strobe or LED amber light at the rear of the vehicle and two rotating, flashing, strobe or LED amber lights on the power unit are required.

C. Continuous movement is allowed only if specifically stated on the special permit and does not include movement on holidays or during inclement weather.

D. Additional conditions and requirements may be imposed by the [department] DOT, including requiring additional equipment or imposing restrictions applicable to specific roads and highways.

[18.19.8.25 NMAC - Rp, 18.19.8.32 NMAC, 2/12/2016; A, 6/1/2022]

#### **18.19.8.26 MOVEMENT DURING HEAVY TRAFFIC:**

A. Unless otherwise specified in a special permit, movement on weekdays between the hours of 7 a.m. and 9 a.m. and between the hours of 4 p.m. and 6 p.m. is prohibited on:

(1) interstate highways, U.S. highways and state roads within the city limits of Santa Fe and Las Cruces;

(2) Interstate 25 between Santa Fe and Los Lunas and within the city limits of Los Lunas;

(3) U.S. 285 between Santa Fe and Espanola and within the city limits of Espanola; and

(4) Interstate 10 from mile marker 139 to mile marker 145, and Interstate 25 from mile marker 0 to mile marker 9, in the Las Cruces area.



**B.** Unless otherwise specified in a special permit, movement on weekdays between the hours of 7 a.m. and 9 a.m. and between the hours of 4 p.m. and 7 p.m. is prohibited on interstate highways, U.S. highways and state roads within the city limits of Albuquerque and Rio Rancho.

**C.** The [department] DOT may restrict movement during heavy traffic in other locations or time periods.  
[18.19.8.26 NMAC - N, 2/12/2016; A, 6/1/2022]

**18.19.8.28 CERTAIN VIOLATIONS RENDER SPECIAL PERMIT VOID:**

**A.** A special permit is null and void if any of the following violations occur:

- (1) commencing a move under a special permit that contains incorrect information, unless amendments to the permit have been issued by the [department] DOT correcting the information;
- (2) the movement is made on a highway or street other than those specifically noted on the special permit, unless necessary to detour around construction zones or to avoid obstructions;
- (3) movement is made on a highway or street that is closed;
- (4) use of a bridge or structure not authorized by the special permit;
- (5) size or weight limitations specified in the special permit are exceeded;
- (6) improper identification or substitution of a vehicle, combination or load;
- (7) the special permit, route survey, bridge map, list of structures or other required document is not in possession of or carried electronically by the driver during the move;
- (8) the permittee is not the owner or lessee of the permitted vehicle;
- (9) speeds specified in the special permit are not

observed;

(10) special provisions contained in the special permit to protect highways and structures are not observed;

(11) the application for the special permit or the special permit contains misrepresentations;

(12) the special permit has been altered, is fraudulent or is used for a fraudulent or unauthorized purpose;

(13) absence or cessation of a required escort vehicle during the movement;

(14) insurance coverage is canceled, expired, insufficient or otherwise does not meet the requirements of law or this rule; or

(15) failure to comply with any condition or restriction specified in the special permit.

**B.** Violation of a special permit may be cause for suspension or cancellation of all special permit privileges of the permittee. Based on the severity of the violation, the [department] DOT may cancel any or all special permits issued to the permittee for current or future movements and may suspend the permittee’s right to apply for special permits in the future.

**C.** The effect of a void special permit is the same as if no special permit had been issued, and the violator, in addition to any other violations, may be subject to prosecution pursuant to the provisions of Sections 66-7-413, 66-7-413.2 and Section 66-7-416 NMSA 1978. No refund shall be made or credit given for fees paid for a special permit that is rendered void. A special permit issued after a violation does not nullify the violation.

[18.19.8.28 NMAC - Rp, 18.19.8.28 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.29 SECURING A NEW SPECIAL PERMIT FOLLOWING A VOIDED SPECIAL PERMIT:** A special permit that is void shall be

surrendered, upon demand, to a peace officer or authorized [department] DOT or DPS personnel. A new special permit is required before movement move can be resumed.

The issuance of a new special permit will be withheld until all conditions that caused the voiding and seizure of the original permit have been corrected to meet the requirements imposed by the [department] DOT for the move.

[18.19.8.29 NMAC - Rp, 18.19.8.30 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.30 ROUTE SURVEY MAY BE REQUIRED:**

**A.** Based on the dimensions of a vehicle, combination or load or the route requested, the [department] DOT may require that a route survey be conducted and submitted to the [department] DOT prior to issuance of a special permit. When a route survey is required, it shall be carried in the permitted vehicle at all times during the move.

**B.** A route survey is valid for a period of fourteen days but is subject to change by the [department] DOT at any time depending on circumstances, including inclement weather, highway construction, utility work, roadway design, and traffic patterns.

**C.** The [department] DOT may extend the validity period of a route survey at its discretion for carriers engaged in moving the same dimensions or in moving similar loads where there are no structural clearance issues.

**D.** A route survey shall be in a written form approved by the [department] DOT.  
[18.19.8.30 NMAC - N, 2/12/2016; A, 6/1/2022]

**18.19.8.36 OVERHEIGHT VEHICLES OR COMBINATIONS:**

**A.** Special permits may be issued for vehicles, combinations or loads in excess of the statutory limit for heights of [fourteen] 14 feet. When the substitution of a different type of trailer would make the vehicle or load [fourteen] 14 or less in height,



then the load shall be considered reducible and such substitution shall be made.

**B.** If a special permit is requested for a height greater than [~~fourteen~~] 14 but less than [~~fifteen~~] 15 feet six inches, the applicant shall check the desired route for clearance of overhead structures such as traffic signals, wires, utility lines, bridges and overpasses.

**C.** If a special permit is requested for a height of [~~fifteen~~] 15 feet six inches or greater, a route survey is required. The applicant shall check the desired route and conduct a route survey for clearance of overhead structures such as traffic signals, wires, utility lines, bridges and overpasses.

**D.** Certification in writing from utility companies is required for a vehicle or load that exceeds a height of [~~eighteen~~] 18 feet. No person, other than the utility owner, shall move, lift or in any fashion displace an overhead wire.

**E.** Movements that will not clear highway construction, wires, utility lines, bridges, overpasses or other overhead structures shall be rerouted. Use of off-ramps or frontage roads to clear overhead and other obstacles is permitted, provided overall traffic flow is not adversely affected and traffic safety is not jeopardized.

**F.** A permittee shall protect all overhead wires, structures and roadside property. Any damage to these or to the roadway, pavement, road guards or shoulders shall be restored at the sole expense of the permittee.

**G.** The [~~department~~] DOT may require a flagman or an escort to check all overhead clearances during a move. Such requirement shall be stated on the special permit.  
[18.19.8.36 NMAC - Rp, 18.19.8.45 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.39 SPECIAL PERMIT REQUIRED FOR PROJECTING LOADS:**

**A.** A special permit is required for a projecting load that

extends:

(1) more than three feet beyond the foremost part of a vehicle or the foremost part of the front vehicle of a vehicle combination; or

(2) more than seven feet beyond the rearmost part of a vehicle or the rearmost part of the rear vehicle of a vehicle combination.

**B.** This section applies even if the overall length of the vehicle, combination or load would not require a special permit for movement.

**C.** A projecting load or overhang shall not cause excessive axle weight that would diminish the effectiveness of the steering axle or axles and shall not constitute a hazard.

**D.** When the substitution of an articulated vehicle for a single vehicle would make the load a smaller dimension, then the load shall be considered reducible and such substitution shall be made.

**E.** The [~~department~~] DOT may require an escort as a condition of issuing a special permit for movements with a projecting load.  
[18.19.8.39 NMAC - Rp, 18.19.8.47 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.40 ENGINEERING ANALYSIS FOR VEHICLES OR LOADS IN EXCESS OF ONE HUNDRED SEVENTY THOUSAND POUNDS:**

**A.** An application for a special permit for a vehicle, combination or load with a gross weight in excess of [~~one hundred seventy thousand~~] 170,000 pounds shall be forwarded to the [~~department~~] DOT of transportation for approval.

**B.** No special permit shall be issued for a vehicle, combination or load with a gross weight in excess of [~~one hundred seventy thousand~~] 170,000 pounds unless an engineering analysis has been conducted for the proposed route and the move has been approved by the [~~department of transportation~~] DOT.

**C.** An engineering analysis shall determine if the roads on the proposed route, including any

bridges, culverts, overpasses and other structures, are adequate and capable of handling the overweight movement. The analysis may require specific restrictions to be imposed on the movement, such as requiring the overweight vehicle, combination or load to significantly reduce its speed at certain structures, requiring a different route or requiring other maneuvers.

**D.** Data required from the applicant for an engineering analysis includes:

(1) tire sizes;  
(2) axle loads;  
(3) axle spacings;  
(4) desired route to be traveled;  
(5) clearance documents if movement is overheight or overwide; and  
(6) any additional information requested by the [~~department or the department of transportation~~] DOT.

**E.** Unless an applicant submits an engineering analysis of the route to be traveled that is satisfactory to the [~~department of transportation~~] DOT, the [~~department of transportation~~] DOT shall perform its own analysis. The [~~department of transportation~~] DOT may assess a fee for the cost of performing the analysis and such a fee shall be charged to the applicant as an added cost to the permit fee.

**F.** Once an engineering analysis has been conducted and the movement approved [~~by the department of transportation~~], the [~~department~~] DOT may issue a special permit upon payment of the proper fee.  
[18.19.8.40 NMAC - Rp, 18.19.8.48 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.52 WRECKER SERVICE - MULTIPLE-TRIP SPECIAL PERMIT:**

**A.** A multiple-trip special permit may be issued to a wrecker service, commensurate with the class of service authorized. A commercial motor carrier that operates wreckers for towing its

own vehicles may also apply for this multiple-trip special permit.

**B.** A multiple-trip special permit for a wrecker service authorizes continuous movement and movement on holidays and during inclement weather on an emergency basis. The multiple-trip special permit may exclude movement over certain highways or structures.

**C.** The maximum width allowed when towing vehicles under a multi-trip special permit is ~~twelve~~ 12 feet, including towing on a dolly. This limit includes the width of the towed vehicle plus all load binders or other equipment required to tie or hold the unit together.

**D.** The maximum height allowed when towing vehicles under a multi-trip special permit is ~~fourteen~~ 14 feet. If damage to the wrecked or disabled vehicle causes protruding pieces that cannot be reasonably removed before towing, a height up to ~~fifteen~~ 15 feet is allowed.

**E.** A disabled or wrecked vehicle that exceeds the maximum width or height provided in this section shall not be moved under a multiple-trip special permit. A single-trip special permit shall be obtained for the movement. The ~~department~~ DOT may require an escort as a condition of the single-trip special permit.

**F.** In addition to any other restrictions, the following apply to a wrecker service operating under a multiple-trip special permit:

(1) the towing of one motor vehicle and one trailer in combination is allowed;

(2) a second trailer of a three-unit combination may be towed in combination to the nearest point of safety where it shall be disconnected from the combination being towed;

(3) movement during inclement weather is restricted to movement from the site of disablement or crash to the nearest point of safety;

(4) when towing a single vehicle or combination of vehicles, the

driver shall comply with all safety regulations with respect to both the equipment and the driver;

(5) when towing a single vehicle or a combination of vehicles, the wrecker vehicle and the towed vehicle or combination shall be properly flagged and equipped with oversize load signs and any other required warning devices;

(6) unless the towed vehicle or combination has been issued a valid oversize or overweight special permit, the combined weight of the wrecker and the towed vehicle or combination shall not exceed the weight of the wrecker plus ~~eighty-six thousand four hundred~~ 86,400 pounds and the overall length shall not exceed ~~one hundred twenty-five~~ 125 feet.

(7) if the towed vehicle or combination has been issued a valid oversize or overweight special permit and the combined length of the vehicle or combination plus the length of the wrecker exceeds ~~one hundred twenty-five~~ 125 feet or the combined weight of the towed vehicle or combination and the wrecker exceeds the weight of the wrecker plus ~~eighty-six thousand four hundred~~ 86,400 pounds, the vehicle or combination may be towed only to the nearest point of safety. Towing such a vehicle or combination beyond the nearest point of safety requires a single-trip special permit to be issued based on the combined length and weight of the wrecker and the towed vehicle or combination.

**G.** This section does not authorize trespass on private property.

**H.** The provisions of this section apply to all classes of wreckers and wrecker services.

**I.** As used in this section:

(1) “movement on an emergency basis” means the towing from a highway or right-of-way of a wrecked or disabled vehicle that cannot be moved under its own power, when such movement is necessary for the

safety and convenience of the public, or when directed by a police officer. Unless other laws or regulations provide otherwise, “movement on an emergency basis” includes the movement of the vehicle from the site of the crash or disablement to the vehicle owner’s premises, a repair facility or a storage facility operated by the wrecker service; and

(2) “nearest point of safety” is the closest area where the vehicle or combination can be temporarily parked clear of any motor vehicle traffic and at least ~~thirty~~ 30 feet from the outer edge of the nearest traffic lane of any road or highway at the closest point. Private land shall not be used as the nearest point of safety without permission of the owner.

[18.19.8.52 NMAC - Rp, 18.19.8.49 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.57 OTHER MULTIPLE-TRIP SPECIAL PERMITS:**

A multiple-trip special permit may be issued for:

**A.** a liquid hauling tank vehicle as provided in Section 66-7-413.4 NMSA 1978;

**B.** an agricultural product transport vehicle as provided in Section 66-7-413.7 NMSA 1978; or

**C.** other vehicles, combinations or loads as determined by the ~~department~~ DOT.

[18.19.8.57 NMAC - N, 2/12/2016; A, 6/1/2022]

**18.19.8.58 SPECIAL PERMITS IN CASES OF EMERGENCY:**

**A.** In clear cases of emergency and when it is not possible to follow normal procedures for obtaining a special permit, a special permit may be issued outside of business hours.

**B.** During business hours, normal procedures shall be followed. If an emergency arises outside of business hours, an applicant for a special permit shall access the ~~department’s~~ DOT’s website and follow instructions for obtaining the special permit.

**C.** As used in this

section, "business hours" means Monday through Friday from 8:00 a.m. to 5 p.m.  
[18.19.8.58 NMAC - Rp, 18.19.8.38 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.62 MOVEMENT OF A HOUSE, BUILDING OR SIMILAR STRUCTURE:**

**A.** A special permit is required for movement of a house, building or similar structure that exceeds statutory size or weight limitations. Movement of such a structure with a width in excess of ~~[thirty]~~ 30 feet shall be approved by the [department] DOT.

**B.** Porches or protruding sections are considered reducible and shall be removed to reduce the dimensions of the structure. Loose boards, bricks and similar items shall also be removed for safety.

**C.** A house, building or similar structure shall be moved in the following manner:

(1) mounted on house-moving dollies equipped with pneumatic tires and towed by a truck or truck tractor;

(2) loaded on a truck, semi-trailer or trailer and transported under the same requirements as the movement of oversize or overweight vehicles and loads; or

(3) by other means approved by the [department] DOT.

**D.** A house, building or similar structure shall not be:

(1) pulled or towed by a farm tractor; or

(2) mounted on skids.

**E.** Vehicles used in moving a house, building or similar structure shall conform to all safety standards prescribed by law. Dollies and tires shall be in good condition and a sufficient number shall be used to carry the weight of the structure. A truck or tractor shall be in good condition and shall have the capacity and power to control the movement of the building or structure.

[18.19.8.62 NMAC - Rp, 18.19.8.50

NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.63 MOVEMENT OF MANUFACTURED HOME - TAX RELEASE REQUIRED:**

**A.** An applicant for a special permit to move a manufactured home shall provide the [department] DOT with a tax release document from the appropriate county assessor or treasurer if the origin of the movement of the home is in a county of this state. The tax release document shall contain:

(1) a full description of the manufactured home, including name of the manufacturer, model, license number and identification number;

(2) a description of the exact location where the manufactured home is being moved from, including street address, city and county;

(3) a description of the exact location where the manufactured home is being moved to, including street address, city and county;

(4) the name of the registered owner of the manufactured home;

(5) a statement by the county assessor, treasurer or an authorized delegate that all applicable property taxes have been paid or there is no liability for the current and previous years;

(6) the date the release was issued; and

(7) the signature of the assessor, treasurer or an authorized delegate of the assessor or treasurer.

**B.** The provisions of this section do not apply if the movement of the manufactured home originates from the lot or business location of a manufactured home dealer and the home was part of the dealer's inventory prior to the sale.

**C.** The provisions of this section apply to movement of a manufactured home from a non-dealer owner to a manufactured home dealer.  
[18.19.8.63 NMAC - Rp, 18.19.8.200 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.80 ESCORTS - PURPOSE AND REQUIREMENT:**

**A.** The purpose of an escort vehicle is to enhance the safety of moving an oversize vehicle or load over the highways, to reduce delays and inconveniences to the normal flow of traffic and to alert the motoring public to the presence or approach of an oversize vehicle or load.

**B.** The [department] DOT, after evaluating the dimensions of a vehicle, combination or load and the route to be traveled, may require that one or more escort vehicles accompany the movement or part of the movement or may require that police escorts accompany the movement.

[18.19.8.80 NMAC - Rp, 18.19.8.100 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.81 ESCORT REQUIRED FOR CERTAIN OVERWIDTH VEHICLES:**

Escort vehicles are required for the movement of all widths at or exceeding ~~[fourteen]~~ 14 feet, and may be required for widths less than ~~[fourteen]~~ 14 feet depending on the routes to be traveled and in accordance with established widths for certain highways identified in the escort vehicle map developed and maintained by the ~~[department of transportation]~~ DOT. The escort vehicle map is available by electronic link on the special permit application.  
[18.19.8.81 NMAC - Rp, 18.19.8.108 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.82 ESCORT REQUIRED FOR CERTAIN OVERLENGTH VEHICLES:**

**A.** Escort vehicles are required for the movement of a vehicle, combination or load that exceeds ~~[ninety]~~ 110 feet and one inch in length.

**B.** One escort vehicle will be required for each vehicle, combination or load which is greater than 110 feet and one inch in length but is equal to or less than 120 feet and one inch in length. Two escorts will be required for each vehicle, combination or load which is greater

than 120 feet and one inch in length.

**C.** The movement of such a vehicle, combination or load may be restricted to certain highways as designated on the special permit. [Determination] If so restricted, determination of the required number of escort vehicles shall be made by the [department] DOT based on the route to be traveled and other relevant considerations.

[18.19.8.82 NMAC - Rp, 18.19.8.109 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.83 ESCORT REQUIRED FOR CERTAIN OVERHEIGHT VEHICLES:**

An escort vehicle or a person other than the driver of the permitted vehicle may be required to accompany the movement of a vehicle, combination or load that exceeds a height of [sixteen] 16 feet. The escort or additional person shall make immediate height clearance verifications at each overhead clearance prior to the over-height vehicle moving through the clearance. The requirement for an additional escort or person will be stated on the special permit.

[18.19.8.83 NMAC - Rp, 18.19.8.110 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.84 POLICE ESCORTS:**

**A.** In the discretion of the [department] DOT, police escorts may be required for movement of structures or loads with a width of [twenty] 20 feet or more. The [department] DOT may also require police escorts for movement on certain roads or for movement that, in the judgment of the [department] DOT, may adversely affect traffic, create undue hazards, require counter-flow or in any manner jeopardize the safety of the motoring public.

**B.** An applicant for a special permit that requires a police escort shall cooperate with the [department] DOT on the timing of the move and be prepared for special conditions or other factors that may delay the move.

**C.** The [department] DOT may coordinate police escorts

for the move and may charge a fee for the coordination and provision of police escorts. In certain circumstances, the applicant may be required to coordinate with municipal police for escort services.

**D.** If a route requiring a police escort moves through a municipality, the applicant shall obtain permission from and make arrangements with the municipality for the move, including obtaining any required permit. A special permit shall not be issued until the [department] DOT is assured that the applicant has made satisfactory arrangements with the municipality.

**E.** If a move is entirely within a municipality, a permittee may use a police escort provided by the municipality. However, a special permit shall not be issued until the [department] DOT is assured that the applicant has arranged with local police for assistance.

[18.19.8.84 NMAC - Rp, 18.19.8.102 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.85 PERMITTEE TO PROVIDE CERTIFIED ESCORT VEHICLES:**

Unless a police escort is required, a permittee shall furnish New Mexico certified escort vehicles as required by the [department] DOT and specified on the face of the special permit. An escort vehicle map is available by electronic link on the special permit application.

[18.19.8.85 NMAC - Rp, 18.19.8.100 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.86 ESCORT VEHICLE CERTIFICATION:**

Only a vehicle certified by the [department] DOT or the DPS may operate as an escort vehicle. The vehicle and all required equipment shall be inspected by the [department] DOT or the DPS. Upon a satisfactory inspection, an escort vehicle certification will be issued for that vehicle for a period of one year or until insurance coverage expires, whichever occurs first. An escort vehicle shall undergo inspection on an annual basis.

[18.19.8.86 NMAC - Rp, 18.19.8.103 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.87 ESCORT VEHICLE REQUIREMENTS:**

**A.** The wheelbase of an escort vehicle shall be at least [one hundred] 100 inches. Unless otherwise approved by the [department] DOT upon written application, an escort vehicle shall not exceed a [ton and one-half capacity] capacity of one and one-half tons as rated by the manufacturer.

**B.** An escort vehicle shall be registered in accordance with New Mexico's motor vehicle laws and insured in accordance with New Mexico's financial responsibility laws; provided that minimum coverage shall be:

(1) bodily injury liability in the amounts of \$50,000 for each person and \$100,000 for each accident; and

(2) property damage liability in the amount of \$25,000 for each accident.

**C.** An escort vehicle shall comply with all requirements imposed by the public regulation commission for escort vehicles.

**D.** An escort vehicle operated by an escort vehicle service company shall display the name, city, and state of the company on both sides of the vehicle. This information may be displayed using removable, magnetic signs.

**E.** An escort vehicle shall not display any sign, insignia, device or emblem that is similar in size, shape or color to any police insignia or badge.

**F.** An [the] escort vehicle shall not tow a vehicle or trailer and shall not be loaded in a manner that obstructs the driver's vision in any direction.

[18.19.8.87 NMAC - Rp, 18.19.8.103 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.88 ESCORT VEHICLE EQUIPMENT:**

**A.** An escort vehicle shall have two rotating, flashing, strobe or LED amber lights on top of the vehicle at the vehicle width or at a width not to exceed eight feet. The amber lights shall be of sufficient



intensity to be visible at a distance of at least [five hundred] 500 feet in normal sunlight.

**B.** An escort vehicle shall display a bright yellow sign at least five feet wide by [twelve] 12 inches high with black lettering reading "OVERSIZE LOAD". The letters shall be at least one inch thick by [ten] 10 inches high.

**C.** An escort vehicle shall be equipped with two red or florescent orange flags when escorting a load. The flags shall be square or rectangular and no less than [twelve] 12 inches on any one side.

**D.** The required flags and sign shall be mounted on the front bumper of a front escort vehicle, on the rear bumper of a rear escort vehicle, or on the roof of the front or rear escort vehicle, whichever position provides the greatest visibility for the motoring public.

**E.** An escort vehicle and the escorted oversize vehicle shall be equipped with two-way radios for direct communication between the two vehicles at all times.

**F.** An escort vehicle shall be equipped with at least one fire extinguisher of minimum size, with a capacity of two and one-half pounds carbon dioxide or dry chemical type, or an extinguisher of another type having equivalent or better extinguishing capacities. Extinguishers shall be mounted so as to be readily accessible for use.

**G.** An escort vehicle shall have on board at all times the safety equipment specified in Section 66-3-849 NMSA 1978 relating to flares and other warning devices.

**H.** An escort vehicle shall have on board all the equipment required for flagmen, as provided in 18.19.8.99 NMAC.

**I.** An escort vehicle shall be equipped with two outside rear view mirrors, one on the driver side and one on passenger side of the vehicle.

**J.** An escort vehicle shall carry at all times the escort vehicle map developed and maintained by the [department of transportation] DOT.

[18.19.8.88 NMAC - Rp, 18.19.8.103 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.89 INSPECTION UPON DEMAND:** An escort vehicle is subject to inspection by a peace officer or authorized [department] DPS personnel at any time. The escort vehicle certification, escort vehicle map, required equipment, documentation of vehicle registration and insurance and any documents required by the public regulation commission shall be made available for inspection on demand.

[18.19.8.89 NMAC - Rp, 18.19.8.103 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.90 ESCORT VEHICLE DRIVER REQUIREMENTS:**

**A.** A driver of an escort vehicle shall be at least eighteen years of age and licensed in accordance with the licensing requirements for escort vehicle drivers in the jurisdiction where the driver resides.

**B.** At all times during a move, an escort vehicle driver shall carry a current driver's license, the escort vehicle certification issued by the [department] DOT or the DPS, an escort vehicle map and any document required by the public regulation commission.

**C.** Escort vehicle drivers do not have police powers and shall not issue citations, attempt arrest or operate the escort vehicle as an emergency vehicle.

**D.** While performing escort vehicle services, an escort driver shall not:

(1) wear a uniform of a color or design similar to uniforms worn by law enforcement officers; or

(2) display any badge, shield or emblem of a type similar to police badges or emblems.

**E.** A person employed by the [department] DPS shall not act as a driver of a private escort vehicle. [18.19.8.90 NMAC - Rp, 18.19.8.104 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.96 CESSATION OF ESCORT SERVICES:**

**A.** When an escort operation is completed, the escort driver shall turn off all exterior escort equipment lights, remove or cover the oversize load sign and remove the amber lights and flags. Failure to comply with this requirement shall render the escort vehicle certification void, and the escort vehicle driver shall immediately surrender the escort vehicle certification to a police officer or authorized [department] DPS or DOT personnel upon request.

**B.** If an escort driver determines that the escorted oversize vehicle driver is not, or will not, comply with a provision of the special permit or is otherwise operating in a manner that creates a hazardous or dangerous situation, the escort driver shall notify the oversize vehicle or load driver of the escort driver's intent to cease providing escort services.

**C.** If, for any reason, an escort vehicle driver ceases to provide escort services before the move is completed:

(1) movement of the escorted vehicle shall stop;

(2) the escort driver shall immediately notify the [department] DPS or DOT; and

(3) the special permit is rendered void.

[18.19.8.96 NMAC - Rp, 18.19.8.105 NMAC, 2/12/2016; A, 6/1/2022]

**18.19.8.99 FLAGMEN:**

**A.** Flagmen are required on all loads [twenty] 20 feet wide or wider or whenever otherwise required by the special permit. Flagmen shall not be used in lieu of an escort vehicle. A dismounted driver of an escort vehicle shall serve as a flagman as necessary during the movement of an escorted oversize vehicle or load.

**B.** A flagman shall be at least eighteen years of age and an employee or agent of the permittee or an escort vehicle service.

**C.** A flagman shall wear an orange or red safety jacket and an orange or red hard hat or bump cap. A flagman shall be equipped with a paddle sign.

**D.** A paddle sign shall be constructed of rigid durable material and consist of a handle at least eight inches long attached to an octagon sign the shape of a standard street stop sign. Each of the eight sides of the octagon sign shall be at least [fourteen] 14 inches, point to point. One side of the sign shall have a red background with white letters, one and one-half inches thick, reading "STOP". The other side shall have a yellow or orange background with black letters, one and one half inches thick, reading "CAUTION". The handle shall be affixed to the sign in such a manner that the word on the sign is displayed to motorists when the sign is held up to view.

**E.** A flagman shall use a paddle sign to direct traffic at all locations where traffic may be obstructed, or when necessary to infringe on the oppositely-bound traffic lane because of breakdown, pulling onto or off the pavement, or avoiding obstacles in the path of movement.

**F.** A flagman shall use a paddle sign to warn traffic of an approaching oversize vehicle at danger points, such as narrow bridges or sharp corners, where the oversize vehicle will travel.

**G.** Flagmen shall position themselves far enough in advance of a problem area so that approaching traffic is allowed sufficient distance to reduce speed and come to a stop. Depending upon approach speed and physical conditions at the site, a distance of [two-hundred] 200 to [three-hundred] 300 feet is usually adequate. In urban areas, a shorter distance may be appropriate.

**H.** Flagmen shall face traffic on the edge of the shoulder of the road just outside of the traffic lane and shall always stand where they are visible by approaching motorists.

**I.** When warning or stopping traffic, the paddle sign shall be kept in a horizontal position in the path of the vehicle. The free arm shall be raised with the palm of the hand toward approaching traffic.

**J.** To slow traffic, but

not stop it, the flagman shall extend the paddle sign into the traffic lane. The paddle sign shall be lowered before traffic is completely stopped.

**K.** The paddle sign shall not be used to signal traffic to move ahead. When signaling traffic to move ahead, a flagman shall lower the paddle sign behind his body and signal with the free hand, using a sweeping motion in the direction traffic is to move.

**L.** The paddle sign shall not [tø] be waved. Signals from a flagman shall be clear and distinct.

**M.** If time permits and when possible, a flagman shall inform motorists of the reason for the delay. [18.19.8.99 NMAC - Rp, 18.19.8.113 NMAC, 2/12/2016; A, 6/1/2022]

**RACING COMMISSION**

**This is an amendment to 15.2.1 NMAC, Sections 8 & 9, effective 5/24/2022.**

**Explanatory paragraph: This is a short-form amendment to 15.2.1 NMAC, Section 8, effective May 24, 2022. For Section 8 of 15.2.1 NMAC, Subsections A thru G and Subsections I thru J were not published, as there were no changes. For Section 9 of 15.2.1 NMAC, Subsections A & B and Paragraphs (1) thru (14) and Paragraphs (16) thru (22) of Subsection C were not published, as there were no changes.**

**15.2.1.8 COMMISSION:**

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**H. Organization's financial requirements:**

**(1)** The New Mexico horse breeders' association shall establish interest-bearing accounts, designated as gaming funds for purses.

**(2)** The New Mexico horse breeders' association shall ensure all accounting of funds deposited with and paid out or distributed by the New Mexico horse breeders' association pursuant to the

Horse Racing Act is in accordance with or exceeds generally accepted accounting principles.

**(3)** The New Mexico horse breeders' association shall provide at a minimum the following insurance policies:

**(a)** \$1,000,000 cyber liability

**(b)** \$1,000,000 directors, officers, and employment practices

**(c)** \$1,000,000 employee theft

**(4)** The New Mexico horse breeders' association will provide the New Mexico racing commission with a copy of their yearly independent audits, and proof of insurance.

**(5)** The ~~New Mexico horsemen's association and the~~ associations and the New Mexico horse breeders' association with regard to gaming monies shall keep accurate, complete, and legible records with reports to the commission to include:

**(a)** monthly reconciliation of amounts collected to account statements;

**(b)** copy of account authorizing signatures;

**(c)** any changes in authorizing signatures; and

**(d)** detail of disbursements from the accounts.

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[15.2.1.8 NMAC - Rp, 15 NMAC 2.1.8, 3/15/2001; A, 8/30/2001; A, 1/31/2008; A, 4/30/2012; A, 6/1/2016; A, 2/25/2020; A, 5/24/2022]

**15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:**

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**C. Proceedings by the commission:**

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**(15)** Proposal for decision.

**(a)** Where a hearing officer conducts a hearing, the hearing officer shall

complete a report containing his or her findings of fact, conclusions of law and recommendations for commission action.

(b)

Any commissioner who did not hear the case may not participate in a decision in which the commission rejects, modifies, adds to, or makes substitutions for the findings of fact in a hearing officer's report unless the commission has reviewed all portions of the record that pertain to such findings of fact.

(c)

Where the commission itself is the hearing body, the commission shall complete a report containing findings of fact and conclusions of law. No commissioner may participate who has not either heard the case or reviewed the entire record.

(d)

The person preparing a proposal for decision under this section shall initiate service of a copy of the hearing officer's report or commission's report on each party of record no later than 31 calendar days after the close of the hearing.

(e)

A party of record may, not later than 10 business days after the date of service of a hearing officer's report or commission's report, file exceptions to the report. A reply to an exception filed under this subsection must be filed no later than five business days after the last day for filing the exceptions. A copy of each exception and reply must be served on all parties of record.

(f)

After the expiration of time for filing exceptions and replies, the commission shall consider the proposal for decision in open [meeting] or closed session. The commission may: adopt the proposal for decision, in whole or in part; decline to adopt the proposal for decision, in whole or in part; modify the recommendations or the hearing officer's report, in whole or in part, based on aggravating or mitigating factors or inaccuracies; remand the proceeding for further examination by the same or a different presiding

officer; or direct the presiding officer to give further consideration to the proceeding with or without reopening the hearing.

(g)

If on remand additional evidence is received which results in a substantial revision of the proposal for decision, a new proposal for decision shall be prepared, unless a majority of the commission, on remand, has heard the case or read the record. A new proposal for decision must be clearly labeled as such and all parties of record are entitled to file exceptions, replies and briefs.

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[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 3/15/2001; A, 3/31/2003; A, 5/30/2003; A, 6/15/2004; A, 6/30/2009; A, 9/15/2009; A, 12/1/2010; A, 5/1/2013; A, 1/1/2014; A, 3/16/2015; A, 5/1/2015; A, 9/16/2015; A, 3/15/2016; A/E, 6/28/2016; A, 9/16/2016; A, 12/16/2016; A, 7/1/2017; A, 3/14/2018; A, 9/26/2018; A, 4/9/2019; A, 5/24/2022]

## RACING COMMISSION

**This is an amendment to 15.2.2 NMAC, Sections 8 and 9, effective 5/24/2022.**

**Explanatory paragraph: This is a short-form amendment to 15.2.2 NMAC, Section 8, effective May 24, 2022. For Section 8 of 15.2.2 NMAC, Subsection A and Subsections C thru X were not published as there were no changes.**

### 15.2.2.8 ASSOCIATIONS:

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#### **B. Financial requirements: insurer of the race meeting:**

(1) Approval of a race meeting by the commission does not establish the commission as the insurer or guarantor of the safety or physical condition of the association's facilities or purse of any race.

(2) An

association shall agree to indemnify, save and hold harmless the commission from any liability, if any, arising from unsafe conditions of association grounds and default in payment of purses.

(3) An

association shall provide the commission with a certificate of liability insurance as required by the commission.

(4) An

association shall maintain one or more trust accounts in financial institutions insured by the FDIC or other federal government agency for the deposit of nominations and futurity monies and those amounts deducted from the pari mutuel handle for distribution to persons other than the association according to the Horse Racing Act and commission rules. An association may invest nominations and futurities monies paid by owners in a U.S. treasury bill or other appropriate U.S. Government financial instrument instead of an account in a financial institution, in which case the provisions of this rule shall apply to such instrument.

(5) An

association shall keep its operating funds and other funds that belong exclusively to the association separate and apart from the funds in its trust accounts and from other funds or accounts it maintains for persons other than itself, such as a horsemen's book account.

(6) An

association shall employ proper accounting procedures to insure accurate allocation of funds to the respective purses, parties and organizations and detailed records of such accounts shall be made available to the commission or its staff on demand in connection with any commission audit or investigation.

(7) An

association shall insure that sufficient funds for the payment of all purses on any race day are on deposit in a trust account at least two business days before the race day and shall provide the commission with documentation of such deposits prior to the race

day. Exceptions to this subsection may be made by the commission or the agency director for good cause shown.

(8) An association shall add all interest accrued on funds in a trust account to the balance in the account and distribute the interest ~~[proportionally]~~ to those for whom the funds are held with the exception of administrative costs pursuant to Subsection E of Section 60-2E-47 NMSA 1978.

(9) An association and its managing officers are jointly and severally responsible to ensure that the amounts retained from the pari mutuel handle are distributed according to the Horse Racing Act and commission rules and not otherwise.

(10) An association and its managing officers shall ensure that all purse monies, disbursements and appropriate nomination race monies are available to make timely distribution in accordance with the Horse Racing Act, commission rules, association rules and race conditions.

(11) An association is authorized to offset a portion of the jockey and exercise rider insurance premium from gaming monies subject to the approval of the commission.

(12) An association shall insure that funds for the payment of the ten percent track breeder's awards on New Mexico bred winners, that have been requested by the New Mexico horse breeders' association and whose purses have been cleared by the New Mexico racing commission, will be sent via wire transfer to the designated bank account set up for that purpose within five business days after the request.

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[15.2.2.8 NMAC - Rp, 15 NMAC 2.2.8, 3/15/2001; A, 8/30/2001; A, 11/14/2002; A, 8/30/2007; A, 1/1/2013; A, 6/1/2016; A, 12/16/2016; A, 9/26/2018; A, 4/20/2021; A, 5/24/2022]

**15.2.2.9 GAMING:  
A. Associations' financial requirements:**

(1) An association who is a gaming operator shall pay twenty percent of the net take to purses.

(2) An association shall provide a weekly report of the previous week's daily net take payment to purses every Monday to the commission ~~[the New Mexico horsemen's association]~~ and the New Mexico horsebreeders' association each week except for legal holidays which will be submitted on the next business day.

(3) All monies remitted by the association to the ~~[New Mexico horsemen's association]~~ gaming account shall be reconciled and settled within 30 days of the generation of monthly reports from the gaming control board.

(4) An association will be liable for all portions of the gaming funds for purses from such time as the funds are received into the gaming machines until the funds are deposited into the designated interest bearing accounts. The commission may take whatever action is available under the existing rules regarding fines, suspension or revocation of license should the association fail to deposit the funds in accordance with Paragraph (1) of Subsection B of Section 15.2.2.9 NMAC.

(5) The twenty-percent of the net take to purses shall be distributed as follows: Nineteen and three tenths percent of the net daily take deposited by the association will be distributed weekly by the ~~[New Mexico horsemen's association]~~ associations to the New Mexico horsebreeders' association to the purse fund; eighty and seven tenths percent of the net daily take deposited by the ~~[association]~~ associations will be distributed to the existing purse structures determined and approved by ~~[that race meet's local horsemen's committee, the horsemen's state board, and approved by]~~ the commission.

**B. Organizations' financial requirements:**

(1) The ~~[New Mexico horsemen's association]~~ associations shall establish interest-bearing accounts, designated as gaming funds for purses. ~~[An association]~~ The associations shall deposit, by 1:00 o'clock p.m. Monday of each week except for legal holidays which will be deposited on the next business day, twenty percent of the daily net take as defined in the gaming control act.

(2) The ~~[New Mexico horsemen's association]~~ associations and the New Mexico horsebreeders' association shall keep accurate, complete, and legible records with reports to the commission to include:

- (a) monthly reconciliation of amounts collected to account statements;
- (b) copy of account authorizing signatures;
- (c) any changes in authorizing signatures; and
- (d) detail of disbursements from the accounts.

[15.2.2.9 NMAC - Rp, 15 NMAC 2.2.9, 3/15/2001; A, 12/30/2003; A, 5/24/2022]

**RACING COMMISSION**

**This is an amendment to 15.2.3 NMAC, Section 8, effective 5/24/2022.**

**Explanatory paragraph: This is a short-form amendment to 15.2.3 NMAC, Section 8, effective May 24, 2022. For Section 8 of 15.2.3 NMAC, Subsection A, Paragraphs (1) thru (4) and Subsections C thru P were not published as there were no changes.**

**15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:**

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**B. Stewards:**

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**(5) Stewards'**

**presence:** Three stewards shall be present in the stewards' stand either physically or through any other electronic means during the running of each race subject to the discretion and approval of the executive director.

**(6) Order of finish for pari-mutuel wagering:****(a)**

The stewards shall determine the official order of finish for each race in accordance with 15.2.5 NMAC.

**(b)**

The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, shall be final for purposes of distribution of the pari-mutuel wagering pool.

**(7) Cancel**

**wagering:** The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races, if such action is necessary to protect the integrity of pari-mutuel wagering.

**(8) Records****and reports:****(a)**

The stewards shall prepare a daily report, on a form approved by the commission, detailing their actions and observations made during each day's race program. The report shall contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, and objections and any unusual circumstances or conditions. The report shall be signed by each steward and be filed with the commission not later than 24 hours after the end of each race day.

**(b)**

The stewards shall maintain a detailed log of the stewards' official activities. The log shall describe all questions, disputes, protests, complaints, or objections brought to the attention of the stewards and all interviews, investigations and rulings made by the stewards. The log shall be available at all times for inspection by the commission or its designee.

**(c)**

Not later than seven days after the last day of a race meeting, the stewards shall submit to the commission a written report regarding the race meeting. The report shall contain: the stewards' observations and comments regarding the conduct of the race meeting and the overall conditions of the association grounds during the race meeting; any recommendations for improvement by the association or action by the commission.

**(9) Stewards'****list:****(a)**

The stewards shall maintain a stewards' list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance behavior on the racetrack that endangers the health or safety of other participants in racing or for positive tests pursuant to Subsection C of 15.2.6.9 NMAC.

**(b)**

The stewards may place a horse on the stewards' list when there exists a question as to the exact identification or ownership of said horse.

**(c)**

A horse which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing.

**(d)**

A horse which has been placed on the stewards' list because of questions as to the exact identification or ownership of said horse, may be removed from the stewards' list when, in the opinion of the stewards, proof of exact identification or ownership has been established.

**(e)**

A horse that has been placed on the steward's list for a positive test pursuant to Subsection C of 15.2.6.9 NMAC may only be removed if the criteria set forth in that subsection are met or in the event of a split sample result which does not confirm the

official laboratory's original finding of a positive test.

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[15.2.3.8 NMAC - Rp, 15 NMAC 2.3.8, 4/13/2001; A, 11/15/2001; A, 8/30/2007; A, 6/15/2009; A, 6/30/2009; A, 12/1/2010; A, 5/1/2015; A/E, 6/28/2016; A, 9/15/2016; A, 12/16/2016; A, 7/1/2017; A, 9/26/2018; A, 5/1/2019; A, 12/19/2019; A, 12/28/2021; A, 5/24/2022]

**RACING COMMISSION**

**This is an amendment to 16.47.1 NMAC, Section 8, effective 5/24/2022.**

**Explanatory paragraph: This is a short-form amendment to 16.47.1 NMAC, Section 8, effective May 24, 2022. For Section 8 of 16.47.1 NMAC, Subsections A thru K and Subsections M thru V were not published as there were no changes.**

**16.47.1.8 GENERAL PROVISIONS:**

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**L. Grounds for disciplinary measures for a licensee, and refusal, denial, suspension, or revocation of a license:****(1)** The

commission may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, if the applicant:

**(a)**

has been convicted of a felony;

**(b)**

has been convicted of violating any law regarding gambling or a controlled dangerous substance;

**(c)**

who is unqualified, by experience or otherwise, to perform the activities for which a license is required, or who fails to pass an examination prescribed by the commission;

**(d)**

has failed to disclose or falsely states any information required in the application;

(e) has been found in violation of rules governing racing in this state or other jurisdictions;

(f) has been found to have made false or misleading statements to the commission, stewards, or any racing official;

(g) has been or is currently excluded from association grounds by a recognized racing jurisdiction;

(h) has had a license denied, suspended, or revoked by any racing jurisdiction;

(i) is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting; interfering with the orderly conduct of a race meeting shall include, but is not limited to, disruptive or intemperate behavior or behavior which exposes others to danger anywhere on the racetrack grounds; the fact that the race meet was not actually interrupted is not a defense to the imposition of discipline under this rule;

(j) demonstrates a lack of financial responsibility by accumulating unpaid obligations, defaulting on obligations or issuing drafts or checks that are dishonored, or payment refused; for the purpose of this subsection, non-compliance with the Parental Responsibility Act shall be considered grounds for refusal, denial, suspension, or revocation of a license; the application, or license as applicable, shall be reinstated if within 30 days of the date of the notice, the applicant provides the commission with a certified statement from the department that they are in compliance with a judgment and order for support;

(k) is ineligible for employment pursuant to federal or state law concerning age or citizenship.

(l) is disrespectful or intimidates any official, commissioner, or commission staff or any other licensee;

(m) attempts to influence any racing official or commission staff member;

(n) has knowingly filed a false complaint against another licensee or a racing official where the racing commission or the stewards determine that the complaint was made without reasonable or probable cause and for the purpose of the harassment or abuse of the complaint process;

(o) has engaged in conduct unbecoming or detrimental to the best interests of racing.

(2) A license suspension or revocation shall be reported in writing to the applicant and the association of racing commissioners international, incorporated, whereby other racing jurisdictions shall be advised.

(3) Any license denied, suspended or revoked by the commission pursuant to these rules shall state the time period for the effect of its ruling. When the action is taken for a misdemeanor or felony conviction, the time period shall be the period of the licensee's or applicant's imprisonment; or if not imprisoned, the period of probation, deferral, unless the person can satisfy the commission of sufficient rehabilitation. This rule shall also apply to licensees who voluntarily turn in their license because of, or in anticipation of, a conviction.

(4) If a license is suspended or revoked by the commission or stewards pursuant to these rules the commission or stewards may probate all or any portion of the suspension.

(a) The order or ruling entered placing a licensee on probation shall state the specific probationary period and the terms and conditions of the probation.

(b) The terms and conditions of the probation must have a reasonable relationship to the violation and may include:

(i) passing a prescribed examination in a specific area;

(ii) periodic reporting to the commission, stewards or other designated person on any matter that is the basis of the probation;

(iii) a medical evaluation and completion of a prescribed treatment program; and

(iv) other terms and condition as specified in the order or ruling that are reasonable and appropriate.

(c) If the commission or stewards determine the licensee has failed to comply with the terms of the probation, the probation may be revoked on three days' notice to the licensee and the licensee may be required to appear before the New Mexico racing commission. Failure to comply with the terms of the probation may subject the licensee to additional disciplinary action.

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[16.47.1.8 NMAC - Rp, 16 NMAC 47.1.8, 3/15/2001, A, 08/30/2001; A, 11/15/2001; A, 12/14/2001; A, 2/14/2002; A, 11/14/2002; A, 3/31/2003; A, 7/15/2003; A, 9/29/2006; A, 3/30/2007; A, 8/14/2008; A, 6/15/2009; A, 9/15/2009; A, 1/1/2014; A, 4/1/2014; A, 6/1/2016; A, 12/16/2016; A, 7/1/2017; A, 3/14/2018; A, 2/25/2020; A, 5/24/2022]

**REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION**

**This is a short-form amendment to 14.6.3 NMAC, Section 8, effective 9/1/2022.**

**Subsections A and B, Paragraphs (2) through (6) of Subsection C, and Subsections D through L were not shown as no changes were made.**

**14.6.3.8 LICENSE  
AND QUALIFYING PARTY  
REQUIREMENTS:**

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**C. Proof of financial  
responsibility.**

(1) [ Upon initial licensure and as a condition of renewal each applicant shall furnish to the division a bond in the amount of ten thousand dollars (\$10,000) underwritten by a corporate surety authorized to transact business in New Mexico.] Upon initial licensure each applicant shall furnish to the division a bond, that shall cover the initial three-year licensure period, in the amount of ten thousand dollars (\$10,000) underwritten by a corporate surety authorized to transact business in New Mexico. As a requirement for renewal of licensure, each applicant shall furnish to the division a new bond or a certificate of renewal, either of which shall establish that the bond remains valid for the entire period of renewal of licensure.

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[14.6.3.8 NMAC - Rp, 14.6.3.8 NMAC, 3/10/2022; A, 09/1/2022]

**TAXATION AND  
REVENUE, DEPARTMENT  
OF**

**This is an amendment to 3.1.4 NMAC, Section 18 Section 19, effective 5/24/2022.**

**3.1.4.18 ELECTRONIC  
FILING:**

**A.**—This regulation is adopted pursuant to the secretary's authority in Section 9-11-6.4 NMSA-1978.

**B.**—For returns due after August 1, 2010, the returns and reports for the following taxes must be filed electronically using approved electronic media on or before the due date of the return or report:

(1) taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle

Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded twenty thousand dollars (\$20,000); and

(2) weight distance tax if the taxpayer must pay taxes for two or more trucks.

**C.**—For returns due after January 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded ten thousand dollars (\$10,000) must be filed electronically on or before the due date of the return.

**D.**—For returns due after July 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax liability for this group of taxes during the preceding calendar year equaled or exceeded one thousand dollars (\$1,000), must be filed electronically on or before the due date of the return.

**E.**—Confirmation of electronic filing of a return must accompany payment of taxes by taxpayer. If taxpayer does not have confirmation of electronic filing when the taxpayer submits payment to the department, taxpayer must ensure that taxpayer's tax identification number is on the payment. Payments without confirmation or tax identification number may not be properly applied to the taxpayer's account and interest and penalty may be assessed.

**F.**—Once a taxpayer is required to file returns electronically pursuant to this regulation, the taxpayer may not file future returns by mail or any method other than electronically.

**G.**—For the purposes of this section, "average monthly tax payment" means the total amount of taxes paid with respect to a group of taxes under Paragraph (1) of Subsection B, Subsection C or Subsection D of this section during a calendar year divided by the number of months in that calendar year containing a due date on which the taxpayer was required to pay one or more taxes in the group.

**H.**—A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least 30 days before the taxpayer's electronic return is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the tax or tax return to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

**I.**—A taxpayer may be granted a waiver to the requirement of electronic filing for a single tax return. The request for a waiver must be in writing and received by the department on or before the date that the tax return is due and must include the tax or tax return to which the waiver if granted will apply, a clear statement of the reasons for the waiver, and the signature of the taxpayer. A waiver may be granted for the following reasons:

(1) if the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the

taxpayer is unable to procure the services of a person to complete the taxpayer's return and file it electronically;

(2) if the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to electronically file; or

(3) if the taxpayer's accountant or other agent or employee who routinely electronically files for taxpayer has suddenly died or has become disabled and unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to electronically file the return or to procure the services of a person to electronically file the return before the due date.

J. If a taxpayer is granted an exception or waiver, the taxpayer must file a paper return in a timely fashion unless an extension pursuant to 3.1.4.12 NMAC has been granted. If a paper return is not timely filed, interest will be due even if an extension is granted.]

A. This regulation is adopted pursuant to the secretary's authority in Section 9-11-6.4 NMSA 1978.

B. The secretary or secretary delegate will publish on the department's public website a full list of all tax programs that have an electronic filing or payment mandate. This website will also include information on how to obtain an electronic filing or payment exception or waiver.

C. Once a taxpayer is required to file returns or make payments electronically pursuant to this regulation, the taxpayer may not file future returns or make future payments by mail or any method other than electronically unless they receive an exception or waiver. An exception or a waiver may be granted if the taxpayer has shown a good faith attempt to comply with the electronic

filing and payment requirements but is unable to do so due to a reason listed in Subsections D or E below. If a taxpayer is granted an exception or, the taxpayer must file a paper return and make a payment by the due date unless an extension pursuant to 3.1.4.12 NMAC has been granted. If a return is not filed and a payment is not made timely, interest will be due, and penalty may be due.

D. A taxpayer may request in writing an exception to the requirement of electronic filing or making electronic payments for a year at a time. The request must be on the form prescribed by the department and must be received by the department at least 30 days before the taxpayer's electronic return or payment is due. An exception may be granted for the following reasons.

(1) if the taxpayer shows a hardship including but not limited to no reasonable access to internet in the taxpayer's community;

(2) if the taxpayer does not have reasonable access to a computer or technology required to electronically file;

(3) if the taxpayer does not have the knowledge or expertise to file a return electronically; or

(4) if the taxpayer is unable to utilize technology or the internet for religious reasons.

E. A taxpayer may request in writing a waiver to the requirement of electronic filing for a single tax return or for a single payment. The request for a waiver must be on a form prescribed by the department and received by the department on or before the date that the tax return is due. A waiver may be granted for the following reasons:

(1) if the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete and file the taxpayer's return electronically or make the necessary payment electronically.

(2) if the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to electronically file or pay;

(3) if the taxpayer's accountant, agent, or employee who routinely electronically files for taxpayer has suddenly died, has become disabled, or sick and is unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to electronically file the return, electronically pay the tax due or to procure the services of a person to electronically file the return or make the electronic payment before the due date; or

(4) if the taxpayer's accountant, agent, or employee who routinely electronically files for taxpayer is no longer employed with the taxpayer and the taxpayer has been unable to gain access to their method of electronically filing and making payment of tax due in time to file electronically before the due date. [3.1.4.18 NMAC - Rp, 3.1.4.18 NMAC, 7/7/2021, A; 5/24/2022]

### 3.1.4.19 ~~[ELECTRONIC FILING OF INFORMATION RETURNS AND REPORTS:~~

A. Annual income and withholding information returns, federal Form 1099-MISC, *pro forma* 1099-MISC or successor forms must be filed with the department using a department-approved electronic medium if a pass-through entity has more than 50 New Mexico payees in a tax year, unless the pass-through entity obtains an exception pursuant to Subsection C of 3.1.4.19 NMAC.

B. The annual income and withholding detail report of pass-through entity allocable net income must be filed using a department-approved electronic medium if the pass-through entity has more than



fifty New Mexico payees in a tax year, unless the pass-through entity obtains an exception pursuant to Subsection C of 3.1.4.19 NMAC.

**C.** A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least 30 days before the taxpayer's electronic information return or report is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the information return or report to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

**D.** If a pass-through entity is required by regulation or statute to file information returns or reports electronically, the information return or report shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute. ] **[RESERVED]** [3.1.4.19 NMAC - Rp, 3.1.4.19 NMAC, 7/7/2021; Repealed, 5/24/2022]

## TAXATION AND REVENUE, DEPARTMENT OF

This is an amendment to 3.1.8 NMAC, Sections 8 through 16, effective 5/24/2022.

### 3.1.8.8 **[GENERAL RULES ON FORMAL HEARINGS:**

**A.** Formal hearings are held in Santa Fe. Hearings are not open to the public except upon request of the taxpayer. Taxpayers may appear at a hearing for themselves

or be represented by a bona fide employee or an attorney licensed to practice in New Mexico, certified public accountant or registered public accountant.

**B.** Every party shall have the right of due notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing, including the right to discovery as provided in these rules.

**C.** An adverse party, or an officer, agent or employee thereof, and any witness who appears to be hostile, unwilling or evasive may be interrogated by leading questions and may also be contradicted and impeached by the party calling that person.

**D.** The parties may agree to, and the hearing officer may accept, the joint submission of stipulated facts relevant to the issue or issues. The hearing officer may order the parties to stipulate, subject to objections as to relevance or materiality, to uncontested facts and to exhibits. The hearing officer may also order the parties to stipulate to basic documents concerning the controversy, such as audit reports of the department, assessments issued by the department, returns and payments filed by the party taxpayers and correspondence between the parties, and to basic facts concerning the identity and business of a taxpayer, such as the taxpayer's business locations in New Mexico and elsewhere, the location of its business headquarters and, if applicable, the state of its incorporation or registration. ] **[RESERVED]** [7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.8 NMAC - Rn, 3 NMAC 1.8.8, 1/15/2001, A, 8/30/2001; A, 4/30/07, Repealed, 5/24/2022]

### 3.1.8.9 **[HEARING OFFICER:**

**A.** Hearings in adjudicative proceedings shall be presided over by a hearing officer designated by the secretary who will be referred to herein as the hearing officer.

**B.** The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

**(1)** to administer or have administered oaths and affirmations;

**(2)** to cause depositions to be taken;

**(3)** to require the production and/or inspection of documents and other items;

**(4)** to require the answering of interrogatories and requests for admissions;

**(5)** to rule upon offers of proof and receive evidence;

**(6)** to regulate the course of the hearings and the conduct of the parties and their representatives therein;

**(7)** to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

**(8)** to schedule, continue and reschedule formal hearings;

**(9)** to consider and rule upon all procedural and other motions appropriate in proceeding;

**(10)** to require the filing of briefs on specific legal issues prior to or after the formal hearing;

**(11)** to cause a complete record of proceedings in formal hearings to be made; and

**(12)** to make and issue decisions and orders.

**C.** In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any officer, employee or agent of the department.

**D.** In the performance of these adjudicative functions, the hearing officer is prohibited from ex parte discussions with either party on any protested matter.

**E.** Disqualification of a hearing officer:

—————(1)————— When a hearing officer has substantial doubt as to whether the hearing officer has a conflicting interest, the hearing officer shall disqualify himself or herself and withdraw from the hearing by notice on the record.

—————(2)————— Whenever any party believes the hearing officer for any reason should be disqualified in a particular proceeding, such party may file with the secretary a motion to disqualify and remove the hearing officer, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. A copy of the motion shall be served on the opposing party and on the hearing officer whose removal is sought. The hearing officer shall have 25 days from such service within which to accede or to reply to the allegations. If the hearing officer does not disqualify himself or herself within that time, the secretary shall promptly review the validity of the grounds alleged and determine whether or not the hearing officer shall be disqualified. The secretary's decision shall be final.

—————(3)————— If the hearing officer is disqualified, the secretary shall designate another person to act as hearing officer].

**[RESERVED]**

[11/5/1985, 1/4/1988, 5/24/1990, 8/15/1990, 10/31/1996; 3.1.8.9 NMAC - Rn, 3 NMAC 1.8.9, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]

**3.1.8.10 [EVIDENCE:]**

—————A.————— The taxpayer shall have the burden of proof, except as otherwise provided by law.

—————B.————— Relevant and material evidence shall be admitted. Irrelevant, immaterial, unreliable or unduly repetitious evidence may be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as is practicable. The hearing officer shall consider all evidence admitted.

—————C.————— The hearing officer shall take administrative notice of facts to the extent provided in the New Mexico Rules of Civil Procedure for District Courts. When any

decision of the hearing officer rests, in whole or in part, upon the taking of administrative notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.

—————D.————— Parties objecting to evidence shall timely and briefly state the grounds relied upon. Rulings of the hearing officer on all objections shall appear in the record.

—————E.————— Formal exception to an adverse ruling is not required.

—————F.————— When an objection to a question propounded to a witness is sustained, the examining representative may make a specific offer of what the representative expects to prove by the answer of the witness, or the hearing officer may, with discretion, receive and have reported the evidence in full. Excluded exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority. **[RESERVED]**

[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.10 NMAC - Rn, 3 NMAC 1.8.10, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]

**3.1.8.11 [RECORD:]**

Hearings shall be electronically recorded unless the hearing officer allows recording by any alternative means approved by the New Mexico supreme court for the recording of judicial proceedings. Any party may request that a hearing be recorded by such an alternative means. Unless otherwise ordered by the hearing officer, the party requesting recording by an alternative means will be responsible for the full cost thereof, including the provision of the original transcript to the hearing officer and copies to opposing parties. **[RESERVED]**

[11/5/1985, 5/24/1990, 8/15/1990, 10/31/1996, 1/15/98; 3.1.8.11 NMAC - Rn, 3 NMAC 1.8.11, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]

**3.1.8.12 [PROPOSED FINDINGS, CONCLUSIONS AND BRIEFS:]**

At the close of the

reception of evidence, or within a reasonable time thereafter fixed by the hearing officer, the hearing officer may require or any party may file with the hearing officer proposed orders, proposed findings of fact and proposed conclusions of law, together with reasons therefore and briefs in support thereof. **[RESERVED]** [11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.12 NMAC - Rn, 3 NMAC 1.8.12, 1/15/2001, Repealed, 5/24/2022]

**3.1.8.13 [DISCOVERY:]**

The parties are expected to accomplish adequate discovery by the time a formal hearing is held. This discovery is to be achieved by informal consultation, stipulation, deposition, requests for admissions and production of documents and written interrogatories. If adequate discovery is not achieved within a reasonable time prior to the time a formal hearing is scheduled, any party may apply to the hearing officer for an order to require depositions, production of records or answers to interrogatories. Depositions may be taken orally or upon written interrogatories and cross-interrogatories. Unless order otherwise by the hearing officer, responses to interrogatories, requests for production of documents and requests for admission shall be due thirty days after service of same on a party. Unless ordered otherwise by the hearing officer, any notice of deposition shall be served on all opposing parties at least five working days prior to the date of the deposition. The parties have an obligation to cooperate in the scheduling of depositions to avoid unnecessary expense to the parties and inconvenience to witnesses. **[RESERVED]**

[11/5/1985, 1/4/1988, 5/24/1990, 8/15/1990, 10/31/1996, 1/15/98; 3.1.8.13 NMAC - Rn, 3 NMAC 1.8.13, 1/15/2001, Repealed, 5/24/2022]

**3.1.8.14 [CONSEQUENCES OF FAILURE TO COMPLY WITH ORDERS:]**

\_\_\_\_\_ **A.** \_\_\_\_\_ If a party or an officer or agent of a party fails to comply with an order of the hearing officer for the taking of a deposition or otherwise relating to discovery, the hearing officer may, for the purpose of resolving issues and disposing of the proceeding without unnecessary delay despite such failure, take such action in regard thereto as is just, including but not limited to the following:

\_\_\_\_\_ **(1)** \_\_\_\_\_ infer that the admission, testimony, documents or other evidence sought by discovery would have been adverse to the party failing to comply;

\_\_\_\_\_ **(2)** \_\_\_\_\_ rule that, for the purposes of the proceeding, the matter or matters concerning which the order was issued be taken as established adversely to the party failing to comply;

\_\_\_\_\_ **(3)** \_\_\_\_\_ rule that the noncomplying party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent or upon the documents or other evidence discovery of which has been denied;

\_\_\_\_\_ **(4)** \_\_\_\_\_ rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown; or

\_\_\_\_\_ **(5)** \_\_\_\_\_ dismiss the protest or order that the protest be granted.

\_\_\_\_\_ **B.** \_\_\_\_\_ Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the decision of the hearing officer. It shall be the duty of parties to seek and the hearing officer to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the withheld testimony, documents or other evidence.

\_\_\_\_\_ **C.** \_\_\_\_\_ Any party who previously requested the secretary to issue a subpoena may request the secretary to seek the assistance of the court in the enforcement of any subpoena issued to any person who fails to provide the information or documents requested in the subpoena

under the provisions of Subsection 7-1-4D NMSA 1978:]-[**RESERVED**] [11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.14 NMAC - Rn & A, 3 NMAC 1.8.14, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]

### 3.1.8.15 **[PREHEARING CONFERENCES:**

\_\_\_\_\_ **A.** \_\_\_\_\_ The hearing officer may, and upon motion of any party shall, direct representatives for all parties to meet with the hearing officer for a prehearing conference to consider any or all of the following:

\_\_\_\_\_ **(1)** \_\_\_\_\_ simplification and clarification of the issues;

\_\_\_\_\_ **(2)** \_\_\_\_\_ stipulations and admissions of fact and of the contents and authenticity of documents;

\_\_\_\_\_ **(3)** \_\_\_\_\_ expedition in the discovery and presentation of evidence, including, but not limited to, restriction on the number of expert, economic or technical witnesses;

\_\_\_\_\_ **(4)** \_\_\_\_\_ matters of which administrative notice will be taken; and

\_\_\_\_\_ **(5)** \_\_\_\_\_ such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

\_\_\_\_\_ **B.** \_\_\_\_\_ Prehearing conferences may be recorded in the discretion of the hearing officer.

\_\_\_\_\_ **C.** \_\_\_\_\_ The hearing officer may enter in the record an order which recites the results of the conference. Such order shall include the hearing officer's rulings upon matters considered at the conference, together with appropriate directions to the parties. The hearing officer's order shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.]-[**RESERVED**]

[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.15 NMAC - Rn, 3 NMAC 1.8.15, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]

### 3.1.8.16 **[MOTIONS:**

\_\_\_\_\_ **A.** \_\_\_\_\_ After a formal hearing is scheduled on a protest, all motions shall be addressed to the hearing officer with copies to the opposing parties and shall be ruled upon by the hearing officer.

\_\_\_\_\_ **B.** \_\_\_\_\_ All written motions shall state the particular order, ruling or action desired and the grounds therefor.

\_\_\_\_\_ **C.** \_\_\_\_\_ Within ten calendar days after personal service or service by facsimile transmission of any written motion, or within thirteen calendar days after the motion is mailed or within such longer or shorter time as may be designated by the hearing officer, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion.—The moving party shall have no right to reply, except as permitted by the hearing officer.]-[**RESERVED**]

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.8.16 NMAC - Rn, 3 NMAC 1.8.16, 1/15/2001; A, 8/30/2001, Repealed, 5/24/2022]

## TAXATION AND REVENUE, DEPARTMENT OF

This is an amendment to 18.19.4 NMAC, Sections 32 through 42, effective 5/24/2022.

### 18.19.4.32 **[HEARINGS--WHEN HEARING REQUIRED--NOTIFICATION:**

\_\_\_\_\_ **A.** \_\_\_\_\_ Whenever the department has reason to believe any licensee has violated any provision of the Motor Vehicle Code or the regulations promulgated thereunder, the department shall schedule a hearing to determine whether or not the licensee's license should be canceled, suspended, revoked or continued.

\_\_\_\_\_ **B.** \_\_\_\_\_ The licensee shall be notified of the hearing. Notification shall inform the licensee of the suspected violations of particular provisions of the Motor Vehicle Code and shall briefly advise the licensee of



the procedures employed in hearings and of remedies subsequent to the hearing if the license is refused, canceled, suspended or revoked. At the end of the hearing or within ten (10) days thereafter, the department shall enter a written decision and order]. **[RESERVED]**  
 [7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.32 NMAC - Rn, 18 NMAC 19.4.10.4, 9/14/2000, Repealed, 5/24/2022]

**18.19.4.33 [HEARINGS--INFORMAL CONFERENCES:**

**A.** The secretary, in appropriate cases, may provide for an informal conference before setting a hearing. An informal conference will be scheduled at a time and place agreed to by both parties. The secretary may attend or designate a delegate to attend. Both parties may bring representatives of their own choosing to the conference, and both parties may bring any records or documents that are pertinent to the issues to be discussed. An informal conference will be vacated if the parties resolve the issue prior to the scheduled date.

**B.** The purpose of the informal conference is to discuss the facts and the legal issues. The result of an informal conference will usually be one of the following:

- (1)** an agreement that the license can be issued without further action;
- (2)** an agreement that the license can be issued, but only after certain specific requirements are satisfied;
- (3)** an agreement to schedule a hearing; or
- (4)** any combination of the above agreements.

**C.** The appellant or the department may be given the opportunity to provide more facts if the situation warrants. There is no statutory restriction on the number of informal conferences that may be scheduled.

**D.** In the event the appellant fails to appear at the informal conference without reasonable notice to the Secretary,

the protest may be scheduled for a hearing without further opportunity for an informal conference.]

**[RESERVED]**

[7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.33 NMAC - Rn, 18 NMAC 19.4.10.5, 9/14/2000, Repealed, 5/24/2022]

**18.19.4.34 [HEARINGS--DEPOSITIONS:**

The parties are expected to accomplish adequate discovery by the time a hearing is held. This discovery is to be achieved by informal consultation, stipulation, deposition, requests for admissions and production of documents and written interrogatories. If adequate discovery is not achieved within a reasonable time prior to the time a hearing is scheduled, any party may apply to the hearing officer for an order to require depositions, production of records or answers to interrogatories. Depositions may be taken orally or upon written interrogatories and cross-interrogatories.] **[RESERVED]**

[7/19/1994, 9/14/1996; 18.19.4.34 NMAC - Rn, 18 NMAC 19.4.10.6, 9/14/200; Repealed, 5/24/2022]

**18.19.4.35 [HEARINGS--CONSEQUENCES OF FAILURE TO COMPLY WITH ORDERS:**

**A.** If a party or an officer or agent of a party fails to comply with an order of the hearing officer for the taking of a deposition or otherwise relating to discovery, the hearing officer, for the purpose of resolving issues and disposing of the proceeding without unnecessary delay despite such failure, may take such action in regard thereto as is just, including but not limited to the following:

**(1)** infer that the admission, testimony, documents or other evidence sought by discovery would have been adverse to the party failing to comply;

**(2)** rule that, for the purposes of the proceeding, the matter or matters concerning which the order was issued be taken as established adversely to the party failing to comply;

**(3)** rule that the noncomplying party may not introduce into evidence or otherwise rely, in support of any claim or defense, on testimony by such party, officer or agent or on the documents or other evidence discovery of which has been denied; or

**(4)** rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown.

**B.** Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the decision of the hearing officer. It shall be the duty of the parties to seek and the hearing officer to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the withheld testimony, documents or other evidence.

**C.** Any party who previously requested the secretary to issue a subpoena may request the secretary to seek the assistance of the court in the enforcement of any subpoena issued to any person who fails to provide the information or documents requested in the subpoena.] **[RESERVED]**

[7/19/1994, 9/14/1996; 18.19.4.35 NMAC - Rn, 18 NMAC 19.4.10.7, 9/14/2000, Repealed, 5/24/2022]

**18.19.4.36 [HEARINGS--MOTIONS:**

**A.** After a hearing is scheduled, all written motions shall be addressed to the hearing officer with copies to the opposing parties and shall be ruled on by the hearing officer. All written motions shall state the particular order, ruling or action desired and the grounds therefor.

**B.** Within 15 days after personal service of any written motion, or within 20 days after the motion is mailed, or within such longer or shorter time as may be designated by the hearing officer, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the



motion. The moving party shall have no right to reply, except as permitted by the hearing officer. [RESERVED] [7/19/1994, 9/14/1996; 18.19.4.36 NMAC - Rn, 18 NMAC 19.4.10.8, 9/14/2000, Repealed, 5/24/2022]

**18.19.4.37 [HEARINGS--PREHEARING CONFERENCE:**

**A.** The hearing officer may, and upon motion of any party shall, direct representatives for all parties to meet with the hearing officer for a prehearing conference to consider any or all of the following:

- (1) simplification and clarification of the issues;
- (2) stipulations and admissions of fact and of the contents and authenticity of documents;
- (3) expedition in the discovery and presentation of evidence, including, but not limited to, restriction on the number of expert, economic or technical witnesses;
- (4) matters of which official notice will be taken; and
- (5) such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

**B.** Prehearing conferences may be recorded in the discretion of the hearing officer.

**C.** The hearing officer may enter in the record an order which recites the results of the conference. Such order shall include the hearing officer's rulings on matters considered at the conference, together with appropriate directions to the parties. The hearing officer's order shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice. [RESERVED]

[7/19/1994, 9/14/1996; 18.19.4.37 NMAC - Rn, 18 NMAC 19.4.10.9, 9/14/2000, Repealed, 5/24/2022]

**18.19.4.38 [HEARINGS--GENERAL RULES ON HEARINGS:**

**A.** Hearings are held in Santa Fe. Hearings are open to the public. An appellant may appear at a hearing in person or be represented by a bona fide employee, an attorney or other bona fide representative.

**B.** Every party shall have the right of due notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing, including the right to discovery as provided in 18.19.4.30 through 18.19.4.42 NMAC.

**C.** An adverse party, or an officer, agent or employee thereof, and any witness who appears to be hostile, unwilling or evasive may be interrogated by leading questions and may also be contradicted and impeached by the party calling that witness. [RESERVED]

[7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.38 NMAC - Rn & A, 18 NMAC 19.4.10.10, 9/14/2000, Repealed, 5/24/2022]

**18.19.4.39 [HEARINGS--HEARING OFFICER:**

**A.** Hearings in adjudicative proceedings shall be presided over by a hearing officer designated by the secretary.

**B.** The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings, and to maintain order. The hearing officer shall have all powers necessary to carry out these duties, including the following:

- (1) to administer or have administered oaths and affirmations;
- (2) to cause depositions to be taken;
- (3) to require the production or inspection of documents and other items;
- (4) to require the answering of interrogatories and requests for admissions;
- (5) to schedule a prehearing conference for simplification of the issues, or any other proper purpose;

(6) to require the filing of briefs on specific legal issues prior to the hearing;

(7) to rule upon offers of proof and receive evidence;

(8) to regulate the course of the hearings and the conduct of the parties and their representatives therein;

(9) to continue and reschedule hearings;

(10) to consider and rule upon all procedural and other motions appropriate in proceeding;

(11) to cause a complete record of proceedings in hearings to be made; and

(12) to make and issue decisions and orders.

**C.** In the performance of these functions, the hearing officer shall not be responsible to or subject to the supervision or direction of any officer, employee or agent engaged in the performance of investigative or prosecuting functions for the department.

**D.** In the performance of the adjudicative functions, the hearing officer is prohibited from ex parte discussions with either party on any matter relating to the complaint.

**E.** Disqualification of a hearing officer:

(1) When a hearing officer has substantial doubt as to whether he or she has a conflicting interest, the hearing officer shall disqualify himself or herself and withdraw from the hearing by notice on the record.

(2) Whenever any party believes for any reason the hearing officer should be disqualified to preside in a particular proceeding, such party may file with the secretary a motion to disqualify and remove the hearing officer, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. A copy of the motion shall be served on the opposing party and on the hearing officer whose removal is sought. The hearing officer shall have twenty-five (25) days from such service within which to accede or to reply to the

allegations. If the hearing officer does not disqualify himself or herself within that time, the secretary shall promptly review the validity of the grounds alleged and determine whether or not the hearing officer shall be disqualified. The secretary's decision shall be final.

~~(3) If the hearing officer is disqualified, the secretary shall designate another person to act as hearing officer.]~~

~~[RESERVED]~~

~~[7/19/1994, 9/14/1996; 18.19.4.39 NMAC - Rn, 18 NMAC 19.4.10.11, 9/14/2000, Repealed, 5/24/2022]~~

**18.19.4.40 [HEARINGS-- EVIDENCE:**

~~A. The appellant shall have the burden of proof, except in those cases where the department is the petitioner seeking to cancel, revoke or suspend a license or temporary permit and as otherwise provided by law.~~

~~B. Relevant and material evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious evidence may be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as is practicable. The hearing officer shall consider all evidence admitted.~~

~~C. The hearing officer shall take judicial notice of facts and law to the extent provided in the New Mexico rules of civil procedure for district courts. When any decision of the hearing officer rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.~~

~~D. Parties objecting to evidence shall timely and briefly state the grounds relied upon. Rulings of the hearing officer on all objections shall appear in the record.~~

~~E. Formal exception to an adverse ruling is not required.~~

~~F. When an objection to a question propounded to a witness is sustained, the examining person may make a specific offer of what~~

~~that person expects to prove by the answer of the witness, or the hearing officer may, with discretion, receive and have reported the evidence in full. Excluded exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.]~~ ~~[RESERVED]~~

~~[7/19/1994, 9/14/1996, 11/30/1999; 18.19.4.40 NMAC - Rn, 18 NMAC 19.4.10.12, 9/14/2000, Repealed, 5/24/2022]~~

**18.19.4.41 [HEARINGS--RECORD:** Hearings shall be either stenographically recorded by an official reporter or mechanically recorded, as the hearing officer directs.] ~~[RESERVED]~~

~~[7/19/1994, 9/14/1996; 18.19.4.41 NMAC - Rn, 18 NMAC 19.4.10.13, 9/14/2000, Repealed, 5/24/2022]~~

**18.19.4.42 [HEARINGS--PROPOSED FINDINGS, CONCLUSIONS AND BRIEFS:** At the close of the reception of evidence, or within a reasonable time thereafter fixed by the hearing officer, the hearing officer may require or any party may file with the hearing officer proposed orders, proposed findings of fact and proposed conclusions of law, together with reasons therefor and briefs in support thereof.] ~~[RESERVED]~~

~~[7/19/1994, 9/14/1996; 18.19.4.42 NMAC - Rn, 18 NMAC 19.4.10.14, 9/14/2000, Repealed, 5/24/2022]~~

## TAXATION AND REVENUE, DEPARTMENT OF

This is an amendment to 18.19.9 NMAC, Sections 8 through 19, effective 5/24/2022.

**18.19.9.8 [IMPLIED CONSENT HEARINGS--REQUEST FOR HEARING--TIME AND PLACE--TELEPHONIC HEARINGS--CONTINUANCES:**

~~A. Requests for hearing must be in writing, must be~~

~~accompanied by the required fee or statement of indigency and must be made within ten days after receipt of notification of revocation as defined in Section 66-8-112 NMSA 1978. Incomplete requests or requests received after this time will not be honored. Timeliness of the request shall be determined either by the date of actual delivery to the department's headquarters in Santa Fe or, if mailed, by the postmark date of the envelope containing the request delivered through the U. S. postal service.~~

~~B. The department will notify the driver or the driver's agent by certified mail of the time and place scheduled for the hearing. This notice will be directed to the address contained on the request for a hearing or, if no return address is indicated, to the address last given the division pursuant to Section 66-5-22 NMSA 1978.~~

~~C. The hearing officer may conduct the hearing in person or, with the driver's consent, by telephone. If the hearing is to be conducted by telephone, the notice shall so inform the driver or the driver's agent and provide no less than seven days for the driver or the driver's agent to object to the hearing being conducted telephonically. Such telephonic hearings shall be conducted so that the driver, the driver's agent and any percipient witnesses are present together at a place designated by the department, usually a motor vehicle field office, in the county where the arrest took place. The department will bear the expense of the telephone call. The field office shall have a speaker telephone and unless other arrangements are made, a fax machine available so that all may hear the proceedings and documentary evidence may be transmitted between witnesses and the hearing officer.~~

~~D. Within ten days prior to the time an in-person hearing is scheduled, the driver or the driver's agent may request that one or both appear by telephone. The hearing officer shall grant the request so long as the driver or driver's agent can make arrangements either to~~

have access to a fax machine during the hearing or to exchange all documentary evidence prior to the hearing. It will be the responsibility of the driver or the driver's agent to call the designated telephone number at the time of the hearing. If the driver or driver's agent fails to call, it will be treated as a non-appearance.

~~E.~~ At the request of the driver or the driver's agent or on the hearing officer's own motion, the hearing officer may, for good cause, continue the hearing. The hearing officer shall consider only those requests made at least three working days prior to the scheduled hearing absent extraordinary circumstances which the requesting party could not have known earlier. Employees of the department's DWI scheduling section may grant or deny the request on behalf of the hearing officer.]

~~[RESERVED]~~

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.8 NMAC - Rn & A, 18 NMAC 19.9.8, 9/14/2000; A, 10/13/00, Repealed, 5/24/2022]

~~18.19.9.9 [IMPLIED-  
CONSENT HEARINGS--  
SUBPOENAS FOR WITNESSES  
AND DOCUMENTS ISSUANCE  
-COSTS:~~

~~A.~~ Under the authority granted by Subsection D of Section 66-8-112 NMSA 1978 and by Section 66-2-10 NMSA 1978, the department may subpoena witnesses to give testimony under oath and to require the production of relevant books, or other records.

~~B.~~ The department may issue subpoenas to the law enforcement officer(s) whose name(s) are identified in any affidavit submitted to the department pursuant to Section 66-8-111 NMSA 1978 and to any other person who the department, in its discretion, believes may have relevant testimony to offer at the hearing. Such subpoenas shall be served by personal service as provided by NMRA 1-045(c) or by certified mail.

~~C.~~ The driver or the driver's agent may make written application to the secretary requesting

that a subpoena be issued to compel the attendance of a witness and for the production of specific books, papers or other records. Such written application shall set forth reasons supporting the issuance of the subpoena in order that relevancy of the proposed testimony or documents to be produced can be ascertained.

The driver or the driver's agent shall be responsible for the service of any such subpoenas. Unless a request for continuance is made at least three working days prior to the scheduled date for the hearing, inability to serve such subpoenas shall not be grounds for continuance.] ~~[RESERVED]~~  
[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.9 NMAC - Rn & A, 18 NMAC 19.9.9, 9/14/2000, Repealed, 5/24/2022]

~~18.19.9.10 [IMPLIED-  
CONSENT HEARINGS--  
HEARING OFFICER:~~

The secretary shall designate a hearing officer to conduct the hearings, continue hearings, receive evidence and issue decisions on behalf of the department. Only hearing officers designated by the secretary may conduct Implied Consent Act hearings.] ~~[RESERVED]~~  
[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.10 NMAC - Rn, 18 NMAC 19.9.10, 9/14/2000, Repealed, 5/24/2022]

~~18.19.9.11 [IMPLIED-  
CONSENT HEARINGS--  
POWERS AND DUTIES OF  
HEARING OFFICER:~~

Hearing officers have the duty to conduct fair and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings and to maintain good order and decorum. Hearing officers possess all powers necessary to that end, including the following:

~~A.~~ to administer or have administered oaths and affirmations;

~~B.~~ to receive evidence and to rule upon offers of proof;

~~C.~~ to consider and rule upon all procedural and other motions and objections appropriate in proceeding;

~~D.~~ to insure that all, and only, relevant and material issues are considered during the hearing;

~~E.~~ to require the production or inspection of relevant documents and other items;

~~F.~~ to participate, when appropriate, in the examination of witnesses;

~~G.~~ to cause a complete record of the hearing to be made;

~~H.~~ to regulate the course of the hearing and the conduct of the parties and their representatives therein;

~~I.~~ to make and issue decisions and orders; and

~~J.~~ to take such other action as may be necessary and appropriate, consistent with legal authority vested in the department, and with the rules and regulations and policies of the department.]

~~[RESERVED]~~

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.11 NMAC - Rn, 18 NMAC 19.9.11, 9/14/2000, Repealed, 5/24/2022]

~~18.19.9.12 [IMPLIED-  
CONSENT HEARINGS--  
PARTIES TO THE HEARING  
-PARTIES' RIGHTS:~~

The parties to the hearing shall be the department and the driver. The parties shall be entitled to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, to make opening and closing arguments and to be represented by counsel at their own expense. Rebuttal evidence and argument may only be allowed at the discretion of the hearing officer.]

~~[RESERVED]~~

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.12 NMAC - Rn, 18 NMAC 19.9.12, 9/14/2000, Repealed, 5/24/2022]

~~18.19.9.13 [IMPLIED-  
CONSENT HEARINGS--RULES  
OF EVIDENCE:~~

~~A.~~ The technical rules of evidence shall not apply to the conduct of any hearing held under the provisions of Section 66-8-112 NMSA 1978. Irrelevant, immaterial or unduly repetitious evidence shall

be excluded. The hearing officer may give probative effect to evidence that is of a kind commonly relied upon by reasonably prudent people in the conduct of serious affairs.

~~B.~~ The hearing officer may take notice of judicially cognizable facts and of general technical or scientific facts and of other facts within the specialized knowledge of the division.

~~C.~~ All evidence in the possession of the division may be placed in evidence and made part of the record of the proceeding. Documentary evidence may be received in evidence in the form of copies or excerpts.

~~D.~~ The experience, technical competence and specialized knowledge of the division and of the hearing officer may be utilized in the evaluation of the evidence].

**[RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.13 NMAC - Rn & A, 18 NMAC 19.9.13, 9/14/2000, Repealed, 5/24/2022]

**18.19.9.14 [IMPLIED- CONSENT HEARINGS-- FAILURE TO APPEAR:** If a driver who has requested a hearing fails to appear at the scheduled time and place, either in person or through an attorney licensed to practice law in New Mexico, and notice was given to the driver or to the driver's agent of the time and place, and no continuance has been granted, the right to a hearing shall be forfeited and the revocation shall be sustained.]

**[RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.14 NMAC - Rn, 18 NMAC 19.9.14, 9/14/2000, Repealed, 5/24/2022]

**18.19.9.15 [IMPLIED- CONSENT HEARINGS-- ISSUES TO BE CONSIDERED AT THE HEARING:** The hearing shall be strictly limited to those issues set out in Subsection E of Section 66-8-112 NMSA 1978 and whether the driver previously has had a driver's license revoked under the provisions of the Implied Consent Act.] **[RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.15 NMAC - Rn & A, 18 NMAC 19.9.15, 9/14/2000, Repealed, 5/24/2022]

**18.19.9.16 [IMPLIED- CONSENT HEARINGS-- HEARINGS OPEN TO PUBLIC:**

The hearing, including any continuations, shall be open to the public]. **[RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.16 NMAC - Rn, 18 NMAC 19.9.16, 9/14/2000, Repealed, 5/24/2022]

**18.19.9.17 [IMPLIED- CONSENT HEARINGS--**

**DECISION AND ORDER:** The hearing officer shall enter a written order either sustaining or rescinding the revocation of the driver's license, permit or privilege to drive. The written order sustaining the revocation shall contain the findings required by Subsection F of Section 66-8-112 NMSA 1978]. **[RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.17 NMAC - Rn & A, 18 NMAC 19.9.17, 9/14/2000, Repealed, 5/24/2022]

**18.19.9.18 [IMPLIED- CONSENT HEARINGS-- RECORD OF THE HEARING:**

Hearings shall be electronically recorded unless the hearing officer requires recording by stenographic, mechanical or other means.]

**[RESERVED]**

[7/2/1990, 1/10/1994, 12/31/1996; 18.19.9.18 NMAC - Rn, 18 NMAC 19.9.18, 9/14/2000, Repealed, 5/24/2022]

**18.19.9.19 [IMPLIED- CONSENT HEARING-- TIME**

**FRAMES:** In computing any period of time under this section, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.]

**[RESERVED]**

[1/10/1994, 12/31/1996; 18.19.9.19 NMAC - Rn, 18 NMAC 19.9.19, 9/14/2000, Repealed, 5/24/2022]

**End of Adopted Rules**



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## Other Material Related to Administrative Law

**GOVERNOR,  
OFFICE OF THE****EXECUTIVE ORDER 2022-024****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 April 28, 2022 the Centers for Disease Control and Prevention (“CDC”) reported over 81 million people have been infected in the United States, with over 990,000 related deaths, and the New Mexico Department of Health has reported 522,094 positive COVID-19 cases and 7,484 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 subsequently declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many, if not most, have kept such states of emergency in place.

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, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011, 2021-012, 2021-023, 2021-030,

2021-044, 2021-049, 2021-054, 2021-058, 2021-061, 2021-067, 2022-004, 2022-007, 2022-012, 2022-16 shall be renewed and extended through May 30, 2022.

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, and 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect on May 1, 2022 and shall remain in effect until May 30, 2022 unless renewed, modified, or rescinded.

**ATTEST:  
DONE AT THE EXECUTIVE  
OFFICE  
THIS 29TH DAY OF APRIL 2022**

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

/ S /  
**MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**  
/ S /  
**MICHELLE LUJAN-GRISHAM  
GOVERNOR**

**HEALTH,  
DEPARTMENT OF  
PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
ACTING SECRETARY DAVID  
R. SCRASE, M.D.**

**May 16, 2022**

**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 Certain Public Health  
Measures**

**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”). While vaccines are the most effective method to prevent the spread of COVID-19, masks, social distancing and self-isolation measures continue to be necessary to protect New Mexicans who are ineligible to receive a COVID-19 vaccine or who choose not to receive a vaccine. All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans continue social distancing measures.

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. 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;

B.

January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;

C. April

5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19;

D. February

26, 2021 Public Health Emergency Order Implementing Administration Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine; and

E. December

2, 2021 Amended Public Health Emergency Order Requiring All School Workers Comply with Certain Health Requirements and Requiring Congregate Care Facility Workers, Hospital Workers, and Employees of the Office of the Governor Be Fully Vaccinated and Receive Booster Vaccines.

3. The April 15, 2022

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 Certain Public Health Measures 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 May 30, 2022;

**WHEREAS**, confirmed cases in the United States have risen to more than 81 million and confirmed COVID-19 infections in New Mexico have risen to over 525,000;

**WHEREAS**, COVID-19 is a deadly virus and has taken the lives of over 1,000,000 Americans and over 7,600 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**, vaccination, 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, David R. Scrase, M.D.,**  
 Acting Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in 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.

**I HEREBY DIRECT AS FOLLOWS:**

(1) Unless a healthcare provider instructs otherwise, all individuals ages 2 years and older shall wear a mask or multilayer cloth face covering in all public hospitals, profit or nonprofit private hospitals, general hospitals, special hospitals, nursing homes, assisted living facilities, adult day cares, hospice facilities, rehabilitation facilities, residential treatment centers, the New Mexico State Veterans' Home, and community homes except when eating or drinking. Nothing in this Order shall be construed as prohibiting any business, house of worship, non-profit entity, or other entity from imposing more stringent requirements.

(2) Any business, establishment, or non-profit (other than those which are a healthcare operation, utility, or indigent care services) which members of the public regularly visit must report to the New Mexico Environment Department when there is an occurrence of a rapid response. The New Mexico Environment Department shall monitor when

an entity has 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. Businesses, establishments, or non-profits with four or more rapid responses shall not be required to cease operations. However, the rapid responses must be reported to the Environment Department so that the public may be made aware of the positive cases.

(3) All businesses, establishments, and non-profit entities must adhere to the pertinent COVID-Safe Practices

(4) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall continue to adhere to the face covering requirements contained in the New Mexico Public Education Department's "COVID-19 Response Toolkit for New Mexico's Public Schools", available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, until the school district, governing local education agency, or private educational institution elects otherwise. Public and private educational institutions shall adhere to the other COVID-Safe Practices requirements for in-person instruction contained in the COVID-19 Response Toolkit for New Mexico's Public Schools and may operate up to maximum capacity. Public and private educational institutions shall follow the reporting, testing, and closure requirements set forth by the Public Education Department in the COVID-19 Response Toolkit for New Mexico's Public Schools.

**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 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 immediately and remain in effect through June 15, 2022.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, 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 NMSA 1978, Section 12-10A-19.

**ATTEST:**

**DONE AT THE EXECUTIVE OFFICE**

**THIS 16TH DAY OF MAY 2022**

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

/ S /

**MAGGIE TOULOUSE OLIVER**  
**SECRETARY OF STATE**

/ S /

**DAVID R. SCRASE, M.D.**  
**ACTING SECRETARY OF THE NEW MEXICO DEPARTMENT OF HEALTH**



**PUBLIC SAFETY,  
DEPARTMENT OF**

**NOTICE OF EMERGENCY  
RULEMAKING**

**Public Notice.** The New Mexico Department of Public Safety [“DPS”] gives notice that on May 5, 2022, it adopted 10.2.4 NMAC LAW ENFORCEMENT RETENTION FUND REPORTING, MONITORING AND ADMINISTRATION, as an emergency rule. DPS finds that the adoption of 10.2.4 NMAC as an emergency rule is justified because the time required to comply with the non-emergency rulemaking procedures of the State Rules Act would cause the unanticipated loss of funding for an agency program, in accordance with, Section 14-4-5.6 NMSA 1978. Law enforcement agencies throughout the state who wish to provide the statutorily provided retention differential disbursements to their eligible officers in the upcoming fiscal year only have until June 1 in which to submit the required data to DPS. Without the guidance of the emergency rule these agencies may not be able to comply with the statutory requirements in time to obtain this funding.

**Rule Information.** The purpose of the emergency rule is to develop rules, forms, standards and procedures for law enforcement agencies to report law enforcement officer retention information to DPS to enable DPS to disburse to reporting agencies monies from the Law Enforcement Retention Fund to provide eligible officers retention differential disbursements in the 2022-2023 fiscal year. HB 68, passed in the 2022 Regular Session, goes into effect on May 19, 2022. The statute has a June 1 deadline for law enforcement agencies to submit statutorily required information in order to receive a disbursement from the Law Enforcement Retention Fund for retention differential disbursements for law enforcement officers completing five, ten, fifteen and twenty years, in the upcoming

fiscal year, to submit the required information to DPS. The emergency rule advises the law enforcement agencies what information needs to be submitted and how. Without the rule, law enforcement agencies throughout New Mexico may miss the opportunity to fund retention differential disbursements from the LERF in the upcoming fiscal year.

**Copies of the Rule.**

Copies of the emergency rule may be obtained at all DPS district, field, ports of entry, and regional offices, at the DPS website, <https://www.dps.nm.gov/index.php/public-information/law-enforcement-retention-fund> on the sunshine portal, or by contacting Jason Greenlee, Chief Legal Counsel, at 505.467.9629 or [jason.greenlee@state.nm.us](mailto:jason.greenlee@state.nm.us)

**Statutory Authorization.**

The statutory authorization for this rulemaking is set forth in NMSA Section 9-19-6 E., 14-4-5.6 and Section 36 of HB 68 passed in the 2022 Regular Session.

**Temporary rule.** The emergency rule is a temporary rule which will expire within one hundred and eighty days of its effective date.

**Summary of the rule.** The rule defines key terms left undefined by the statute. The rule provides important clarifying information on how to calculate the five percent retention differential disbursement and when to disburse it. The rule provides information to the law enforcement agency on when and how to report to DPS information required by the statute and the rule.

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

# 2022 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXIII, Issues 1-24

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

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